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**The Making of South Africa's Sexual
Offences Act (2007): Structure and Agency
in a Women's Rights Coalition**

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Abstract

How do women's rights groups campaign for institutional change to reform archaic rape laws in transitional democracies? This article presents the findings from a case study of a coalition of women's rights and legal advocacy organisations in South Africa, the National Working Group on Sexual Offences, established to campaign for progressive institutional change to national laws and policies on rape. It examines the opportunities provided by the shifting political and structural arrangements of transitional democracies for promoting sustainable social change, and describes the constraints faced by civil society coalitions within these contexts. This article describes the factors that facilitate the emergence of developmental coalitions and determine or impede their success. It concludes with a description of the substantive achievements and successes of the coalition.

Introduction

In South Africa, women's coalitions have formed around a broad spectrum of development and human rights issues encompassing sexual and domestic violence, women's livelihoods, education and the law. These organisations have strengthened legislative and policy commitments relating to gender quality, and improved access to services including comprehensive reproductive healthcare, the increased protection of women in the workplace and better education for women and girls. This study focuses on the role of a coalition of civil society organisations, primarily women's rights organisations, in the passing of South Africa's Criminal Law (Sexual Offences) Amendment Act (2007). Using the coalition of the National Working Group on Sexual Offences (hereafter the 'Working Group') as a case study, this research examines how South Africa's democratic transition provided opportunities for civil society coalitions to participate in the processes of law reform. The primary objectives of the Working Group were to unite and organise spheres of civil society to influence the content of the Sexual Offences Act and to expedite its passage through state

legislative structures. This research examines the strategies used by the Working Group to meet their objectives, and describes some of the constraints they faced into meeting their objectives.

Methodology

This study is based on semi-structured, in-depth interviews with members of the ‘Working Group’ and key government officials involved in the formulation of the Sexual Offences Act (2007).¹ Purposive sampling was used to source informants for these interviews. Researchers analysed relevant parliamentary submissions between 1998 (when the need for rape law reform was first acknowledged by parliament) and 2007 (when the Sexual Offences Act was passed). Secondary research was conducted on South African civil society within the socio-political context of the post-apartheid state, and in relation to the broader, international movement for women’s rights that came to the fore around the Fourth World Conference on Women in Beijing (1995).

Structure and agency in post-apartheid South Africa

When a nation is undergoing fundamental, systematic changes to its polity, such as a transition to democracy, changes in the political settlement may provide opportunities for civil society to redefine its rules of engagement with the state and to promote inclusive social development.² One way in which civil society may prise open new spaces for political participation is through the process of law reform.³

Subsequent to South Africa’s first democratic elections in 1994, parliament began to update legislation to promote transformative justice and to fulfil its commitments to international declarations on human rights. The rules of engagement between civil society and government were re-negotiated in the early years of South Africa’s democratic transition. The women’s sector, then

¹ Known in full as the Criminal Law (Sexual Offences and related matters) Amendment Act 32 of 2007, *effective* 16 December 2007, Government Gazette 30599 (14 December 2007), <http://www.justice.gov.za/legislation/acts/2007-032.pdf>.

² Inclusive social development refers not only to the provision of services on an equitable basis, but also the promotion and protection of human rights and gender equality.

³ Agency in this context refers to the role of people – principally leaders, elites and coalitions – in forging developmental institutions.

constituted by a loose collective of women's rights and legal advocacy organisations, capitalised on new opportunities provided by these changes and used legislative activism to pressure state actors to reform archaic rape laws. Organisations within the women's sector brought test cases before the courts to challenge inadequate laws.⁴ When their cases succeeded, judges were compelled to write new jurisprudence that better reflected the legislative tenets of South Africa's new democracy, giving legal recognition to the rights to dignity and privacy. But the legislative reforms enacted by judges were problematic in terms of the separation of powers between different arms of the state, impinging on the role of the legislature. This exerted pressure on the other tiers of government, including parliament and the executive, to begin the formal process of rape law reform. The independence of the judiciary and the reformulation of the relationship between the state and civil society in the early years of South African democracy therefore provided the structural factors necessary for the effective use of this form of activism.

At the same time as organisations within the women's sector used judicial activism to promote rape law reform, additional pressure for this reform was mounting from within the South African government. A year after South Africa's first democratic elections in 1994, parliamentarians with extensive ties within the new government and past experience in human rights activism attended the Fourth World Conference on Women (Beijing, 1995). At this conference, political elites from across the globe strengthened their ties with other elite members of the international network on violence against women (interview, JC 2, 10.08.2010). After returning to South Africa, key leaders within the ruling African National Congress (ANC) instigated the formal process of rape law reform to fulfil government's commitment to the Beijing Platform for Action and the Convention on the Elimination of All Forms of Discrimination against Women, thereby bringing South African laws and policies into line with the international objectives of the global movement for women's rights.

The emergence of a developmental coalition

The onset of formalized, collective advocacy work around sexual law reform began in 1998 (Pithey *et al*, 1999: 3). At this time, a coalition of women's rights and legal reform groups emerged to generate policy and legal recommendations

⁴ The social movement for access to HIV treatment, which emerged from 1998 onwards, also used the courts to force government to fulfil its constitutional promise of 'the right to health' through providing public access to antiretroviral medicines.

to ensure that the content of future sexual offences legislation protected the rights of women and children, and was responsive to the South African specific context of endemic gender based violence. The coalition later named itself the Western Cape Consortium on Violence against Women (the ‘Consortium’), and it was founded with support from the Open Society Foundation. Its members were organisations with a strong legal advocacy and research focus, including the Women’s Legal Centre and the Gender, Health and Justice Research Unit at the University of Cape Town. Many had worked together previously on campaigns relating to violence against women, principally around drafting the Domestic Violence Act (1998) (personal interview, National Working Group on Sexual Offences informant 2, 8 June 2010). Past networks established through joint advocacy and research initiatives therefore facilitated the Consortium’s emergence, as did financial support from a donor with a well-established profile in the development sphere.

In 1999 the Law Reform Commission, a subsidiary of the Department of Justice, was approached by the Department of Justice to investigate how to reform laws pertaining to rape. Key officials working within the Justice Department were aware of the research and advocacy of leading figures within the women’s sector on rape law reform. The coalescence of ‘soft advocacy’, alliance-building between influential elites at local and international levels, and the motivation of government officials to strengthen laws and policies to promote gender equality, therefore triggered the formal process of rape law reform in South Africa.⁵

In December 2002 the Law Reform Commission completed its investigation on rape law reform and published its report, including a proposed Sexual Offences Bill. However, after its publication in July 2003, parliament did nothing to approve the Bill.⁶ In response, key figures within the women’s sector again used soft advocacy strategies to revive government’s stated commitment to passing the Bill, writing letters and talking personally with key officials on the Justice Committee (which was responsible for drafting the Sexual Offences Act), as well as within other state agencies.⁷ However, due to the lengthy delays in the Bill, leaders within the women’s sector grew increasingly frustrated and disillusioned with the state actors from the Justice Committee. There was also

⁵ A trigger is an event that provides a new political opportunity for a coalition to redefine its strategic direction, achieve its objectives, or exercise greater political leverage.

⁶ A Bill is a draft of a legislative proposal. It has to pass through various stages in Parliament before it is passed as an Act of Parliament, at which point it becomes a binding law. In South Africa, a Bill has to be passed by both the National Assembly and the National Council of Provinces (the two houses of Parliament) before it is sent to the President for signature, when it is passed as an Act.

⁷ The head of the Justice Committee was Deputy Minister of Justice, Johnny de Lange.

concern that revised drafts of the Bill would exclude the recommendations made by civil society organisations based on evidence-based research and many years of direct experience working with both victims and perpetrators of rape. These organisations feared that the Justice Committee's exclusion of their recommendations would result in a 'watered down' version of the original Sexual Offences Bill that would do little to protect rape survivors or to address the underlying causes of sexual violence in South Africa (Artz & Smythe, 2008: 7).

From 2004, a group of Johannesburg-based women's rights and legal advocacy organisations began to plan the formation of a women's rights coalition that would be larger and more broad-based than the coalition formed in the Western Cape. They foresaw the new coalition as a pressure group to influence the content of the Sexual Offences Bill, and to expedite its passage (personal interview, Portfolio Committee on Justice and Constitutional Development informant 2, 10 August 2010). On 6 May 2004, representatives from nine organisations formed the National Working Group on Sexual Offences (the 'Working Group') with the collective aim of promoting 'the development and implementation of legislation and policy that ensures that women and child survivors of sexual offences receive the optimal legal, medical and psycho-social support, treatment and care' (National Working Group on the Sexual Offences Bill, 2005). Between 2004 and 2007, these civil society organisations collaborated under the aegis of the Working Group to influence the content of the Act and to speed up its passage.

The significance of prior networks

The existence of co-operative networks between elite actors spanning the boundaries of the women's sector and government were crucial to the establishment and evolution of the Working Group. Networks which had been established in the anti-apartheid resistance movement connected leaders of the women's sector to each other through joint histories of campaigning and collective action (personal interview, National Working Group on Sexual Offences informant 5, 17 June 2010). Moreover, work in the anti-apartheid resistance movement had fostered networks between leaders of the women's sector and previous comrades and mentors, who had assumed official state positions subsequent to the formation of South Africa's Government of National Unity (personal interview, National Working Group on Sexual Offences informant 5, 17 June 2010).

From the mid-90s, drawing on these connections, high-ranking political officials who sympathised with the aims of the women's sector created a platform for them to meet with other political elites to propose their objectives for rape law reform. These connections were used to feed research and policy recommendations from civil society to state actors with the power to influence policy directly. State actors also benefited from this alliance, as they drew on the expertise and research support of these organisations. Co-operation between leading figures in civil society and government thus characterized the state's early investigation into the process of rape law reform.

However, one of the problems of a coalition's reliance on connections with government elites and the achievement of its objectives through soft advocacy is that these informal networks are susceptible to rapid change. Once a state official has resigned or fallen from political favour, a coalition may lose its influence and be cast out into the political wilderness. In the case of the Working Group, the resignation of one parliamentarian in particular, Pregs Govender, who had championed rape law reform and provided an important bridge between the women's sector and influential parliamentarians, curtailed the influence of the Working Group.⁸ Subsequent to Govender's resignation, members believed that the coalition lacked a decisive political champion working within government. Because many of the earlier leaders from the women's movement had been appointed to positions within government, there was no longer a strong, autonomous women's movement in politics (personal interview, National Working Group on Sexual Offences informant 8, 28 June 2010). While there were a small number of influential women politicians who pushed for the reform of rape laws, they were ultimately constrained by their affiliation with government, particularly the ruling ANC.

In the absence of a decisive political champion, the Working Group used its networks within the sphere of civil society to extend its influence and to generate popular support for its objectives (discussed further below in the section on 'building consensus'). The Working Group also adapted lessons learnt from prior collaborations with civil society organisations, including the use of legislative activism and certain forms of 'framing', to influence the content of the Sexual Offences Bill and to expedite its passage as an Act.

From 2006 onwards, once the Working Group's influence on state actors had waned, the coalition's leaders drew on their own networks and partnerships to

⁸ Govender was a member of parliament from 1994 – 2002, and is currently the chair of South Africa's Human Rights Commission. She resigned from parliament in protest against the AIDS denialist policies of President Mbeki and the closing down of democratic participation between civil society and different arms of the government.

gain support for their advocacy objectives (personal interview, National Working Group on Sexual Offences informant 9, 30 June 2010). However, while prior connections between individuals were the basis for the establishment of the National Working Group, when conflict developed over the strategic direction and funding of the coalition, this impeded its functioning. Moreover, the expansion of the Working Group to incorporate organisations with a greater diversity of objectives meant that it became increasingly difficult to establish and maintain consensus in submissions to parliament. (This is discussed further below in the section on the weaknesses of the coalition.)

Rolling triggers

A ‘rolling trigger’ is a high profile public event or process that galvanises greater action by civil society, often inspiring change in strategic direction. A series of rolling triggers re-imbued the Working Group’s advocacy efforts and radicalised its members further, leading ultimately to the creation of a ‘splinter’ coalition (the 1in9 campaign), and determining the later evolution of the Working Group.⁹ These rolling triggers changed the coalition’s engagement with the officials on parliament’s Justice Committee, from support and co-operation, to monitoring and opposition. They included the Jacob Zuma rape trial and the ‘Get on the Bus’ campaign. The Working Group perceived the government’s delays in finalising the contents of the Sexual Offences Act as stemming from antagonism towards the coalition. In response, the activism became ‘more driven’, and members began to ‘yell louder’ (personal interview, National Working Group on Sexual Offences informant 5, 17 June 2010). The perceived opposition of state elites was another rolling trigger for the coalition. It led to a shift in strategy from supporting the Law Reform Commission and Justice Committee to monitoring and criticising parliament and other state bodies. This change in the Working Group’s strategy may have curtailed the coalition’s political influence and efficacy further. In dominant one-party states (such as South Africa), ‘adversarial advocacy’ such as monitoring government’s fulfilment of laws and policies, criticising political elites in the press, or staging protests outside parliament, may close down spaces for engagement between civil society and state elites.

⁹ The 1in9 campaign is an outspoken feminist coalition that was founded specifically to monitor the Jacob Zuma rape trial. Constituted by the more ideologically radical members of the Working Group, 1in9 activists organized a number of advocacy initiatives outside the courthouse where Zuma’s trial was conducted, and were victimised and threatened by his supporters.

Strategies

The Working Group used various strategies to achieve its objectives. These may be divided into five categories:

- (A) Adapting the strategies of predecessor movements and coalitions to gain popular and political support, particularly through the use of ‘legislative advocacy’;
- (B) Expanding the coalition’s support base;
- (C) Establishing consensus between the coalition’s members;
- (D) ‘Framing’ demands and objectives in order to maximise influence and support; and
- (E) Mobilising the support of political elites.

Adapting the strategies of predecessor movements and coalitions

The Working Group adapted the strategies of predecessor coalitions to maximise its influence on civil society, parliament and the general public. The central strategy used by the Working Group to achieve its objectives was legislative advocacy – direct engagement with the law-making process to influence the content of the Sexual Offences Act and to expedite its passage. The primary means by which civil society may engage with the drafting of legislation in South Africa is through submitting comments on drafts of a Bill to the relevant parliamentary portfolio committee, and through making oral submissions at public hearings. Two coalitions that preceded the Working Group had pioneered these methods of legislative advocacy. The first of these was the Children’s Justice Coalition, an alliance of organisations within the children’s sector that was established to influence the content of the Children’s Act. The Working Group learnt numerous lessons from the Children’s Justice Coalition, including the importance of solidarity among civil society organisations in ‘striving to bring about fundamental change’ (personal interview, National Working Group on Sexual Offences informant 4, 11 June 2010; personal interview, Portfolio Committee on Justice and Constitutional Development informant 2, 10 August 2010). This informed the Working Group’s strategic expansion of its membership base as well as its emphasis on maintaining consensus among members. There was also an overlap in membership between the two coalitions, as numerous members of the Working Group (including some of its leaders) had participated in the Children’s Justice Coalition (personal interview, National Working Group on Sexual Offences informant 3, 10 June 2010; personal

interview, National Working Group on Sexual Offences informant 4, 11 June 2010). The second influential predecessor coalition was Gun Free South Africa. The leader of Gun Free South Africa was described by one informant as the ‘quintessential lobbyist’, who had developed some of the best strategies for enacting legal reform in South Africa (personal interview, National Working Group on Sexual Offences informant 9, 30 June 2010).¹⁰ These included the emphasis on professional expertise and evidence-based research in arguing for the inclusion of specific legislative tenets into a new Act.

A host of other coalitions which had lobbied for legal reform during South Africa’s democratic transition were cited as influences by Working Group members. These included the Reproductive Health Alliance, the coalition of health and human rights organisations that constituted the HIV treatment access movement, and the Gay and Lesbian Equality Alliance. The Working Group’s members had also collaborated in regional organisations, such as the Western Cape Anti-Rape Forum (personal interview, National Working Group on Sexual Offences informant 5, 17 June 2010). Preceding coalitions therefore provided valuable frameworks for engagement with the state, media, public, and civil society. They informed and inspired the coalition’s advocacy and lobbying strategies.

Expanding the coalition’s support base

In the history of South African civil society, mass movements and coalitions have played a pre-eminent role. The most powerful civil society organisations in South Africa, the trade unions, remain those with the largest memberships and the strongest mobilisation potential. One of the Working Group’s first objectives was to expand its support base (personal interview, National Working Group on Sexual Offences informant 15, 18 August 2010). Many of the Working Group’s informants emphasized the importance of the coalition’s involvement of an array of women’s rights organisations, with a particular emphasis on community-based organisations. These were regarded as central to winning the support of government officials, who it was believed would pay greater consideration to the Working Group’s recommendations if the coalition was seen as broadly inclusive of a range of organisations beyond the metropolitan centres of Cape Town, Durban and Johannesburg. Working Group members involved in other civil society partnerships used these forums to expand the coalition’s support base (personal interview, National Working Group on Sexual Offences informant 10, 29 July 2010; personal interview, National Working Group on

¹⁰ This was Margie Keegan.

Sexual Offences informant 4, 11 June 2010; personal interview, National Working Group on Sexual Offences informant 9, 30 June 2010). For those organisations that were new, or had not yet established national ties within the women's sector, the Working Group presented an opportunity to be part of a coalition run by leading organisations in the field and to contribute to its collective aims and achievements.

Establishing consensus among a coalition's members

One of the principal means by which the Working Group aimed to establish consensus was through distributing its reports, memoranda and submissions as widely as possible, and requesting other organisations and coalitions (both within and beyond the women's sector) to support these. This strategy was partly successful, and many 'external' organisations signed onto Working Group memoranda and parliamentary submissions, helped to circulate and publicise press statements, and joined direct actions such as marches and pickets (personal interview, National Working Group on Sexual Offences informant 10, 29 July 2010; personal interview, National Working Group on Sexual Offences informant 9, 30 June 2010).

Informants believed that the Working Group's strength lay partly in its alliance of academics, lobbyists and community activists. They explained that the involvement of community-based organisations and rural community leaders in particular would encourage government to pay more attention to the Sexual Offences Bill and regard the issue of violence against women as having greater political currency. This would showcase the Working Group's popular recognition and representivity and, its leaders believed, strengthen its political leverage.

The Working Group's structure and leadership were directed at the establishment and maintenance of consensus. A steering committee was formed by the 'core instigators' of the coalition (personal interview, National Working Group on Sexual Offences informant 5, 17 June 2010). Their primary role was to mediate between different organisations within the coalition in order to maintain consensus. Differences in approach were dealt with generally by discussion and compromise. Divisive issues were debated openly among the Group, after which votes were held to determine the Working Group's course of action (personal interview, National Working Group on Sexual Offences informant 9, 30 June 2010). One informant explained that the coalition would

avoid making decisions or statements ‘that upset or went against the mission and vision of the member organisations’ (personal interview, National Working Group on Sexual Offences informant 7, 23 June 2010). However, other informants recounted how the ‘difficulties in bringing together divergent issues and views... and in making sure that everyone’s interests were represented and that there wasn’t one dominant organization’ (personal interview, National Working Group on Sexual Offences informant 11, 4 August 2010).

In instances in which the Group failed to achieve consensus, organisations had recourse to submitting individual briefs to the Justice Committee. But this led to the perception by some that separate submissions made by individual Working Group members ‘diluted the effect of the submissions’ on the Justice Committee (personal interview, National Working Group on Sexual Offences informant 13, 5 August 2010). Others argued that the push to reach consensus on behalf of the whole Working Group resulted in ‘watered down submissions’, rather than making strong arguments from the different standpoints of individual organisations (personal interview, National Working Group on Sexual Offences informant 8, 28 June 2010). The Working Group therefore identified minimum bottom lines to maintain the consensus of the whole coalition and to prevent its fragmentation over controversial issues. This is a strategy by coalitions to prevent contentious issues from dividing constituent members. However, it is also the result of managing large, ‘open’ coalitions, which are more likely to resort to ‘lowest common denominator’ positions in order to retain agreement on issues and strategies (Tattersall, 2010: 143). The size of the Working Group and the extent of its support base were understood as valuable characteristics of the coalition. Members believed that the Working Group’s messages carried more weight with government, because, as one explained: ‘It’s like being bitten by a dozen mosquitoes instead of just one’ (personal interview, National Working Group on Sexual Offences informant 6, 21 June 2010). Numerous members therefore explained that functioning in a coalition gave the Working Group’s members ‘a louder voice’ (personal interview, National Working Group on Sexual Offences informant 5, 17 June 2010).

‘Framing’ as a strategic device

One of the Working Group’s key strategies was to ‘name and frame’ its messages, or to package them for its target audiences in ways that instilled a common understanding of the coalition’s objectives, fostering solidarity and support (Gamson, 1975; Tarrow, 1998). The Working Group framed its messages according to its various target audiences: the media, elected government officials, civil servants working within the courts and welfare

systems, civil society and the public. The Working Group courted the media actively to gain a greater public forum for its demands. However, use of the media to exert pressure on government to meet the demands of civil society is a strategy only available in democratic societies in which the media is largely free and moreover has a stake in representing the demands of civil society organisations.

In view of the rhetorical focus of South African political elites on the democratic transition, constitutionalism and nurturing a culture of human rights, the Working Group situated the issue of rape law reform within the broader framework of human rights and constitutional imperatives. This allowed the coalition to ‘broaden the scope of the argument beyond just a piece of legislation’, and to link rape law reform symbolically with democracy, constitutionalism and modernity (personal interview, National Working Group on Sexual Offences informant 11, 4 August 2010).

When targeting the public, the Working Group sought to illustrate the direct impacts of inadequate rape laws and poor implementation. For instance, materials gave examples of children who had been raped and who had been failed by the justice system (personal interview, National Working Group on Sexual Offences informant 9, 30 June 2010). The Working Group also framed its messages in response to current affairs. It would ‘package’ its messages in relation to issues currently in the public eye, piggybacking also on commemorative events or national holidays (personal interview, National Working Group on Sexual Offences informant 5, 17 June 2010). The purpose here was to frame advocacy objectives within the semantic or historical mould of national days of commemoration, garnering greater public attention and establishing a link between South African national identity and the protection of women’s rights.

When its target audience was the Justice Committee, the Working Group’s leaders would frame their advocacy messages within parliament’s own legalistic rhetoric. Numerous informants perceived the ability to communicate with parliament on these professional terms as a crucial determinant in the coalition’s success. As one member explained, ‘Engaging with a piece of legislation is hectic. If you don’t speak the language, they ignore you, no matter how good your argument is’ (personal interview, National Working Group on Sexual Offences informant 11, 4 August 2010). Members of the Working Group with legal backgrounds mentored other leaders to strengthen their knowledge and understanding of South Africa’s legal framework, building capacity within the coalition (personal interview, National Working Group on Sexual Offences informant 9, 30 June 2010).

Not all informants believed that using academic research to establish connections with the Justice Committee served the purposes of the Working Group. One informant explained: ‘Parliamentarians are not rocket scientists. Being too legalistic or academic can put them off’ (personal interview, National Working Group on Sexual Offences informant 8, 28 June 2010). However, because the research-based organisations targeted members of the Justice Committee who were sympathetic to a more legalistic approach, they cultivated the sympathy and respect of leading political officials by framing their submissions as well-researched, evidence-based guidance, rather than as advocacy briefs. The Working Group also strived to merge academic arguments with an experiential approach, in which its policy/legal recommendations were framed by its practical knowledge.

Mobilising support from political elites

Capitalising on prior networks, the Working Group’s leaders used various strategies to build stronger alliances with influential political actors working on rape law reform. Through establishing symbiotic working relationships with actors on the Justice Committee, the National Prosecuting Authority and the police service, Working Group members used their understanding of institutional spaces and the opportunities that existed to further the coalition’s objectives. The Working Group’s leaders engaged in a ‘constant scanning of the environment and the best angle to take, the person to address, and the type of message to put out’ (personal interview, National Working Group on Sexual Offences informant 8, 28 June 2010). In the early years of its functioning, the Working Group’s strived to establish symbiotic relationships with parliamentarians, mostly women, whom it hoped would be sympathetic to its objectives. It ‘strategically targeted’ these officials through soft advocacy strategies such as writing briefs and memoranda which aligned the political sympathies of these officials with the Working Group’s objectives (personal interview, National Working Group on Sexual Offences informant 4, 11 June 2010).

However, after persistent delays in the passing of the Sexual Offences Bill and the decision by the Justice Committee to exclude many of the Working Group’s recommendations, the coalition decided to alter its position in relation to the Justice Committee, from support to opposition. This decision was disputed hotly by the coalition’s members, some of whom believed that soft advocacy and closer co-operation with government elites were the best strategies to achieve the coalition’s objectives, while others were more intent on oppositional

strategies such as monitoring and exposing government's lack of progress on rape law reform. Some members with more legal expertise were intent on a tightly focussed movement around the specific details of the legislation. However, others were impatient with butting heads with government and wanted to pursue more broad-based, adversarial strategies. This led to a rift between key members of the coalition and some, with prior connections with key state figures involved in the process of law reform established through years of advocacy and research support, left the coalition.

The Working Group's connections with key state actors and the soft advocacy its leaders used to bring the Bill back onto the parliamentary agenda point to the centrality of a coalition's connections with elite government officials. After the departure of Working Group's members who had prior working relationships with the head of the Justice Committee, the coalition's association with the Justice Committee was weakened and its ability to influence the content of the Bill through 'backstage' politics was curtailed. In response, the Working Group focused more on eliciting the support of the media, civil society and the general public in order to promote its objectives.

Would a stronger focus by the coalition on oppositional strategies, activism and mobilisation have been more effective in achieving its objectives than support strategies such as technical input and expert advice to the Justice Committee? In the context of South Africa's social history, the Working Group may have wielded greater influence had it become a mass social movement with a support base constituted by rural and working class women. The ANC's electoral campaigning has focused traditionally on poverty alleviation, housing and employment. The issues of gender equality and the protection of women have never been major electoral issues in South Africa. Due to the lack of widespread public interest and investment in the rights of women, combined with the coalition's inability to establish a broad base of popular support, the women's sector was unable to generate the popular or political leverage necessary to force the issue of rape law reform onto the electoral agenda.

The coalition's shift from co-operation with the Justice Committee to opposition, and the departure of some of its best-connected members, further compromised its ability to meet its objectives. In contexts in which one political party is dominant, efforts made by developmental coalitions to expand political influence through canvassing support from opposition political parties or organisations may alienate the ruling party and therefore be counter-productive to the achievement of advocacy objectives.

The coalition's weaknesses

Representation

Because most members were based in the Western Cape, Gauteng and KwaZulu Natal, the Working Group remained fairly regional and failed to mobilize members dispersed across the other provinces. A number of informants described the demographic homophily of the group's leadership as a weakness. As one explained: 'The leaders of the Working Group were all white, urban women from the big NGOs' (personal interview, National Working Group on Sexual Offences informant 9, 30 June 2010). This was due to the historical privileges conferred by apartheid, which gave white women the educational and professional opportunities to become expert advocates for women's rights. In the post-apartheid context from which the coalition emerged, the middle class status of these women was as much a factor in their leadership of the coalition. Middle class women were able to mobilise the resources necessary for the establishment and functioning of the coalition through professional networks with donors and civil society partners. Numerous informants suggested that greater representivity of the Group's leadership may have improved its reception among political elites, and expanded its public support base.

Funding and capacity constraints

Most members funded their involvement in the Working Group through their advocacy budgets and not through funds raised specifically to participate in the coalition. This is because the process of procuring funds from donors may take many months without any guarantee of ultimate success. Moreover, capacity constraints within organisations mean that the writing of funding applications and the negotiations that ensue are often the responsibility of an organisation's leaders, who are already grappling with excessive workloads.

Because of the relative speed of the Working Group's emergence, there was little time for constituent members to canvass funding for their participation. Moreover, the funding available to these organisations was perceived as better spent on the individual organisations themselves, rather than their participation in a collective. Informants believed abidingly that few donors and developmental partners were willing to fund advocacy for women's rights. Therefore, staunch competition over funding has emerged, with organisations

jockeying for support from donors.¹¹ This has been exacerbated by the current financial crisis and the perceived trend of donors to fund civil society organisations targeting men. Initiatives to reconfigure unequal gender norms through advocacy and outreach in the ‘men’s sector’ is regarded by seasoned women’s activists as the current donor cause *du jour*. Numerous informants therefore believed this ‘donor transience’ would have a negative effect on women’s organisations.

The Working Group’s funding constraints meant that information was shared primarily through emails or workshops, which required constituent members to provide resources in terms of staff, telecommunications, time and transport. The lack of funding for community-based and rural NGOs meant that they often became ‘lost’ to the Working Group, as many did not have the funding for transport or communications required to engage with the email list or to travel to meetings (personal interview, National Working Group on Sexual Offences informant 15, 18 August 2010). Another consequence of resource constraints was that the Working Group relied on email and telephone for most of its communications. This made it more difficult to negotiate strategic priorities and to build unity of purpose. More frequent, face-to-face meetings of the coalition as a whole may have prevented some of the divisions which resulted from members’ uneven levels of participation in the coalition’s organisation and functioning. An expanded budget would also have facilitated the incorporation of more resource-constrained organisations working outside of the metropolitan activist ‘hubs’.

Communication strategies

Numerous informants regarded the Working Group’s communication strategies as inadequate, and there was a perception that ‘buy-in’ was not always elicited sufficiently (personal interview, National Working Group on Sexual Offences informant 8, 28 June 2010). Informants recounted how there were ‘difficulties in bringing together divergent issues and views... and in making sure that everyone’s interests were represented’ (personal interview, National Working Group on Sexual Offences informant 11, 4 August 2010). Some informants believed that the Working Group’s focus on the technical aspects of the Act meant that it may have lost its ‘voice on the ground’, its popular support from a broad base of civil society organisations (personal interview, National Working Group on Sexual Offences informant 5, 17 June 2010). However, the fact that

¹¹ Donors with a strong record of supporting women’s advocacy in South Africa include the Ford Foundation, Open Society Foundation, Oxfam (Belgium and Canada), and Womankind.

members had legal expertise and a strong research background was believed generally to have also contributed to the Working Group's successes. It ensured that members were able to analyse the various drafts of the Sexual Offences Bill and to explain its shortcomings and strengths to other members.

Regional rather than national focus

Numerous informants contended that the Working Group would have been more effective had it established a constant, regionally representative presence at provincial parliamentary hearings. This would have provided the coalition's members with further opportunities to interact with government officials at a provincial level, and physical distance and funding shortages would have been less constraining. However, because the Working Group focused its attention at national level, members strived to establish connections with higher-ranking government officials who were less accessible than their regional counterparts.

The coalition's impact

In 2007 the Sexual Offences Act was passed eventually into law (Fuller, 2010: 5). Most Working Group members were disappointed with its content. They believed that they had been sidelined by state elites who resisted forming strategic alliances with civil society due to a political climate that was increasingly intolerant of opposition. The Act lacked concrete, procedural commitments to providing medical and support services to rape victims. Moreover, many provisions recommended by both the Working Group and the Western Cape Consortium were excluded from the ultimate draft. For instance:

- The Act omitted provisions allowing victims of sexual offences the status of 'vulnerable witnesses'. Had these provisions been included, courts would have been able to provide protective measures for complainants, including testimony via CCTV camera for children.
- The Act omitted the use of expert assessors who would advise and aid judicial officials when they lacked the necessary expertise in sexual offences cases.¹² The result of a lack of expert assessors is the continuing

¹² In some districts, civil society organisations including Rape Crisis, RAPCAN and TVEP (all of whom were members of the Working Group), have established a cohort of 'court supporters' for the victim so that s/he does not feel alone in the courtroom. However, this intervention is limited to the small number of districts in which these organisations operate,

secondary victimisation by the court system of sexual offences complainants, many of whom do not report sexual offences for fear of further trauma by the police and criminal justice system.

- The Act omitted any mandatory state obligations to provide psychosocial services to rape survivors.

Despite these and other weaknesses, the Sexual Offences Act has resulted in some progressive changes to rape law in South Africa. These are:

- New, substantive definitions of rape and sexual offences, including the recognition of oral rape.
- Legal proscriptions for the provision of some health services, including access to post-exposure prophylaxis for rape survivors to prevent sero-conversion to HIV.¹³
- The abandonment of the ‘cautionary rule’, whereby the courts were compelled to apply caution to the evidence of complainants in sexual offences cases.
- A lack of evidence of previous consistent statements can no longer lead to an inference by the court that a complainant is lying (as it could according to preceding laws).
- Firmer rules about the admission of a complainant’s previous sexual history. ‘Evidence’ pertaining to previous sexual history is now inadmissible unless it can be shown that it pertains to an incident of direct relevance to the trial (Fuller, 2010: 18).¹⁴

The Sexual Offences Act has led to some progressive policy changes and measures to protect rape victims. New policies that supplement the Act include:

- The Service Charter for Victims of Violence and Crime (2004);
- National policy guidelines to the Sexual Offences Act for Prosecutors, Police and Health Workers (2008); and
- The National Directory of Services for the Victims of Violence and Crime in South Africa (2009).

and is dependent on the continued funding and support of these organisations. This intervention has not been adopted by the state.

¹³ However, it is notable that, in order for a victim to receive PEP, she will first have to have an HIV test. This may serve as a disincentive, as victims may experience an HIV-positive diagnosis as an additional trauma to a sexual offence.

¹⁴ Although the rules pertaining to previous sexual history have been strengthened, the problem remains that it is still largely at the discretion of the judge or magistrate to decide whether this evidence may be admitted. Since the passage of the Sexual Offences Act there have been numerous examples in South African case law of misuses of this rule.

However, there are numerous problems concerning the practical implementation of these measures, including the failure to implement victim empowerment policies to their full potential. NGOs that provide psychosocial support services to rape victims are based largely in urban areas. These services are therefore frequently inaccessible in rural areas and districts. A lack of information for both state agencies and victims limits knowledge of new legislative and policy requirements (Combrinck, 2008: 265 – 269). Conviction rates of alleged rapists remain low, and attrition rates for rape are high. Legislation does not pose a threat to many perpetrators, who believe they will never be imprisoned for rape (Human Rights Watch, 2010). Organisations working at the coalface of service provision for rape survivors report that 75 – 80% of survivors do not report their crimes because of a lack of faith in the criminal justice system (1in9 campaign, 2011).

New policies have helped to alleviate the suffering of rape victims on a practical level and have improved the reporting process. For instance, as a direct result of the Sexual Offences Act, 62 sexual offences courts have been established throughout South Africa. These courts have designated waiting rooms and offer counselling for victims. In 35 of these courts, Child Victim and Witness Rooms have been established with one-way glass partitions for greater protection while giving testimony.

Through the National Prosecuting Authority's Sexual Offences and Community Affairs Unit, the Department of Justice has created Thuthuzela Care Centres. These are one-stop centres for rape survivors where they may receive medical and psychosocial services, and prosecutorial support. Numerous leading figures within the Working Group were instrumental in the creation of the Thuthuzela centres, advising the National Prosecuting Authority on their structure and functioning.

Since the passing of the Sexual Offences Act, there has been a substantial increase in the number of rapes reported in South Africa. When the Act came into effect over 2007/2008, 63 818 rapes were reported. For the year 2009/2010, this number had increased to 68 332 (South African Police Service [a], 2010; South African Police Service [b] date unspecified). While this may reflect growing faith in the criminal justice system with concomitant increased desire to report crimes, it may also reflect an increase in the incidence of rapes in South Africa.

There is an ongoing lack of state funding for the operational costs of government agencies that provide services to rape victims (Alipo, 2010). This

includes a lack of funds for training programmes for police, health services and employees of the National Prosecuting Authority. The result is insufficient levels of knowledge about the protection of victims of sexual offences by police and the criminal justice system, despite the fact that this protection is mandated by the law. Weaknesses and inadequacies in the current implementation of the Sexual Offences Act and attendant policies provide future opportunities for judicial and legislative advocacy by civil society, particularly the women's sector.

Recommendations to developmental partners

International donors and aid agencies have been cast in a negative light in the development sphere in sub-Saharan Africa, particularly with reference to economic development models. However, in this case study, it was clear that donors played the role of developmental partners rather than restrictive bodies. In the course of this research, various findings emerged regarding how developmental partners could have better supported the Working Group, for instance through gaining a detailed understanding of the local history and politics of gender. Donors that come from a political culture that values opposition, monitoring and oversight of state entities may be eager to fund 'adversarial' advocacy strategies without careful consideration of the possible negative impacts. Consulting closely with key agents and organizations from civil society will help to identify the windows of political opportunity. This requires donors to have a trained workforce, at both local and international levels, with the analytical skills that enable them to work effectively and sensitively with civil society organisations.

This research found that donors should sustain commitments to organisations that continue to deliver on their indicators, rather than shifting attention and resources to 'sexier' causes. During the evaluation of coalitions, donors should focus on *processes* as well as outputs or outcomes, as internal governance and decision-making may affect performance on the ground. Moreover, in national contexts in which demographic diversity and affirmative action are valued by political elites, the efficacy and impact of a developmental coalition may be premised on its inclusion of previously marginalised members and partners. In such contexts, donors should fund the inclusion of appropriate community-based organisations, particularly those based in rural areas. Donors should also collaborate with each other to decide where and how to fund women's coalitions to avoid duplication or gaps in funding, and to ensure more strategic direction for sectors of civil society.

Lastly, this case study demonstrated that developmental coalitions require ‘bedrock’ or ‘core’ funding to sustain diverse memberships and build unity of purpose. Funding operational costs will enable coalitions to achieve their objectives while maintaining previous programmes, including vital service provision (for example, psychosocial support for rape victims).

Conclusion

Civil society coalitions have the potential to expand the power and political leverage of members (Tattersall, 2010: 143). The Working Group created and built alliances between the women’s sector and other public spheres and institutions. Numerous partner organisations which previously had no profile at the level of the national women’s sector were able to pursue national connections and collaborations through their participation in the coalition. Because the Working Group involved various actors in the process of rape law reform, it established new opportunities for inter-sectoral collaboration and solidarity between civil society, service providers and government officials working within parliament and the civil service more broadly. It also generated awareness of changes in rape legislation among provincial and national government departments, the South African Police Services and the National Prosecuting Authority, and linked up various government agencies and affiliates to co-ordinate their work on women’s rights and criminal justice.

The Working Group fused strategies for legal reform with advocacy for women’s rights and against sexual violence. The coalition’s lobbying ranged from legislative advocacy to direct actions (such as protests outside parliament), and soft advocacy (letter writing and private conversations with key state actors). The Working Group also framed its advocacy strategies consciously in order to raise awareness about the practical implications of legislative reform, and to foster popular support for its work. Members emphasised their extensive experience of legal and psychosocial service provision to rape survivors to underscore the value and relevance of the coalition’s objectives. Their experiential understanding informed the materials, reports and parliamentary submissions of the coalition, and augmented the knowledge of various state affiliates and service providers through their collaborations with various Working Group partners.

Weaknesses and inadequacies in the current implementation of the Sexual Offences Act and attendant policies provide future opportunities for further legislative advocacy by civil society, particularly the women’s sector. The Working Group is still functioning, but since the Sexual Offences Act has been

passed its focus has shifted to monitoring the implementation of the Act's clauses – particularly those regarding legal protection and service provision. The Group has a new campaign called Shukumisa ('shake things up'), which works to increase public awareness and monitoring of the Sexual Offences Act and its implementation. Shukumisa focuses more on public awareness and less on political advocacy (personal interview, National Working Group on Sexual Offences informant 4, 11 June 2010). Its members generate action research about the successes and failures of the Acts, and devise strategies to address the gaps and weaknesses in the legislation. According to one member:

Now it's a coalition to promote the implementation of the Act and services in general for sexual offences, but not limited to the Act. Where [the Working Group] didn't succeed in getting something into the Act, they still see it as the work of the coalition. The Shukumisa campaign seeks to translate the law into something tangible for communities (personal interview, National Working Group on Sexual Offences informant 9, 30 June 2010).

Shukumisa's membership differs from that of the original Working Group, as numerous member organisations have left the coalition and others have joined. However, at the time of writing, the two coalitions had over 50 percent of their organisations in common.¹⁵

Among the twenty women's rights advocates interviewed during the course of this research, many had changed their organizational affiliations in the last few years, but remained working within the women's and legal advocacy sectors. This demonstrates the mobility of key actors within South African civil society, and the interconnectivity of different organisations working within this sphere.

South Africa remains a deeply patriarchal society characterised by endemic violent crime. The issues of women's bodies and sexuality became highly contested in the years during which parliament reformed national rape laws. While the Working Group was partly successful in influencing the content of the Sexual Offences Act, parliament's curtailment of its participation in the law reform process limited its influence and efficacy. But despite certain weaknesses in the Act, most members of the Working Group perceived its passage as a

¹⁵ Organisations that remain part of the Working Group are the Centre for the Study of Violence and Reconciliation, Childline, the Institute for Women's Development (NISAA), Resources Aimed at the Prevention of Child Abuse and Neglect, Rape Crisis Cape Town Trust, Sex Workers Education and Advocacy Taskforce, Thohoyandou Victim Empowerment Programme, Tshwaranang Legal Advocacy Centre to end violence against women, the Western Cape Network on Violence Against Women and the Women's Legal Centre.

victory. They believed that the Act's weaknesses provided future opportunities for further judicial and legislative advocacy, and other, powerful new forms of collaboration.

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