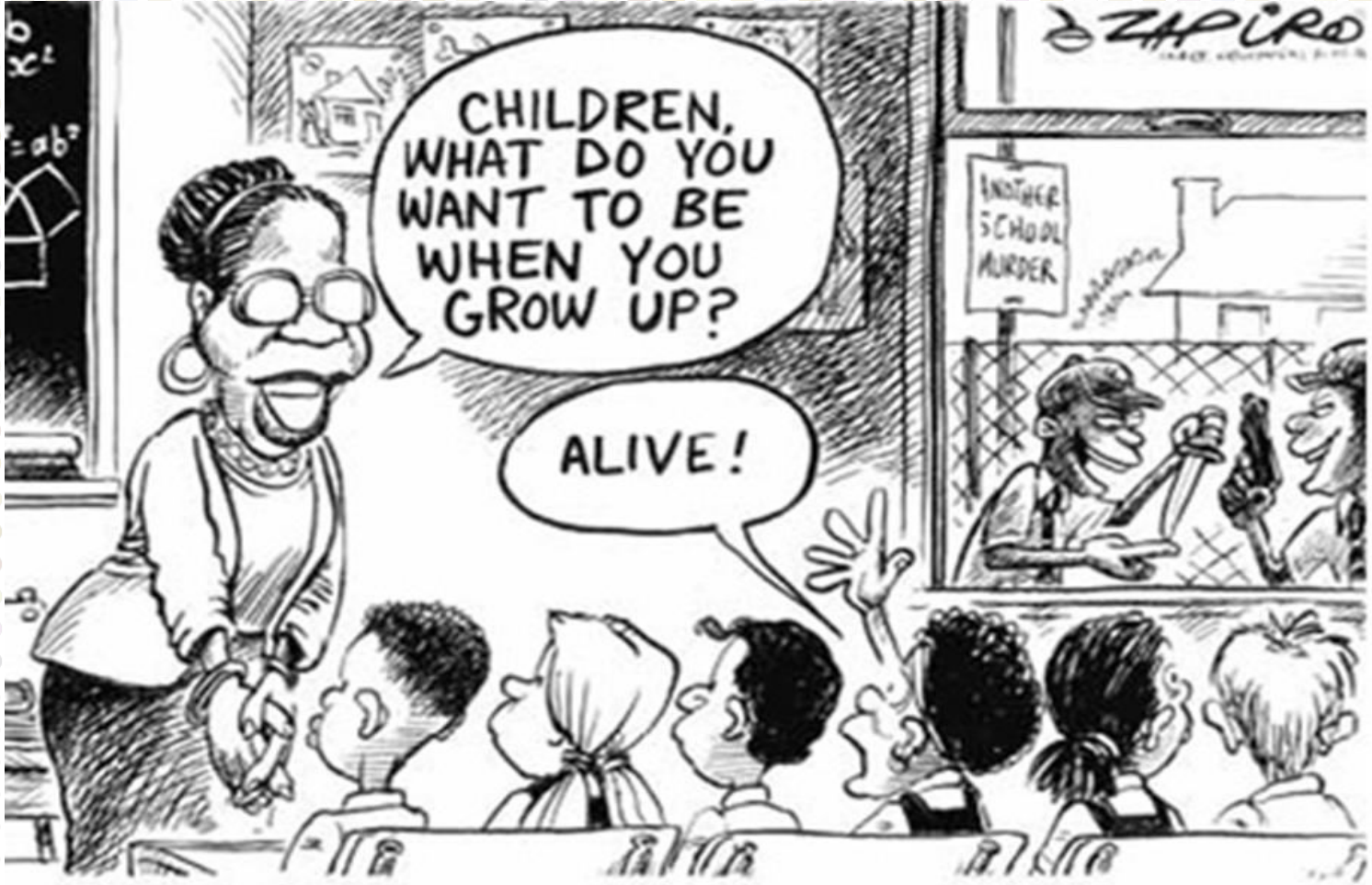

Sustainability, health systems & Human Rights

Lynette Mabote

ARASA
AIDS & Rights Alliance for Southern Africa

ABOUT AIDS AND RIGHT ALLIANCE FOR SOUTHERN AFRICA (ARASA)

- ARASA is a regional partnership of 106 non-governmental organisations

- Work collaboratively to strengthen capacity of civil society for evidence-based advocacy around rights-based responses to HIV, SRHR and TB in southern and east Africa.

- It is the only regional organisation that is structured in the form of a partnership of country-based civil society organisations (CSOs) working together to promote human rights approaches in the context of access to HIV, SRHR and TB health care.

- ARASA) strengthens civil society's role in governance of health and rights by monitoring policy, legislative and programmatic responses at national, regional and international levels

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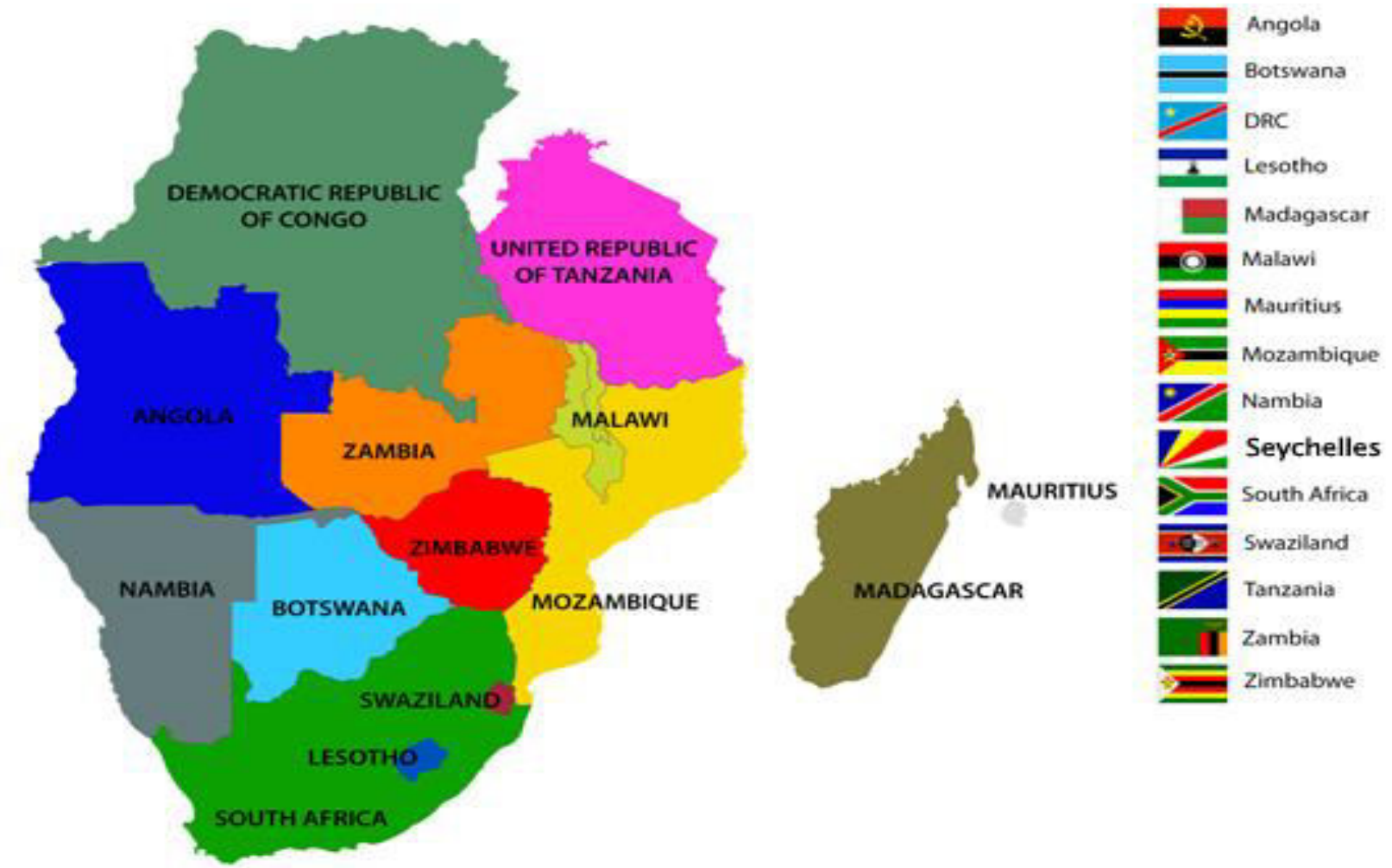
SADC Countries



LDC and non-LDC in SADC

LDC	Non-LDC
Angola	Botswana
DRC	Mauritius
Lesotho	Namibia
Madagascar	Seychelles
Malawi	South Africa (developed)
Mozambique	Swaziland
Tanzania	Zimbabwe
Zambia	

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Where are our countries in adopting TRIPS flexibilities

***ANGOLA*: Industrial Property Law No.3 of 1992 was passed in 1992 before TRIPS. NO flexibilities adopted; No patent duration…**

***BOTSWANA*: Industry Property Act 1996 (Amended 1997) before TRIPS flexibilities. 20 year patent term Goes beyond TRIPS requirements. Competition Bill of 2009, to prevent anti-competitive practices**
PROGRESS: AMENDMENTS TALKS!!!

***MOZAMBIQUE*: Industrial Property Law of 2006. Provisions for compulsory licenses for public health. 20 year patent life, from filing. In 2004, granted compulsory license for local manufacturing of First Line ARVs (WHO, 2006)**

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Where are our countries in adopting TRIPS flexibilities

***TANZANIA*:**

Patent Act of 1987 Sec 52 of Act allows for compulsory on certain grounds. Not amended to align with TRIPS flexibilities. Patent life of 10 years from date of filing *(Extension: 2033)*

***LESOTHO:* Industrial Property Amendment Act (1997); before DOHA Declaration on Public health. Has not updated its Industrial Property Act. Currently considering the adoption of certain TRIPS flexibilities this year.**

***ZAMBIA:* Patent Act of 1958, amended in 1980 & 1987.**

16 years patent life; but has until 2033. Some sections feature flexibilities. For example the allowing of compulsory licenses (Sec37) for insufficient use or violation of a patent license

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Where are our countries in adopting TRIPS flexibilities

***ZIMBABWE*: Patent Act of 1971, amended in 1994. In 2001, Patents Law Amendment Bill. Takes into account certain flexibilities; like compulsory licenses under sec31. In 2002, Govt declared state of emergency and overrode patents on ARVs. Issued compulsory licences to make, use and import ARVs; from 2003 - 2008**

SEYCHELLES: Patent Act (1901) protection is obtainable via a national filing.

Seychelles has other laws protecting Trademarks and Copyrights. Not TRIPS compliant and no flexibilities offered in TRIPS and DOHA

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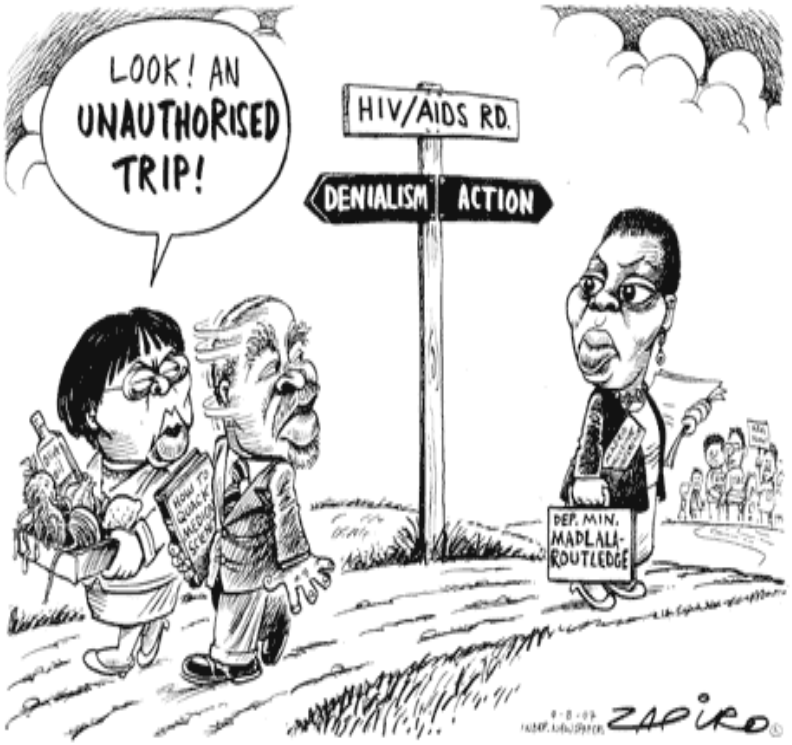
Culture of incoherence

- Lack of understanding about TRIPS flexibilities
- Conflicting interests between industrial policy, public health and revenue collection
- Confusion or lack of clarity about which government agency takes responsibility e.g. Health or Trade & Industry, Finance
- Lack of political will to drive the processes through
- Trade agreements negating benefits of TRIPS flexibilities e.g. TRIPS+ through bilateral trade agreements
- Inertia in parliamentary processes in getting to Bill stage then Act of Parliament



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Status of TRIPS Flexibilities Use in SADC

- 8 LDCs exempt from granting and enforcing patents for pharmaceuticals until 2033
- Other 7 countries (non-LDCs) can use TRIPS flexibilities provided included in national IP/patent legislation i.e. domesticated
- LDCs in SADC can produce generics of patented products until 2033 – can produce and export those generics that India no longer allowed to produce
- The inadequate utilisation of TRIPS flexibilities at domestic level (incl. compulsory licence, parallel importation, paragraph 6 system).
- Mozambique, Zambia and Zimbabwe have issued compulsory licenses for antiretrovirals. Very cumbersome processes within legislations, not easy to use

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Status of TRIPS Flexibilities Use in SADC

- Status of TRIPS flexibilities in IP/patent laws assessed by Southern African Regional Programme on Access to Medicines & Diagnostics (SARPAM) project in 2012 using a number of criteria. Results on: http: //ttatm.sarpam.net/sadc/
- Database of 25 regional experts in IP Legislation created with emphasis on maximising TRIPS flexibilities was created
- SADC countries assisted to review their IP/Patent legislation through Technical Working Groups.
- Currently reviewing Intellectual Property (IP) / Patent law in 6 countries: Botswana, Malawi, Seychelles, Swaziland, Zambia and Zimbabwe
- Lesotho, Mauritius, Mozambique and Tanzania) expressed interest in reviewing their IP/Patent laws and required support.

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BREAKING IP BARRIERS

Creating Pathways to Medicine Access

- Work supported by AIDS Fonds (2015- 2017): ARASA & SARPAM
- Focus is on:
  - *Domestication of TRIPS-flexibilities by putting pressure on governments to amend their Patent laws*
  - *Strategic thinking around procurement / regional manufacturing of 2nd & 3rd line ARVs, TB and Hepatitis C medicines*
- Implemented in three countries: Mauritius, Zimbabwe & Botswana
- Ensuring that CSOs are at the negotiation table, for better monitoring of progress
- Capacity strengthening of CSOs (online, in-country trainings) to undertake actions/ advocacy around access to medicines, as a human right

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Jukebox rhetoric

- **Jukebox rhetoric leads to incoherent strategies**

  - **3 by 5 Initiative:** *global TARGET to provide 3 million PLHIV in low- and middle-income countries ART by the end of 2005.*
  - **Universal Access by 2010:** *Towards universal access: Scaling up priority HIV/AIDS interventions in the health*
  - **0-0-0 by 2015:** *Zero new HIV infections, zero discrimination and zero AIDS-related deaths*
  - **90-90-90:** *2020, 90% of all PLHIV **will** know their HIV status. By 2020, 90% of all people with diagnosed HIV infection will receive sustained antiretroviral therapy. By 2020, 90% of all people receiving antiretroviral therapy will have viral suppression.*
  - **ENDING AIDS:** *Fast-Track strategy to end the AIDS epidemic by 2030.*

What does it all mean? Do we need new or are the old medicines sufficient?

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Re-calibration of approach: Articulating rights-based approaches to Access to essential medicines

- Man cannot survive on 'PILLS' alone
- Need rights-based discourse at the centre of the health response (e.g Ebola, ZIKA, TB and other vaccines for neglected disease)
- The human rights arguments underpinning fight against HIV over the last 30 have failed, to provide a similar foundation for success against other diseases such as multidrug-resistant TB (MDR-TB).
- Appreciation that we cannot win this fight, one disease at a time- No ending HIV/AIDS without ending TB
- Other non-communicable disease need to be prioritised
- Dismantling broader *status quo*: WHO should not be allowed to get away with providing sub-standard recommendations for developing countries, **NO BLUE SKY**

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An Example of MDR-TB WHO Guidelines

WHO recommended unsound medical treatment for MDR-TB patients in resource-poor settings for almost a decade - since 2000]

Citing cost considerations, WHO did not recommend the available standard of care that had been successfully used to contain and defeat MDR-TB in rich countries.

WHO has essentially facilitated the global implementation of a *double standard for TB care* in low- and middle-income countries (LMICs)

International human rights law was violated.

Current proposal: Policymakers should reject double standards of this kind and instead embrace the challenge of implementing the highest standard of care on a global level.

'Double Standards In Global Health: Medicine, Human Rights Law and Multidrug-Resistant TB Treatment Policy'
By: T. Nicholson, C. Admay, A. Shakow, and S. Keshavjee

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Key questions

- What does it all mean?
- Do we need new or are the old medicines sufficient?

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Thank you

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