

**JOURNEY TO EQUALITY:  
10 YEARS OF THE PROTOCOL ON THE RIGHTS  
OF WOMEN IN AFRICA**



**EDITED BY  
DR. BRENDA KOMBO, RAINATOU SOW & FAIZA JAMA MOHAMED**

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We also appreciate the financial support received from the African Women's Development Fund and Oxfam enabling us to develop and publish this important review of progress made in the ten years that the Protocol was in existence.

Faiza Jama Mohamed  
Nairobi Office Director  
Equality Now

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The views and opinions expressed in this publication are those of the authors of the various articles and do not necessarily reflect the official policy or position of the Solidarity for African Women's Rights Coalition, the African Commission on Human and Peoples' Rights, Make Every Women Count and Equality Now.

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**THE AFRICAN CENTRE FOR DEMOCRACY AND HUMAN RIGHTS STUDIES (ACDHRS)** is independent, non-profit regional human rights NGO based in Banjul, The Gambia. The ACDHRS promotes human rights and democracy issues in the African continent through training, advocacy, networking, action-oriented research, publications and documentation. [www.acdhhs.org](http://www.acdhhs.org)

**AFRICAN WOMEN'S DEVELOPMENT AND COMMUNICATION NETWORK (FEMNET)** is a pan-African Network set up in 1988 to advance African women's rights. FEMNET has played a central role in sharing information, experiences, ideas and strategies among African women in order to strengthen women's capacity to participate effectively and ensure that African women voices are amplified and influence decisions made at national, regional and global levels. [www.femnet.co](http://www.femnet.co)

**AKINA MAMA WA AFRIKA (AMWA)** is an international, Pan-African, non-governmental development organization for African women based in Kampala, Uganda. AMWA was established to create a space for African Women to organize autonomously, network with each other, share skills and expertise, identify issues of concern and speak for 'themselves'. [www.akinamamawaafrika.org](http://www.akinamamawaafrika.org)

**DISABLED WOMEN IN AFRICA (DIWA)** is the independent women's wing of the Pan-African Federation of the Disabled (PAFOD), an umbrella of Disabled People's Organizations in Africa. DIWA was founded in Dar es Salaam in 2002. The overall objective of DIWA is to give women with disabilities in Africa a voice and to lobby for the rights, visibility, mainstreaming of gender and disability and empowerment of women with disabilities. [www.diwa.ws](http://www.diwa.ws)

**EQUALITY NOW**, Founded in 1992 is an organization that advocates for the human rights of women and girls around the world by raising international visibility of individual cases of abuse, mobilizing public support through a global membership, and wielding strategic political pressure to ensure that governments enact or enforce laws and policies that uphold the rights of women and girls. [www.equalitynow.org](http://www.equalitynow.org)

**THE FEMALE LAWYERS ASSOCIATION-GAMBIA (FLAG)** was formed in 2006 as a non-profit making Association made up of female members of the legal profession. FLAG aims to ultimately procure changes to the laws of The Gambia for the protection and wellbeing of women and children. [Www.flag.gm/Gambia](http://Www.flag.gm/Gambia)

**FEMMES AFRICA SOLIDARITÉ (FAS)** is a non-governmental organization (NGO), created by African women leaders, without racial or religious agendas, using international instruments such as the UN Resolution 1325 as its main conceptual framework for guiding its programmes. [www.fasngo.org](http://www.fasngo.org)

**THE GENDER MONITORING OFFICE (GMO) OF RWANDA** is autonomous body established by the Government of Rwanda through the National Constitution of June 2003, as amended to date, with a mandate of monitoring and evaluating the implementation of gender principles and the fight against gender based violence in all sectors and at all levels in Rwanda. [www.gmo.gov.rw](http://www.gmo.gov.rw)

**IPAS** is an international non-profit organization with mission to reduce maternal deaths and injuries due to unsafe abortion and to increase women's ability to exercise their sexual and reproductive rights, with a special focus on the right to safe abortion. [www.ipas.org](http://www.ipas.org)

**MAKE EVERY WOMAN COUNT (MEWC)** is a young African women-led organisation founded in December 2010 with mission to strengthen the voices and work of African women and girls through the use of informative and interactive online resources. MEWC provides a key platform from which African women's participation in all areas of development discourse is promoted. [www.MakeEveryWomanCount.org](http://www.MakeEveryWomanCount.org)

**PEOPLE OPPOSING WOMEN ABUSE (POWA)** is a "feminist, women's rights organisation that provides both services, and engages in advocacy in order to ensure the realisation of women's rights and thereby improve women's quality of life". POWA was

formed in South Africa in 1979 by a group of women volunteers in order to provide referral services and shelter to women experiencing domestic violence. [www.powa.co.za](http://www.powa.co.za)

**SOLIDARITY FOR AFRICAN WOMEN'S RIGHTS (SOAWR)** is a coalition of 43 civil society organizations in 23 African countries dedicated to protecting and advancing African women's rights. SOAWR is working to ensure that the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa remains on the agenda of policy makers and to urge all African leaders to safeguard the rights of women through ratification and implementation of the Protocol. [www.soawr.org](http://www.soawr.org)

**VOIX DE FEMMES IS A BURKINABÉ** NGO created in 2000 with its headquarters in Ouagadougou in Burkina Faso. It is comprised of men and women and has the goal of contributing to the popularization and promotion of women's rights. It focuses on women in general and particularly those who are most in need.

**THE WOMEN, GENDER AND DEVELOPMENT DIRECTORATE (WGDD)** of the African Union Commission (AUC) was created in 2003 as part of the Maputo structure and placed in the Office of the Chairperson of the Commission together with other Policy and Strategic Directorates in the Commission. The mandate of the Directorate is to mainstream gender equality and women's empowerment (GEWE) in the AU Commission and work with AU organs, Regional Economic Communities (RECs) and Member states for the achievement of GEWE

**WOMEN'S RIGHTS ADVANCEMENT AND PROTECTION ALTERNATIVES (WRAPA)** is a national non-governmental organisation registered with the Corporate Affairs Commission of Nigeria. Founded in March 1999, it is an organization of men, women, and youth with over 32,000 registered members. WRAPA is a leading voice in the advocacy and campaign against Violence Against Women (VAW) in all its ramifications. [www.wrapanigeria.org](http://www.wrapanigeria.org)

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We wish to express our sincere gratitude to Henry Kite, Barbara Steward and Jason Bintliff for their wonderful help and contributions to make this report possible.

A MESSAGE FROM H.E. PRESIDENT JOYCE BANDA



Africa.

It is a pleasure for me to contribute to the commemoration of an event that has great importance for the African continent, namely, the 10<sup>th</sup> anniversary of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of women in

It is a little over one year and two months since I assumed the Presidency of the Republic of Malawi in April 2012 and I feel honored by the support that I continue to receive from the people of Malawi as well as from other African countries and the world over. This support demonstrates that Africa is increasingly promoting gender equality and has embraced women's leadership. I was proud to become the second female head of state in Africa's history after Her Excellency President Ellen Johnson Sirleaf of Liberia, and, at the same time the first female Head of State in the SADC Region -I knew that this was made possible by collective effort and the determination of the people of Malawi to promote democracy and peace.

Malawi deposited its instrument of ratification of the Protocol on the Rights of Women in Africa in June 2005, becoming one of the first fifteen countries to ratify the Protocol to enable its entry into force. Since then, many efforts have been made to ensure that both the Protocol and other international instruments are domesticated. Such efforts include the passage of the Gender Equality Bill into law in April 2013; the launch of the Presidential Initiative on Maternal Health and Safe Motherhood in 2012; and the

Economic Recovery Plan to cushion the economic hardships that the nation has been facing well before I took over the leadership of the country. Recently, I have also launched the Mudzi Transformation Trust to uplift the living standards of the rural poor of which the majority of them are women.

Yet, Malawi is not alone in making such efforts. This publication highlights diverse efforts made by governments and civil society actors across the continent and celebrates the gains made in women's rights since 2003. Nevertheless, many women and girls still face numerous challenges in their daily lives—challenges that I saw firsthand and tried to fight as a social justice and human rights activist. Too many women on the continent die while giving birth! Too many children are unable to benefit from a quality education! Too many women and men face a daily struggle to feed their families and make other ends meet! And too many of their livelihoods have been devastated by the impact of climate change! While this publication addresses some of these challenges, it also seeks to provide some solutions, many of which can be realized through effective partnerships between governments, the private sector, civil society actors, and development partners.

I commend the Solidarity for African Women's Rights Coalition (SOAWR), Make Every Woman Count, and the Special Rapporteur on the Rights of Women in Africa for preparing this publication and, in so doing, reminding us of where we have come from and urging us to move forward with even greater tenacity, courage, and a common vision. The potential of the African continent is intrinsically linked with the potential of its women and we must work together to ensure that this potential is realized.

**H.E. President Joyce Banda,  
President of the Republic of Malawi**

A MESSAGE FROM H.E. DR. NKOSAZANA DLAMINI-ZUMA



On the occasion of the 10<sup>th</sup> year commemoration of the African Union's Protocol to the African Charter on Human and Peoples' Rights on the Rights of

Women in Africa, I wish to convey a message of warm congratulations to all African women for whom this Protocol was adopted, on July 11, 2003 in Maputo, Mozambique. This anniversary is special because it coincides with the Golden Jubilee of the Organization of African Unity/African Union (OAU/AU) founded 50 years ago on 25<sup>th</sup> May 1963 in Addis Ababa, Ethiopia. This Protocol is a testimony that the founding fathers and mothers of the OAU/ AU and the Pan African Women's Organization (PAWO) did not liberate its men and women in vain. Indeed, the OAU/AU has come a long way in reclaiming the rightful position for its citizens and also her peoples' and human rights through the Charter. It is for this reason that after many years of lobbying within the AU and by women's rights supporters, that the Protocol was adopted in Maputo.

Although the African Charter is the primary treaty providing a framework for human and peoples' rights in Africa, its provisions on women's rights are largely inadequate. While the Charter recognizes and affirms women's rights in three provisions: Art.2, 3 and 18(3), the Protocol was deemed necessary to complement the Charter and also reinvigorate the Charter's commitment to women's equality by adding rights that were missing, as well as clarifying the obligations of Governments with respect to women's rights.

The Protocol entered into force on 25 November 2005 after securing 15 ratifications by AU Member States. As many of you know, the adoption of the Protocol was not a guarantee that it would automatically enter into force. It took the Advocacy of African women who worked closely with the Commission's Women, Gender and Development Directorate (WGDD) and the Solidarity for African Women Rights (SOAWR), to secure the minimum number of fifteen ratifications required for it to enter into force and also to secure the 36 ratifications that we are so proud of today. According to the 2012 SDGE (Solemn Declaration on Gender Equality in Africa) report, three additional countries have been identified as *quick wins*, which with heightened advocacy accompanied by solidarity missions aligned to the OAU/AU 50<sup>th</sup> anniversary could ratify the Protocol during the AU's year long celebrations.

A successful outcome of these efforts would bring the total number of ratifications to forty.

As we celebrate this milestone, I wish to remind us that the work of the Commission and SOAWR is expected to shift to domestication and implementation of the Protocol, now that just over two-thirds of our Member States have already ratified it. I call upon all of us and particularly the SOAWR coalition members that have been working with us as well as development partners to be even more vigilant as we move towards implementation.

In my 7<sup>th</sup> report to the AU Assembly of Heads of States and Government in May this year, I reported on the progress Member States have been making on the ratification of the Protocol under Article 9 of the Solemn Declaration for Gender Equality in Africa (SDGEA). While I am pleased to note that to date 41 member states have reported on the Protocol, I have also noted that 49 of AU Member States have reported on the UN Convention on Elimination of All Forms of Discrimination against Women (CEDAW). This clearly indicates that the UN can work with us towards reducing the reporting burden on Member States through convergence of the two sister instruments.

Furthermore, harmonized reporting on CEDAW and the Protocol could present a win-win situation and needs to be explored, alongside the possibility of an independent Protocol report as we move into domestication and implementation mode. I therefore call on relevant AU Organ's and particularly the African Commission on Human and Peoples' Rights and the African Court on Human Rights to play their respective roles in this regard.

As we confidently march on to 2063, it is evident that the level of ownership of the Protocol so far demonstrated by AU Member States is without question, while the speed of its ratification is unparalleled. As the AU celebrates its 50<sup>th</sup> Anniversary, the African women look forward to both claiming the African Women's Decade (2010-2020) and also the AU's Agenda 2063 on an equal basis with men. This calls for the full implementation of the articles in the Protocol among others and a paradigm shift which will guarantee that African women, their children and grandchildren enjoy a peaceful and prosperous continent at peace with itself on the road to 2063.

I thank you.

**H.E. Dr. Nkosazana Dlamini Zuma,**  
**The Chairperson of the African Union Commissi**

## FOREWORD



On the 11<sup>th</sup> of July 2003, when African Heads of State and Government adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in Maputo, Mozambique, it

seemed that Africa was entering a new era characterized by significant promise for girls and women. Despite some of the contentions over various provisions during the drafting process, the adoption of the instrument demonstrated the consensus of African leaders concerning the need to protect, promote, and fulfil women's rights on the continent. This consensus was subsequently reaffirmed in the Solemn Declaration of Heads of State and Government on Gender Equality in Africa adopted in July 2004. The historic day in July 2003 provided African women with a comprehensive bill of rights that spoke to their struggles and challenges but also recognized their contributions and potential.

As the Special Rapporteur on the Rights of Women in Africa, this year has particular significance for the mechanism for which I am responsible. Not only are we celebrating the 10<sup>th</sup> anniversary of the African Union (AU) and 50<sup>th</sup> anniversary of the Organization of African Unity, but also, the Protocol on the Rights of Women in Africa will be 10 years old.

Since 2003, significant progress has been noted in the domain of women's rights. Currently, nearly 70% of AU Member States have ratified the Protocol and several have made efforts to domesticate and implement it.

The Campaign for Accelerated Reduction of Maternal Mortality in Africa (CARMMA) and the Africa UNiTE Campaign to End Violence Against Women have been launched and are underway in various parts of the continent. Furthermore, the African Women's Decade (2010-2020) is in its third year and women are increasingly participating in decision-making at all levels—including within the African Union Commission, which elected its first female chairperson last year. In addition, African countries have increasingly espoused gender equality in their constitutions and included it in their development plans, policies and programs.

Nevertheless, despite these and other gains, there is much that remains to be done. On-going conflicts on the continent continue to subject women and girls to sexual violence and to rob them of educational and economic opportunities.

Africa remains plagued by some of the highest maternal and infant mortality rates in the world and women on the continent will continue to be disproportionately affected by HIV and AIDS if adequate measures are not taken to reverse the current trends. In many parts of the continent, women still lack access to productive resources, justice, decision-making arenas, and, more broadly, to opportunities that can decisively shape their futures.

This volume, which is the result of collaboration between the Solidarity for African Women's Rights Coalition, Make Every Woman Count, and my office, is an attempt to assess the progress made in the promotion and protection of women's rights on the continent since the adoption of the Protocol while considering the challenges and opportunities for African Women. SOAWR has been at the forefront of lobbying for the ratification and implementation of the Protocol since 2004. The coalition has developed fruitful collaboration with the African Commission on Human and Peoples' Rights through various initiative involving the mechanism of the Special Rapporteur, notably, support to the drafting process and dissemination of guidelines for reporting for Member States under Article 26 of the Maputo Protocol, as well as the drafting process of the General Comments to Article 14(1)(d) and (e) of the Protocol. Thus, it is apt that the coalition has taken on a key role in reviewing the status of the Protocol.

It is my hope that this publication will provide further impetus to Member States to universally ratify and implement the Protocol. At the same time, I hope that it will serve as a useful resource not only for them, but also for women's rights activists, gender practitioners, and for all who hope for better lives for Africa's women and girls.

**Commissioner Soyata Maiga**  
**Special Rapporteur on the Rights of Women in Africa, The African Commission on Human and Peoples' Rights**



## INTRODUCTION

**Brenda Kombo and Faiza Mohamed**

In February 2006, when a 13 year-old Zambian school girl was raped by her teacher, the Protocol on the Rights of Women in Africa (the Protocol) was one of the tools that facilitated justice. R.M., the brave young girl who was under her aunt's guardianship, sued the teacher, the school, Ministry of Education, and the Zambian Attorney General, citing Articles 4 and 12 of the Protocol (which Zambia ratified in May 2006) in addition to other international instruments in her submission to the High Court of Zambia. In June 2008, the High Court rendered a ruling in which Honorable Justice Phillip Musonda cited Article 4 of the Protocol, which elaborates "rights to life, integrity and security of the person". In the judgment, the High Court referred the case to the Director of Public Prosecutions for criminal charges against the perpetrator, directed the Ministry of Education to take measures to protect students, and awarded significant compensation to R.M. This case, a prime example of women's rights public interest litigation<sup>1</sup>, attests to the potential of the Protocol<sup>2</sup> to remedy violations and change lives. Nevertheless, the case is only one of a few well-known landmark cases using the Protocol at the national level. Currently, 36 of the 54 African Union (AU) Member States have ratified the Protocol and, as members of the Solidarity for African Women's Rights Coalition (SOAWR) suggested in a 2004 publication, it is yet to fully become "a force for freedom".



**SOAWR members celebrating Uganda's announcement of upcoming ratification**

The drafting of the Protocol was initiated in the late 1990s as a result of transformations within the Organization of African Unity coupled with the leadership of women's rights activists and civil society organizations—including Women in Law and Development in Africa (WiLDAF), the

International Commission of Jurists (ICJ), the African Center for Democracy and Human Rights Studies, African Women's Communication and Development Network (FEMNET) and various members of what would later become SOAWR<sup>3</sup>—working in partnership with the African Commission on Human and Peoples' Rights (ACHPR). Although Articles 2 and 18(3) of the African Charter on Human and Peoples' Rights<sup>4</sup> explicitly address gender discrimination, these provisions failed to foster increased respect for and promotion of women's rights in Africa by States Parties. In this light, the adoption of the Protocol by the AU Assembly of Heads of State and Government on the 11<sup>th</sup> of July 2003 was revolutionary! The Protocol's provisions were situated in African contemporary realities and innovatively addressed pressing issues such as protection of women from HIV/AIDS, rights of widows and disabled women, female genital mutilation and other harmful practices, rights to sustainable development and to peace, among others. At the same time, provisions on reproductive rights and rights to food security were among several provisions that set the Protocol apart from the Convention on the Elimination of All Forms of Discrimination Against Women.

Yet, ten years after the Protocol's adoption, are African women better off? To what extent has national legislation been harmonized with the Protocol? Have States Parties to the Protocol taken any innovative steps to make the instrument's provisions a reality for women? What role can civil society organizations (CSOs) play in this process? These are some of the questions, which this publication seeks to answer.

Despite state reporting obligations and the ACHPR's elaboration—in partnership with civil society—of *Guidelines for Reporting*, no states have comprehensively reported on implementation and, to date, there have been no studies assessing the status of implementation in the 36 countries that have ratified the Protocol<sup>5</sup>. Although this publication is by no means a comprehensive review of progress at the national and regional levels, it seeks to provide an evaluation of progress made in various countries and across the region in implementing particular provisions. At the same time, it highlights best practices of both member States and CSOs promoting the Protocol; examines gaps and challenges in implementation; considers lessons learned by CSOs; and makes recommendations for future action.

The publication brings together contributions from over two dozen individuals and institutions writing on their areas of

expertise. Following Part I, which presents background information about the Protocol and the ongoing SOAWR campaign, Part II examines the extent of domestication and implementation of provisions covering the following issues: non-discrimination, female genital mutilation (FGM), marriage, access to justice, political participation, right to peace, protection of women in armed conflict, education, economic and welfare rights, health and reproductive rights, land and inheritance rights, and rights of women with disabilities. In Part III, contributors highlight efforts made by the governments of Burkina Faso, The Gambia, Rwanda, South Africa, and Zimbabwe with regard to the Protocol. Subsequently, Part IV brings together articles focusing on various gaps and challenges but also on the potential to realize the Protocol. Part V shares perspectives from three SOAWR members, the African Centre for Democracy and Human Rights Studies, Women's Rights Advancement and Protection Alternatives, and Akina Mama wa Afrika, who have successfully advocated for and supported the realization of women's rights using the Protocol. The section also includes an article about how a multi-sectoral approach can facilitate effective implementation of the important African women's rights instrument. Finally, Part VI presents a few key recommendations for member states, the African Union Commission, development partners, and civil society organizations.

Equality Now, on behalf of SOAWR, wishes to acknowledge Make Every Woman Count and Soyata Maiga, the Special Rapporteur on the Rights of Women in Africa, for their partnership in this initiative. Their commitment to ameliorating women's lives on the continent is inspirational! This publication would also not have been possible without the diverse contributions from individuals and organizations across the continent, to whom the editors are abundantly grateful! The editors are particularly thankful to Her Excellency Joyce Banda, President of the Republic of Malawi, for her support for this commemorative project and for her eloquent message. The editors are also grateful to Her Excellency Dr. Nkosazana Dlamini-Zuma, the Chairperson of

the African Union Commission, for her eloquent message. Her Excellency has prioritized gender equality in the Commission's work and we are optimistic that under her leadership, the Commission will bring about positive change for both Africa's women and men. Furthermore, the editors also wish to thank the African Women's Development Fund and Oxfam for their financial support of this project and all the other donors listed on page 7 for their generous support of the SOAWR campaign. Partnerships like all of the aforementioned have not only greatly enriched Equality Now and the SOAWR Coalition's work, but have contributed to building up and supporting the African women's rights movement. *A luta continua!*

As suggested by several contributors, some progress has been made in the implementation of the Protocol since 2003. This includes the adoption of legislation addressing discrimination and violence against women, increased integration of gender equality concerns into national development plans and policies by African governments, efforts to increase girls' access to education, quotas aimed at improving women's political participation, among others described in this publication. A few achievements of the SOAWR campaign, as highlighted in an evaluation conducted earlier this year are: successful advocacy for ratification in various countries; spearheading and strengthening national-level coalitions, which have contributed to the Protocol's domestication in The Gambia, Liberia, Mozambique, Nigeria, South Africa, Tanzania, Uganda; and designing and implementing activities aimed at changing mindsets among different audiences, with a focus on informing and contributing to the empowerment of rural women. However, there is still need for further targeted and collaborative action if women are to fully benefit from this revolutionary instrument. Let us heed the call of Dr. Angela Melo, Former Special Rapporteur on the Rights of Women in Africa (2001-2007), *"The urgent need to work towards the ratification and effective implementation of the Protocol urgently is a great challenge, yet a duty we all owe to posterity and to Africa."*

## PART I - BACKGROUND ON THE PROTOCOL

### OWNERSHIP OF THE AFRICAN WOMEN'S RIGHTS PROTOCOL AND A WIN-WIN CASE FOR REPORTING

Litha Musyimi-Ogana

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa celebrates 10 years this year since the African Union adopted the landmark Protocol on July 11, 2003 in Maputo, Mozambique, to supplement the African Charter on Human and Peoples' Rights. The Protocol, which entered into force on 25 November 2005 after securing 15 ratifications by AU Member States, provides broad protection for women's human rights, including gender equality and justice. This anniversary coincides with the Golden Jubilee of the Organization of African Unity/African Union (OAU/AU) founded 50 years ago on 25<sup>th</sup> May 1963 in Addis Ababa, Ethiopia. Established one year after the Founding Mothers of the Pan African Women's Organization (PAWO) had met in Dar es Salaam, Tanzania, the OAU has come a long way in claiming its rightful position in the global political map in general, and in particular in asserting the African Peoples' and Human Rights including women's rights.

The adoption of the Protocol, therefore, remains a milestone in the advancement of women's human rights, providing a comprehensive framework for the promotion, protection and respect for the rights of women in Africa. To date, the Protocol has been ratified by 36 AU Member States and signed by 48 making it one of the highest ratified instruments in the African Union. According to the 2012 SDGE report, 3 countries, namely Algeria, Chad and Sierra Leone are in the category of *quick wins* and with heightened advocacy accompanied by solidarity missions aligned to the OAU/AU 50<sup>th</sup> Anniversary and the Protocol's 10<sup>th</sup> Anniversary, this could bring the number of ratifications to thirty-nine. Only 3 countries have neither signed nor ratified the Protocol. AU Member States are acknowledged for their leadership and ownership of the Protocol and the Solidarity for African Women's Rights (SOAWR) for their advocacy on the Protocol and particularly for their creativity, commitment and support to the process that has witnessed the high number of signatures and ratification of this important Protocol.

#### BACKGROUND

In terms of advocacy the African Union Commission's Women, Gender and Development Directorate (WGDD) has worked very closely with the Solidarity for African Women Rights (SOAWR), a coalition of over 40 NGOs that have been working as partners in promoting the protection for the human rights of African women using the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa as a key instrument. In September 2005, WGDD and SOAWR co-convened a conference "*The Protocol to the African Charter on Human and Peoples' Rights on Women's Rights in Africa: from ratification to the realization of African women's human rights*" for civil society organizations and African Union Member States. In 2006, they jointly produced a book titled "*Breathing Life into the African Union Protocol on Women's Rights in Africa*" and in April 2007 they jointly hosted a conference on "*Accelerating the Ratification of the AU Protocol on the Rights of Women in Africa*" which targeted non-ratifying countries in North and West Africa and again brought together Member States and civil society organizations that are engaged in this campaign. In November 2008, the Commission through the WGDD organized jointly with SOAWR the 5<sup>th</sup> Year Commemoration of the Protocol in Nairobi, Kenya. These and other related interventions encouraged many countries to ratify or sign the Protocol, whose progress is reported in the Solemn Declaration on Gender Equality in Africa (July 2004).

#### WHY A PROTOCOL ON WOMEN'S RIGHTS

Although the African Charter is the primary treaty providing a framework for human rights in the region, its provisions on women's rights are largely seen as ineffective and inadequate. While the Charter recognizes and affirms women's rights in three provisions: Art.2, 3 and 18(3), the Protocol reiterates that "despite the ratification of the African Charter, women in Africa continue to be victims of discrimination and harmful practices." The Protocol, which resulted from years of activism by women's rights

supporters in the region, has attempted to reinvigorate the African Charter's commitment to women's equality by adding rights that were missing from the Charter and clarifying the obligations of Governments with respect to women's rights.

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#### THE WOMEN'S PROTOCOL AND CEDAW AND OTHER GLOBAL HUMAN RIGHTS INSTRUMENTS

The Protocol is the only treaty to specifically address women's rights in relation to HIV/AIDs and to identify protection from HIV/AIDs, as a key component of women's sexual and reproductive rights. Adopted in the 21<sup>st</sup> Century, the Protocol went beyond traditional health boundaries to address reproductive health rights of African women and girls. In addition to guaranteeing women's rights to protection from sexually transmitted infections, including HIV/AIDs, the Protocol guarantees women's rights to adequate, affordable, and accessible health services. It also articulates a State's duty to protect girls and women from practices and situations that increase their risk of infection, such as child marriage; sexual violence, and FGM etc. The Protocol additionally guarantees women's right to family planning education, thus reaffirming the right to family planning explicitly recognized in the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the UN Convention on the Rights of the Child (CRC).

The Protocol goes beyond existing global and regional treaties by affording specific legal protection against gender-based violence, in both the public and private sphere, including domestic abuse and marital rape. The Protocol significantly advances women's rights by relocating everyday abuses in the realm of rights violations for which States must be held accountable. In addition, the Protocol is unique in its express guarantee of women's rights to be protected from threats of both physical and verbal violence. Under the African Charter on Human and Peoples' Rights, the lack of specificity on discrimination against women has left them vulnerable to arguments that "cultural values" and community norms should prevail, even when physical harm results. Since women are underrepresented in the Judiciary and legal community, these arguments have rarely been rebuffed. The Protocol affirms the primacy of women's rights to non-discrimination. It requires States to eliminate cultural and traditional practices that discriminate against women and in this respect, the Protocol makes clear what the African Charter omitted: that the legal protection of tradition ends where discrimination against women begins. The Protocol further provides that "women shall have the right to live in a

positive cultural context and to participate at all levels in the determination of cultural policies" (art.17).

The Protocol is unique among global human rights treaties in expressly articulating girls and women's right to be protected from sexual harassment as a key component of their right to equality in education. The Protocol also affirms women's right to be free from sexual harassment as a basic social and economic right and as a key component of their right to work. Furthermore, the Protocol provides clearly for the protection of women in armed conflict situations, elderly women, women with disabilities and women in distress against all forms of discrimination, inhuman and degrading treatment, all forms of abuse and violence. The Protocol places an obligation on State parties to ensure that such women are treated with dignity and that their special needs are adequately provided for (Art.11 and 22).

Moreover among other provisions, the Protocol provides for the equal protection before the law and women's right to access to justice including judicial and legal aid services. State parties are obliged to ensure the effective promotion and enforcement of gender equality (Art.8).

No doubt, the Protocol remains the main legal framework and authority on African Women's Rights and not only complimenting CEDAW, but also being more progressive.

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#### COMPARISON OF PROGRESS MADE ON RATIFICATION/ACCESSION TO CEDAW AND THE PROTOCOL

As of the 8<sup>th</sup> African Regional Conference of Beijing +15, forty-six Member States had signed CEDAW and 29 had ratified the Protocol to the African Charter on People and Human Rights on Right of Women in Africa. To date I am happy to state that 36 countries have ratified the Protocol and 41 have submitted reports under Article 9 of the Solemn Declaration for Gender Equality in Africa (SDGEA). Forty-nine countries have thus far acceded/ratified CEDAW. This gives good justification to work towards reducing the reporting burden on Member States by seeking convergence of the two sister instruments.

Before comparing the progress made by both CEDAW and the Protocol in ratification and reporting, a brief outline of the African Union's Gender Architecture (AUGA) is provided below to contextualize the normative framework that the Commission has put in place to achieve gender equality and women's empowerment, and which covers ratification and reporting among other areas. The AU Gender architecture constitutes 6 pillars:

1. The Constitutional Framework; Article 4(L) of the Constitutive Act which enshrines the gender equality principle (2002)
2. The Legal framework; The Protocol to the Charter on Human and Peoples Rights on the Rights of Women in Africa(2003)
3. Solemn Declaration on Gender Equality in Africa (SDGEA); The Reporting framework
4. African Union Gender Policy; The Policy framework
5. African Women's Decade; The Implementation Framework
6. Fund for African Women; The Financing Mechanism

The importance of the above architecture cannot be over emphasized given persistent gaps between the normative framework and the actual implementation on the ground. This is the reason why the Assembly declared 2010-2020 the African Women's Decade, creating a Platform for Implementation of the commitments in all the other frameworks.

The AU perceives the Protocol to the African Charter on Human and People Rights of Women in Africa as its homegrown CEDAW and expects that reporting on CEDAW could easily accommodate reporting on the Protocol to avoid duplication. As the Protocol marks its 10 years anniversary, it looks up to, and draws on CEDAW's 32 years of reporting experience to further refine and align reporting requirements.

It is for this reason that this section reflects on experiences drawn from CEDAW's 30 years and the Protocol's 10 years with regard to ratification/accession and reporting on both instruments in order to explore possibilities of reducing the burden of reporting on Member States. Addressing the reporting burden may additionally incentivize ratification of the Protocol by more AU Member States. Indeed, the role of AU Organs, particularly the African Human Rights Commission and the African Court of Human and Peoples' Rights will become more prominent because they will be required to manage the Protocol compliance reports independently.

The tables below present the current status on ratification/accession and reporting on the two instruments and will help demonstrate the need for harmonized reporting to achieve greater coherence, make more efficient use of technical and institutional resources and avoid duplication.



**"A Promise is a Promise. Time for Actions" African Solutions to African Problems Photo**

**TABLE I**

**LIST OF COUNTRIES, WHICH HAVE SIGNED, RATIFIED/ACCEDED TO THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA AND THE UNITED NATIONS CONVENTION ON ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

No.	COUNTRY/PAYS	DATE OF SIGNATURE	DATE OF RATIFICATION/ACCESSION	DATE DEPOSITED	Reservation to CEDAW	Ratification of the CEDAW Protocol
1	Algeria	29/12/2003	-	-	Articles 2, 9, 15, 16, 29	Acceded
2	Angola	22/01/2007	30/08/2007	09/11/2007	None	Acceded
3	Benin	11/02/2004	30/09/2005	13/10/2005	None	Signed and ratified
4	Botswana	-	-	-	None	Acceded
5	Burkina Faso	26/02/2004	09/06/2006	09/08/2006	None	
6	Burundi	03/12/2003	-	-	None	Signed and ratified
7	Cameroon	25/07/2006	13/09/2012	28/12/2012	None	Signed and ratified
8	Central African Rep.	17/06/2008	-	-	None	Acceded
9	Cape Verde	-	21/06/2005	22/07/2005	None	Acceded
10	Chad	06/12/2004	-	-	None	Acceded
11	Côte d'Ivoire	27/02/2004	05/10/2011	09/03/2012	None	Acceded
12	Comoros	26/02/2004	18/03/2004	16/04/2004	None	Acceded ,Signed and ratified
13	Congo	27/02/2004	14/12/2011	06/08/2012	None	Acceded ,Signed and ratified
14	Djibouti	18/12/2003	02/02/2005	04/02/2005	None	Acceded ,Signed and ratified
15	Democratic Rep. of Congo	05/12/2003	09/06/2008	09/02/2009	None	Acceded
16	Egypt	-	-	-	Articles 2, 9, 16, 29	Acceded ,Signed and ratified
17	Equatorial Guinea	30/01/2005	27/10/2009	29/06/2011	None	Acceded
18	Eritrea	25/04/2012	-	-	None	Acceded
19	Ethiopia	01/06/2004	-	-	Article 29	Acceded ,Signed and ratified

**Journey to Equality: 10 Years of the Protocol on the Rights of Women in Africa**

No.	COUNTRY/PAYS	DATE OF SIGNATURE	DATE OF RATIFICATION/ ACCESSION	DATE DEPOSITED	Reservation to CEDAW	Ratification of the CEDAW Protocol
20	Gabon	27/01/2005	10/01/2011	10/02/2011	None	Acceded ,Signed and ratified
21	Gambia	11/09/2003	25/05/2005	06/09/2005	None	Acceded ,Signed and ratified
22	Ghana	31/10/2003	13/06/2007	20/07/2007	None	Acceded ,Signed and ratified
23	Guinea-Bissau	08/03/2005	19/06/2008	14/10/2008	None	Acceded ,Signed and ratified
24	Guinea	16/12/2003	16/04/2012	17/09/2012	None	Acceded ,Signed and ratified
25	Kenya	17/12/2003	06/10/2010	13/10/2010	None	Acceded
26	Libya	05/11/2003	23/05/2004	30/06/2004	Article 2	Acceded ,Signed and ratified
27	Lesotho	27/02/2004	26/10/2004	05/11/2004	None	Acceded
28	Liberia	16/12/2003	14/12/2007	15/07/2008	Articles 2, 16	Acceded
29	Madagascar	28/02/2004	-	-	None	Acceded ,Signed and ratified
30	Mali	09/12/2003	13/01/2005	03/02/2005	None	Acceded
31	Malawi	-	20/05/2005	29/06/2005	None	Acceded ,Signed and ratified
32	Mozambique	15/12/2003	09/12/2005	30/12/2005	Articles 0, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30	Acceded
33	Mauritania	-	21/09/2005	14/12/2005	Articles 11, 29	Acceded
34	Mauritius	29/01/2005	-	-	Articles 9, 16, 29	Acceded
35	Namibia	09/12/2003	11/08/2004	26/08/2004	None	Acceded
36	Nigeria	16/12/2003	16/12/2004	18/02/2005	None	Acceded

**Journey to Equality: 10 Years of the Protocol on the Rights of Women in Africa**

No.	COUNTRY/PAYS	DATE OF SIGNATURE	DATE OF RATIFICATION/ ACCESSION	DATE DEPOSITED	Reservation to CEDAW	Ratification of the CEDAW Protocol
37	Niger	06/07/2004	-	-	Articles 2, 5, 15, 16, 29	Acceded
38	Rwanda	19/12/2003	25/06/2004	01/07/2004	None	Acceded, Signed and ratified
39	South Africa	16/03/2004	17/12/2004	14/01/2005	None	Acceded, Signed and ratified
40	Sahrawi Arab Democratic Republic	20/06/2006	-	-	None	Acceded, Signed and ratified
41	Senegal	26/12/2003	27/12/2004	30/01/2005	None	Acceded, Signed and ratified
42	Seychelles	24/01/2006	09/03/2006	25/04/2006	<b>Reservation to CEDAW</b>	<b>Ratification of the CEDAW Protocol</b>
43	Sierra Leone	09/12/2003	-	-	Articles 2, 9, 15, 16, 29	Acceded
44	Somalia	23/02/2006	-	-	None	Acceded
45	Sao Tome & Principe	01/02/2010	-	-	None	Signed and ratified
46	Sudan	30/06/2008	-	-	None	Acceded
47	South Sudan	24/01/2013	-	-	None	
48	Swaziland	07/12/2004	05/10/2012	06/11/2012	None	Signed and ratified
49	Tanzania	05/11/2003	03/03/2007	07/05/2007	None	Signed and ratified
50	Togo	30/12/2003	12/10/2005	26/10/2005	None	Acceded
51	Tunisia	-	-	-	None	Acceded
52	Uganda	18/12/2003	22/07/2010	22/07/2010	None	Acceded
53	Zambia	03/08/2005	02/05/2006	07/06/2006	None	Acceded
54	Zimbabwe	18/11/2003	15/04/2008	05/09/2008	None	Acceded, Signed and ratified

According to Table I above 49 (90.7%) African countries have acceded/ratified to CEDAW, while 48 (88.8%) have signed and 36(67.6) have ratified The Protocol. This demonstrates high commitment by the African Union Member states to Women's Rights instrument. In fact if the time factor is added into the analysis, it is evident that the Protocol (2003) has performed much better than CEDAW (1979) and this further confirms African countries ownership of their own Protocol and certainly indicates the existence of political will in advancing women's rights in the continent, despite the challenges that exist in enjoying these rights due to slow domestication and implementation of such instruments.



**TABLE II**

**LIST OF COUNTRIES WHICH HAVE REPORTED ON THE PROTOCOL (THROUGH THE SDGEA FRAMEWORK) AND ON CEDAW**

<b>NO.</b>	<b>COUNTRY</b>	<b>Reporting Status on AU Protocol under Article 9 of SDGEA Reports</b>	<b>Reporting status to the CEDAW Committee</b>
1.	Algeria	3 in 2007, 2010 & 2013	Round 3 due 6/09
2.	Angola	-	Round 6 due 10/08
3.	Benin	1 in 2010	Round 4 due 04/05 Round 5 due 4/09
4.	Botswana	1 in 2013	Round 1/2/3 submitted 10/08
5.	Burkina Faso	2 in 2008 & 2010	Round 6 submitted 5/09
6.	Burundi	1 in 2007	Round 3 due 2/13
7.	Cameroon	2 in 2008 & 2013	Round 4/5 due 9/15
8.	Cape Verde	-	Round 7/8 due 9/10
9.	Central African Republic	-	Round 1 due 7/92 Round 2 due 7/96 Round 3 due 7/00 Round 4 due 7/04 Round 5 due 7/08
10.	Comoros	-	Round 1 due 7/96 Round 2 due 7/00 Round 3 due 7/04 Round 4 due 7/08

NO.	COUNTRY	Reporting Status on AU Protocol under Article 9 of SDGEA Reports	Reporting status to the CEDAW Committee
11.	Congo	2 in 2010 & 2012	Round 1 due 11/95 Round 2 due 11/99 Round 3 due 11/03 Round 4 due 11/08
12.	DRC	-	Round 6/7 due 8/07
13.	Cote D'Ivoire	1 in 2008	Round 1 due 1/97 Round 2 due 1/01 Round 3 due 1/05 Round 4 due 1/09
14.	Djibouti	1 in 2010	Round 6/7 due 11/11
15.	Egypt	1 in 2010	Round 1 due 1/02 Round 2 due 1/04 Round 3 due 1/08
16.	Equatorial Guinea	1 in 2012	Round 6/7 submitted 2/08
17.	Eretria	-	Round 6 due 11/05
18.	Ethiopia	2 in 2007, 2010	Round 4 due 10/08
19.	Gabon	2 in 2010 & 2012	Round 6/7 due 10/06
20.	Gambia	1 in 2010	Round 6/7 due 2/08
21.	Ghana	2 in 2008, 2010	Round 4 due 5/06
22.	Guinea	1 in 2013	Round 6/7 due 2/11

NO.	COUNTRY	Reporting Status on AU Protocol under Article 9 of SDGEA Reports	Reporting status to the CEDAW Committee
23.	Guinea Bissau	-	Round 7/8 due 9/11
24.	Kenya	-	Round 1/2/3/4/5/6 submitted 9/08
25.	Lesotho	2 in 2007, 2010	Round 7 due 4/09
26.	Liberia	1 in 2010	Round 1 due 9/96 Round 2 due 9/00 Round 3 due 9/04 Round 4 due 9/08
27.	Libya	1 in 2010	Round 1/2/3/4/5/6 submitted 10/08
28.	Madagascar	1 in 2013	Round 6/7 due 6/14
29.	Malawi	-	Round 6/7 due 4/14
30.	Mali	1 in 2008	Round 6 submitted 4/08
31.	Mauritania	1 in 2013	Round 6/7 due 10/10
32.	Mauritius	2 in 2007, 2010	Round 2/3 due 6/10
33.	Mozambique	-	Round 6/7 due 8/09
34.	Namibia	2 in 2007, 2010	Round 5/6 due 7/14
35.	Niger	2 in 2009, 2010	Round 3/4 due 5/10
36.	Nigeria	3 in 2008, 2010 & 2013	Round 4/5 due 12/09
37.	Rwanda	3 in 2008, 2011 & 2013	Round 3/4 submitted 5/09

<b>NO.</b>	<b>COUNTRY</b>	<b>Reporting Status on AU Protocol under Article 9 of SDGEA Reports</b>	<b>Reporting status to the CEDAW Committee</b>
38.	Sahrawi Arab Democratic Republic	2 in 2012 & 2013	Round 7/8 due 7/14
39.	Sao Tome and Principe	-	Round 7/8/9 due 9/14
40.	Senegal	5 in 2007, 2009, 2010, 2012, 2013	Round 1 due 7/04 Round 2 due 7/08
41.	Seychelles	2 in 2010 & 2012	Round 3 due 3/94 Round 4 due 3/98 Round 5 due 3/02 Round 6 due 3/06
42.	Sierra Leone	1 in 2013	Round 1 due 6/93 Round 2 due 6/97 Round 3 due 6/01 Round 4 due 6/05 Round 5 due 6/09
43.	Somalia	-	???
44.	South Africa	2 in 2007 & 2011	Not ratified
45.	Sudan	1 in 2013	Round 3 due 1/05

NO.	COUNTRY	Reporting Status on AU Protocol under Article 9 of SDGEA Reports	Reporting status to the CEDAW Committee
46.	South Sudan	-	Not ratified
47.	Swaziland	1 in 2010	Round 1 due 4/05 Round 2 due 4/09
48.	Tanzania	1 in 2012	Round 7/8 due 9/14
49.	Tchad	1 in 2010	Round 6/7 due 10/08
50.	Togo	1 in 2010	Round 5/6 submitted 4/09
51.	Tunisia	1 in 2007	Round 5 due 8/02
52.	Uganda	2 in 2010 & 2013	Round 5 due 7/02 Round 6 due 7/06
53.	Zambia	3 in 2011, 2012 & 2013	Reporting status to the CEDAW Committee
54.	Zimbabwe	1 in 2009	Round 3 due 6/09

According to Table II above, all African countries except for Somalia and South Sudan, have reported on CEDAW. This makes a total of 52 countries or 96.3% of the AU's Member States. Forty-one countries (75.9) have reported on the Protocol. This demonstrates a high commitment by the African Union Member States to report on CEDAW. Given CEDAW's 32 years of experience, with a full-time Standing Committee (to receive, appraise and provide feedback to Member States,), technical expertise has been accumulated over the years and Member States have institutionalized CEDAW in their planning processes.

**TABLE III**

**LIST OF COUNTRIES WHICH HAVE ACCEDED/RATIFIED CEDAW BUT NOT THE PROTOCOL**

<b>No.</b>	<b>Country</b>	<b>Status</b>	<b>Comments</b>
1	Botswana	Neither signed or Ratified AU Protocol	Reported on SDGEA IN 2012
2	Burundi	Signed AU Protocol	Reported on SDGEA IN 2007
3	Central African Republic	Signed AU Protocol	Never Reported on SDGEA
4	Egypt	Neither signed or Ratified AU Protocol	Reported on SDGEA IN 2010
5	Eritrea	Signed AU Protocol	Never Reported on SDGEA
6	Ethiopia	Signed AU Protocol	Reported on SDGEA IN 2013
7	Madagascar	Signed AU Protocol	Reported on SDGEA IN 20112
8	Mauritius	Signed AU Protocol	Reported on SDGEA IN 2012
9	Niger	Signed AU Protocol	Reported on SDGEA IN 2009, 2010
10	Sao Tome and Principe	Signed AU Protocol	Never Reported on SDGEA
11	Sierra Leone	Signed AU Protocol	Reported on SDGEA IN 2012
12	Tchad	Signed AU Protocol	Reported on SDGEA IN 2010

13	Tunisia	Neither signed or Ratified AU Protocol	Reported on SDGEA IN 2007
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**According to Table III, Three countries namely Botswana, Egypt and Tunisia that have already acceded/ratified CEDAW have neither signed nor ratified the AU Protocol. A total of 10 countries have signed the Protocol but not ratified; while an additional 10 countries have reported on SDGEA including Botswana, Egypt and Tunisia, but have neither signed or ratified the Protocol. Three countries: Central Africa Republic, Eritrea and Sao Tome and Principe, have never reported on SDGEA although they have signed the protocol.**

**TABLE IV: LIST OF COUNTRIES, WHICH HAVE REPORTED ON CEDAW AND NOT ON THE PROTOCOL**

<b>No.</b>	<b>Country</b>	<b>Status</b>	<b>Comments</b>
1	Angola	Signed and Ratified AU Protocol	Needs High Level Advocacy and Solidarity mission
2	Cape Verde	Ratified AU Protocol	Needs High Level Advocacy and Solidarity mission
3	Central African Republic	Signed AU Protocol	Urgently Needs High Level Advocacy and Solidarity mission
4	Comoros	Signed and Ratified AU Protocol	Needs High Level Advocacy and Solidarity mission
5	Eritrea	Signed AU Protocol	Urgently Needs High Level Advocacy and Solidarity mission
6	Guinea Bissau	Signed and Ratified AU Protocol	Needs High Level Advocacy and Solidarity mission
7	Kenya	Signed and Ratified AU Protocol	Needs High Level Advocacy and Solidarity mission
8	Malawi	Signed and Ratified AU Protocol	Needs High Level Advocacy and Solidarity mission
9	Mozambique	Signed and Ratified AU Protocol	Needs High Level Advocacy and Solidarity mission
10	Sao Tome and Principe	Signed AU Protocol	Urgently Needs High Level Advocacy and Solidarity mission

According to Table IV, seven of the countries that have never reported on SDGEA, namely Angola, Cape Verde, Comoros, Guinea Bissau, Kenya, Malawi, Mozambique have already ratified the Protocol, while the other three (Central Africa Republic, Eritrea, Sao Tome and Principe) have signed the Protocol and CEDAW, but have neither signed nor ratified the AU Protocol. A total of 10 countries have thus never reported on SDGEA. This means that with little advocacy, the 7 countries that have already ratified the Protocol could also report on SDGEA and a High Level Advocacy mission is recommended to advance this objective. As for the 3 countries that have only signed and never reported on the Protocol, more effort is required to better understand what the reasons may be, in order to subsequently frame support. An urgently fielded High Level Advocacy and Solidarity mission is also recommended.



**TABLE V**

**LIST OF COUNTRIES WHICH HAVE NEITHER ACCEDED/RATIFIED ON CEDAW AND NOR THE PROTOCOL**

14	Somalia	Neither signed or Ratified AU Protocol	Never Reported on SDGEA
15	South Sudan	Neither signed or Ratified AU Protocol	Never Reported on SDGEA

Table V presents two special cases, namely Somalia and South Sudan. Both countries have not signed, ratified /acceded to either CEDAW or the Protocol for the following reasons. Until July 2012, South Sudan did not exist as a separate and independent UN Member State, while Somalia was regarded “stateless” until the 2012 elections when the country regained statehood status. Human, technical, financial and institutional support as well as solidarity will assist both countries to rebuild a rights-based governance system that embraces women’s rights, and enables both countries to ratify/accede and report on both CEDAW and the Protocol..

**TABLE VI**

**LIST OF COUNTRIES WHICH HAVE EITHER RATIFIED CEDAW BUT NOT AU PROTOCOL OR RATIFIED THE PROTOCOL AND NOT CEDAW**

No	Country	Status	Comments
1	Arab Republic of Saharawi	Neither Acceded/Ratifies CEDAW but has signed the AU Protocol	Country member of AU but not recognized by United Nations
2	Kingdom of Morocco	Neither Acceded/Ratifies AU Protocol but has acceded/ratified CEDAW	Country not member of African Union but member of United member of United Nations

Table VI also presents another special case of two countries, namely the Arab Republic of Saharawi and the Kingdom of Morocco. Both countries are unique because one is a Member of the AU but not recognized by the United Nations while the other is not a member of the African Union but is a Member of the United Nations. Subsequently, the respective Governments of each country do not recognize instruments for Organizations to which they are not Members. However, both have recognized at least one of the two Women’s Rights instruments, and have signed and ratified respectively.

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#### MAKING A WIN-WIN CASE FOR REPORTING ON CEDAW AND THE PROTOCOL

As can be seen from the above tables and analysis, the AU Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the Convention on Elimination of All Forms of Discrimination against Women have the same objective, namely to restore women's human rights and dignity. The Commission strongly believes that reports that Member States submit to CEDAW could easily accommodate specific reporting on the Protocol. With some harmonization of the respective reporting tools, a common reporting framework could be adopted to avoid duplication.

As the Protocol marks its 10 years anniversary and looks to CEDAW's three decades of reporting experience, better harmonization of the two sister instruments can be achieved. In preparation for the next 10 years, it is clear that while advocacy will still be important for ratification of the Protocol by Member States that have not yet done so, more focus should shift to domestication, implementation and reporting on the Protocol since already more than two thirds (67.6%) have now ratified.

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#### MAKING A CASE FOR INDEPENDENT REPORTING ON THE PROTOCOL

While the submission of reports on the Protocol from forty-one countries is a good start, the fact that it is part of the SDGEA report should have made it easier for Member States to report. However, with 36 ratification secured for the Protocol (67.6 %), it is time to consider independent reporting if the State Parties reports have to capture not only compliance but also reporting on domestication and implementation. While it is encouraging that that reports

on the Protocol are part of the SDGEA, it is also important to note that initial reports are usually thorough, while subsequent reports are less so. This could be a loophole in reporting on the Protocol as part of the SDGEA.

On the other hand, the technical nature and comprehensiveness of the independent CEDAW report further confirms the need for an independent report on the Protocol. It also indicates either the existence of technical assistance to African countries in support of reporting or the existence of reporting capacity in Member States to report on CEDAW. There is a need, therefore, to amplify the report on the Protocol independent of the SDGEA report. This may be a viable option. Furthermore, the harmonization of the reporting on CEDAW and the Protocol would present a win-win situation whereby the report on CEDAW would be modified to meet the needs of the Protocol for those countries that have ratified both instruments and vice versa. In addition, using similar templates and technical support from UN agencies could lead to a lean and efficient reporting framework for the two sister instruments. It could also result in the increased ownership of the Protocol and CEDAW.

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#### CONCLUSION

In conclusion, it is evident that the level of ownership of the Maputo Protocol so far demonstrated by AU Member States is without question while the speed of ratification is globally unparalleled. As the AU celebrates its 50<sup>th</sup> Anniversary and confidently marches towards 2063, African women look forward to both claiming the African Women's Decade (2010-2020) but also to claiming the AU's Agenda 2063 on an equal basis with men. This calls for the kind of leadership that will shift the paradigm for African women to realize a truly peaceful and prosperous continent at peace with itself.

## TRACING SOAWR'S BIRTH AND ADVOCACY FOR RATIFICATION AND IMPLEMENTATION OF THE PROTOCOL

Mary Wandji

It is 10 years since the African Union (AU) *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* was adopted on July 11. It is also known as the 'Maputo Protocol' alluding to the city where it was adopted, or the African Women's Protocol (hereafter referred to as the Protocol). The Protocol addresses comprehensively, for the first time, women's human rights in Africa and state obligations to uphold, protect and promote them. The Protocol enumerates a broad range of women's rights, including the elimination of discrimination against women, the right to dignity, the right to life, the integrity and security of the person, the protection of women in armed conflicts, the right to education and training, economic and social welfare rights, and health and reproductive rights. The main focus of this paper is to provide a historical overview of the adoption, ratification and implementation of the Protocol and the role that the Solidarity for African Women's Rights Coalition (SOAWR) has played. The paper concludes with a highlight of achievements that can be attributed to SOAWR's interventions.



SOAWR members during the 'green card' campaign in Abuja, Nigeria (January 2005)

### PRE-ADOPTION

The development of a Protocol on women's rights in Africa was triggered by the outcome of the *World Conference on Human Rights* held in Vienna, Austria, in 1993 that emphasized, "The human rights of women and of the girl child are an inalienable, integral and indivisible part of the universal human rights". Thus the slogan that emerged from Vienna: **Women's Rights are Human Rights**.

Several meetings took place starting with one organised by Women in Law and Development in Africa (WILDAF) in March 1995 in Lomé, Togo. The meeting called for the development of a Protocol to the *African Charter on Human and Peoples' Rights (The Charter)* on women's rights. Consequently, informed by the realisation that the *Charter*, as adopted in 1981, had not addressed women's human rights adequately, the Organisation of the African Unity in June 1995 mandated the African Commission on Human and Peoples' Rights (ACHPR) to elaborate a Protocol on the rights of women in Africa.

The first Draft was prepared by an experts'<sup>6</sup> group meeting organised by the ACHPR and the International Commission of Jurists (ICJ) in April 1997 and submitted to the 22nd Session of the ACHPR in October 1997. The draft was also circulated to NGOs for comments and was enriched by various meetings that followed. The ACHPR forwarded the Draft Protocol to the OAU Secretariat in 1999. The Inter Africa Committee (IAC) and ACHPR met to merge the Draft Convention on Traditional Practices with the Draft Protocol in 2000 and then submitted the draft to OAU policy organs for adoption.

The first OAU Government Experts' Meeting reviewed and amended the Draft Protocol in 2001 and called on the OAU to schedule a second AU experts' meeting in 2002 to consider the draft before it was presented to the OAU ministerial meeting for adoption. However, that was not to be, as the OAU did not manage to achieve the mandatory quorum in 2002. African women's organisations with support from the United Nations Fund for Women (UNIFEM -now UN Women) attended as observers. The African Women's Development and Communications Network (FEMNET) noted that the draft Protocol was way below international standards on women's rights. FEMNET subsequently established an e-mail list serve that enabled the dissemination of the draft, discussion and formulation of inputs to address the gap. Equality Now integrated and tracked the proposals received in the Draft Protocol.

This was followed by the convening of African women's organisations by Equality Now Africa Regional Office in collaboration with the Ethiopian Women Lawyers Association (EWLA) and FEMNET<sup>78</sup> in January 2003. The meeting pooled proposals and integrated them into a Draft

Protocol highlighting weak provisions and proposing language in a collective mark-up to align it with international standards. A multi-pronged advocacy strategy for the adoption of the proposals by the AU Secretariat and member states was also developed. After the meeting, the organisations met AU Secretariat officials and successfully advocated for the experts and ministerial meetings on the Protocol to be scheduled for March 2003.

Thereafter, the organisations embarked on national level advocacy targeting ministries of Justice and Gender to: adopt the proposals to strengthen the draft, confirm their participation in the AU experts and ministerial meetings, commit to send delegates with legal and human rights expertise from their capitals and to include women's rights organisations in the official delegations.

Prior to the Experts and Ministerial Meetings, Equality Now's Africa Regional Office convened a second meeting of women's rights activists and organizations and an informal meeting with Permanent Representatives to the African Union, in order to ensure that the substantive provisions of the draft Protocol were strengthened during the experts and ministerial meetings.

This resulted in a significantly improved draft Protocol that not only met but superseded international human rights standards on women's rights as discussed in other sections in this publication. The Draft was subsequently adopted on July 11, 2003 by the AU Assembly of Heads of State and Government. The advocacy by women's organisations represents a successful model of cooperation among national, regional and international women's NGOs with concrete results, namely the strengthening of the final text of The Protocol.

#### ADVOCACY FOR RATIFICATION AND THE BIRTH OF THE SOAWR COALITION

Protocols and treaties of the AU enter into force thirty days after the deposit of the fifteenth instrument of ratification. By March 2004, only one member state of the AU-The Comoros-had ratified it. Clearly, the process of ratification was proceeding slowly and urgent actions were needed to promote, protect and realise the rights of women. Noting that trend, four organisations<sup>9</sup> came together to reflect on how to build the momentum gained from advocacy for adoption to demand for ratification. Consequently, 17 organisations<sup>10</sup> -national, regional, international-that had advocated for the adoption of the Protocol joined together to form a coalition-Solidarity for African Women's Rights (SOAWR) and its membership has since grown to 43 organisations spread throughout the continent. Since 2004,

SOAWR has focussed on the ratification, popularisation, domestication and implementation of the Protocol. The coalition designed several campaigns for the ratification of the Protocol.

Initially it launched the first ever mobile phone short text service/message campaign dubbed "*text now 4 women's rights*". Mobile phone users across the world sent short text messages from their mobile phones to sign an online petition in support of a campaign urging African governments to ratify the Protocol. A total of 511 SMS messages in support of the petition were received from 29 African countries, while more than 1000 people signed up to an SMS alert list in order to receive updates about the campaign<sup>11</sup>. The technology enabled thousands of African cell phone users to join the campaign and receive updates on the progress of ratification.

Secondly, SOAWR issued an online call for articles in support of ratification of the Protocol that were published in a special issue of *Pambazuka News* "Unfinished Business" and circulated to all AU member states.

The 'coloured cards campaign' was the third strategy targeting Foreign Affairs Ministers at AU Summits. They received red, yellow or green cards depending on their status of ratification of the Protocol: red-card for states that had neither signed nor ratified; yellow-card for states that had signed but not ratified and; green card to honour states that had signed and ratified for their commitment to women's rights.

The fourth strategy was joint fundraising by SOAWR to enable members to carry out national campaigns for ratification at national level. For example, Oxfam GB successfully raised funds to support SOAWR campaigns (under the Raising Her Voice Project) for ratification and/or implementation of the Protocol in seven countries; The Gambia, Liberia, Mozambique, Nigeria, South Africa, Tanzania and Uganda. The ratification by Uganda, the passage of violence against women legislation in Mozambique and Nigeria and the Women's Bill in the Gambia are key achievements of that campaign.

Fifthly, SOAWR seized the privilege accorded to AU members states to host AU conferences and Summits to demonstrate their commitment to women's rights by ratifying the Protocol prior to the events. By way of example, in Kenya in 2010, prior to Kenya's hosting of the launch of the AU Women's Decade 2010-2020, ratification was secured by SOAWR members-FIDA-Kenya, Coalition on Violence against Women (COVAW), FEMNET, and Equality Now Africa Regional Office.

Similarly, in Uganda, SOAWR members led by Akina Mama wa Afrika (AmWA), in collaboration with the National Africa Peer Review Mechanism (APRM) Governing Council and support from other SOAWR members, got commitment that Uganda would ratify the Protocol prior to the hosting of the AU Summit in Kampala in July 2010, which was achieved. In Equatorial Guinea, SOAWR members seized the opportunity of their presence in Malabo in July 2011 for the AU Summit to advocate for ratification of the Protocol. This yielded fruit when the Minister for Social Affairs and the Advancement of Women deposited the instrument of ratification with the Chairperson of the AU Commission in Malabo in the presence of SOAWR member-FEMNET.

The resilience of SOAWR members in advocating for the ratification of the Protocol explains its fast entry into force-18 months only following its adoption thereby breaking an AU record! -and the ever increasing number of ratifications that stood at 36 out of 54 AU member states as of June 2013. SOAWR is determined to achieve universal ratification and, in 2012, conducted a mapping study across countries that have not ratified 10 years since the Protocol was adopted by the AU. The study has highlighted the obstacles to ratification and made recommendations that have been incorporated into the coalition's advocacy strategies.

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#### RAISING AWARENESS ON THE PROTOCOL: STRATEGIC COMMUNICATIONS AND CONVENINGS

SOAWR has also invested in ensuring that citizens are aware of the contents of the Protocol in order to demand for its implementation. This has been achieved through various strategies. The first is publication of several books and special issues of *Pambazuka News*<sup>12</sup> (online newsletter published by FAHAMU with wide reach in Africa and beyond). The publications, developed through "Call for Articles", cover different themes on the Protocol such as the pre-ratification, 5<sup>th</sup> Anniversary of the Protocol, the Beijing+15 process and linkages between the Protocol and the Beijing Platform for Action, the 30th anniversary of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) etc. SOAWR also publishes a quarterly online newsletter in English, Arabic, French and Portuguese to disseminate members' campaigns, challenges and progress and lessons learnt.

Secondly, SOAWR members have played a critical role in developing popular versions of the Protocol and translating and disseminating the Protocol in African languages in several countries.

Thirdly, FEMNET and FAHAMU developed an award winning Radio Drama "Crossroads" that has been translated

into seven languages and used across the continent-Kenya, Togo, Uganda, Senegal and Southern Africa. The Drama has been an effective tool to popularize the Protocol increasing awareness and demand for its ratification and implementation.

The fourth strategy is a focus on the youth. SOAWR organized a youth essay competition led by Alliances for Africa, Equality Now, FAHAMU and FEMNET. Young people were asked to respond to the question "Why is the Protocol on the Rights of Women in Africa important to you?" in an essay of a maximum of 2000 words in English or French. The six winning essays were published on *Pambazuka News*. The winners were facilitated by SOAWR to attend the AU Summit in January 2012.

Fifth, SOAWR hosts and co-convenes with partners various public debates, meetings, cocktails to popularise the Protocol. SOAWR seizes the opportunities provided by the SOAWR Annual Strategy Review and Planning Meetings, the bi-annual AU Summits and anniversaries of the Protocol to organise Public events on the Protocol.

Finally, SOAWR has developed working relationships with different organs and offices of the United Nations and the AU as well as governments, jurists and parliamentarians at national level. Within the AU, SOAWR works with the ACHPR, The Pan African Parliament, the African Union Commission (Social Affairs, Office of the Legal Counsel and The Women Gender and Development Directorate). The partnerships have enabled SOAWR to provide technical support where necessary, co-host meetings and training sessions and develop joint strategies for the institutions to support member states to implement the Protocol or to domesticate the Protocol within their mandate. As demonstrated by partnerships around the publication of this book, SOAWR continues to invite and respond to invitations from other coalitions, networks and organisations to influence AU processes and decisions on women's rights.

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#### BRIDGING THE GAP BETWEEN POLICIES AND THE REALITY OF WOMEN'S LIVES: ADVOCACY FOR DOMESTICATION AND IMPLEMENTATION

The overarching aim of the Protocol is to enhance the enjoyment, protection and promotion of women's human rights at national level. It is laudable that more than half of AU member states have ratified the Protocol. However, with the exception of Rwanda, the slow pace of implementation or lack thereof by states that have ratified it is disappointing. This concern lies at the heart of SOAWR interventions since 2010 to address the gaps between commitment and implementation of the Protocol.

The first intervention is encouraging the application of a multi-sector approach model developed by UN Women in 2010<sup>13</sup>. SOAWR in strategic partnership with UN Women Liaison Office with the African Union have embarked on developing a pool of national resource-persons to promote and support the development of multi-sector frameworks at national level to fast track delivery of rights enshrined in the Protocol. The model builds on the experiences and lessons learned from multi-sector approaches used in other thematic areas such as the promotion of universal primary education, and raising public awareness on HIV and AIDS. The multi-sector approach premise draws from the principle that each organ and department of government is responsible and accountable for fulfilling their obligations under the Protocol vis-à-vis women's rights falling within its mandate.

SOAWR and UN Women in partnership with the AU Commission have jointly convened two conferences where the multi-sector framework was introduced to 28 countries that have ratified the Protocol. They have also organised training for government officials and civil society on the framework and mobilized additional support for eight countries that are willing to pilot the framework. It is envisaged that the experiences and results of the eight will prompt other countries to implement the framework as a tool for domestication and implementation of the Protocol.

The second strategy has been to boost capacity for the implementation of the Protocol in litigation. In this regard, Equality Now, on behalf of SOAWR, developed a *"Guide to Using the Protocol on the Rights of Women for Legal Action"* to help jurists and activists to facilitate the exercise of the rights set out in the Protocol in cases brought before domestic courts and how to bring complaints of violations of the Protocol to regional judicial mechanisms such as the ACHPR and the African Court on Human and Peoples' Rights. Equality Now/SOAWR has gone further to organise training for lawyers, women's rights activists and law associations to use the manual to enforce the Protocol.

The third intervention is on reporting. States that have ratified the Protocol are required to report every two years on the legislative, judicial, administrative and other measures taken towards full realisation of the rights and freedoms of women enshrined in the Protocol. To facilitate that, SOAWR through its member-Centre for Human Rights, University of Pretoria- provided technical support to the ACHPR to develop guidelines on reporting that were adopted by the ACHPR in 2010. In 2011, SOAWR partnered with the Special Rapporteur on the Rights of Women in Africa in organizing training on guidelines on reporting on the Protocol. Then, in 2012, SOAWR supported the Special Rapporteur in disseminating copies of the Guidelines to AU

Member States in English, French and Portuguese. Hopefully these efforts will encourage state parties to the Protocol to implement it and submit reports.



**Students from the midwifery school of El Fasher at International Women's Day march in North Darfur - UN Photo**

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#### WHAT HAS SOAWR ACHIEVED SINCE ITS INCEPTION IN 2004?

SOAWR has managed to build a formidable coalition at regional and national levels that consistently ensures that the Protocol remains on the agenda of AU member states. The SOAWR coalition's model: 'one united voice on a common agenda bringing together diverse groups (international, regional, national and local) tapping into various networks and relationships to pass one message using multiple media and languages' could be emulated by other campaigns.

The advocacy for the ratification and implementation of the Protocol has created strong women's movements at national level. For example, the Women First Coalition in Uganda, The Nigerian RHV Coalition, and the Gender Action Team in the Gambia have strengthened women's voices in demanding national level ratification and the implementation of the Protocol. Although gender equality and women's empowerment is yet to be fully achieved in Africa, with women's movements like SOAWR and emerging national level coalitions, governments cannot escape the pressure to walk their talk on women's rights commitments.

SOAWR has demonstrated that treaties and Protocols need not take years to come into force if civil society organisations carry out intense campaigns. The Protocol came into force in a record eighteen months due to SOAWR's advocacy, thereby becoming the fastest human rights instrument to come into force in the history of the OAU/AU. To date 36 out of 54 AU member states have ratified it.

The Protocol provides a new standard that national and sub-regional laws on women's rights must meet. Rwanda is a case in point where it has implemented the Protocol across all government sectors and The Gambia has adopted a 'Women's Bill' to implement its commitments on women's rights entered into at the regional and international levels including the Protocol.

At the sub-regional level, the SOAWR campaign offers a model for collaboration and joint action among organisations to demand for women's rights instruments with the Economic Community of West African States (ECOWAS), Southern Africa Development Community (SADC) and East African Community (EAC) adopting or developing declarations on gender equality as a result of advocacy borrowing from SOAWR's campaign.

Due to SOAWR's public sensitization campaigns, the Protocol has become a public education tool on women's rights at the national and grassroots levels. SOAWR members in The Gambia, Liberia and Tanzania have translated the provisions of the Protocol into songs. Other SOAWR members have published simplified versions of the Protocol and/or translated the Protocol into local languages to facilitate access by women and the public at large. This has encouraged citizens to demand for the implementation of the Protocol's provisions. For example, the Protocol has been a major boost to the campaign against female genital mutilation (FGM) in Liberia and Tanzania.

SOAWR, through Equality Now, has also contributed to the advancement of national jurisprudence on women's rights. In Zambia, a 13 year-old girl was raped by her teacher. Through a lawyer, a civil suit was instituted against the

teacher, the school, the Attorney General, and the Ministry of Education for failing to protect her from sexual violence while she was in the school. During the trial, the lawyer cited the Protocol given that Zambia is a state party to the Protocol. The judge, in his decision, referenced the lawyer's use of the Protocol and quoted Article 4. This is a Common Law judgment that can be used as a precedent in other common law countries when citing instances when the government has been held accountable for the violation of rights provided for in the Protocol.

Finally, SOAWR's popularization of the Protocol has expanded the discourse on women's rights in Africa into areas that were hitherto considered 'no go zones' setting new international standards on sexual, reproductive health and rights, female genital mutilation (FGM) and polygamy.

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## CONCLUSION

There is no doubt that the Protocol is useless if it does not contribute to substantial changes in the situation of the African women and girls. The real test of AU member states' commitment to women's rights lies in their actions towards the implementation of the Protocol. It is apt to recall that;

The Protocol offers us a tool for transforming the unequal power relations between men and women that lie at the heart of gender inequality and women's oppression.

What we need is for SOAWR to be joined by others to push an agenda to demand concrete action by African leaders to the existing commitments in the Protocol. This is not to benefit women only but all African citizens – men and women.

Status of Ratification of the Protocol, 2003-2013

After the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in July 2003, women's and human rights organizations were concerned about the lag in ratification and domestication of the Protocol. In April 2004, these organizations noted that one year after adoption, only one country, The Comoros, had ratified the Protocol. In response, several national, regional and international organizations formed the Solidarity for African Women's Rights Coalition (SOAWR) whose mission was to ensure the ratification, domestication, implementation, and popularization of the Protocol.

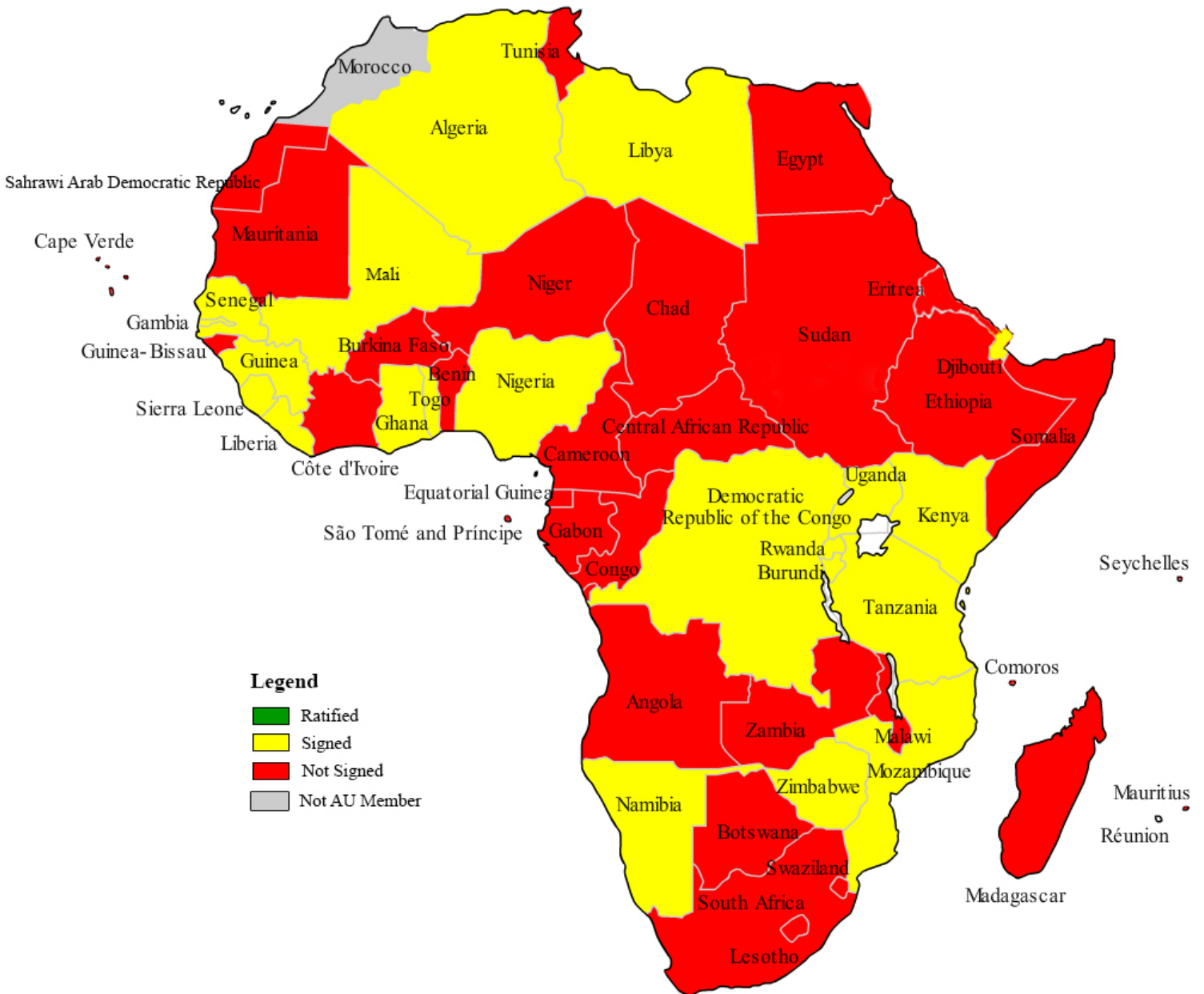
In January 2005, during the African Union (AU) Summit in Abuja, Nigeria, SOAWR members used an innovative colour card campaign to highlight the delay in ratification and advocate for speedier action on the part of Member States. At the Summit, SOAWR members distributed green cards to representatives of Member States that had ratified the Protocol, yellow cards to representatives of those states that had signed, but not ratified the Protocol, and red cards to those who had neither signed nor ratified the Protocol.

Since 2005, SOAWR has used AU Summits as an opportunity to remind Member States of their commitment to ratify the Protocol as reaffirmed in the Solemn Declaration on Gender Equality in Africa and to urge them to do so as a matter of urgency.

The maps presented in the following pages colour code countries based on the SOAWR card campaign and indicate the status of ratification in 2003 as compared to 2013

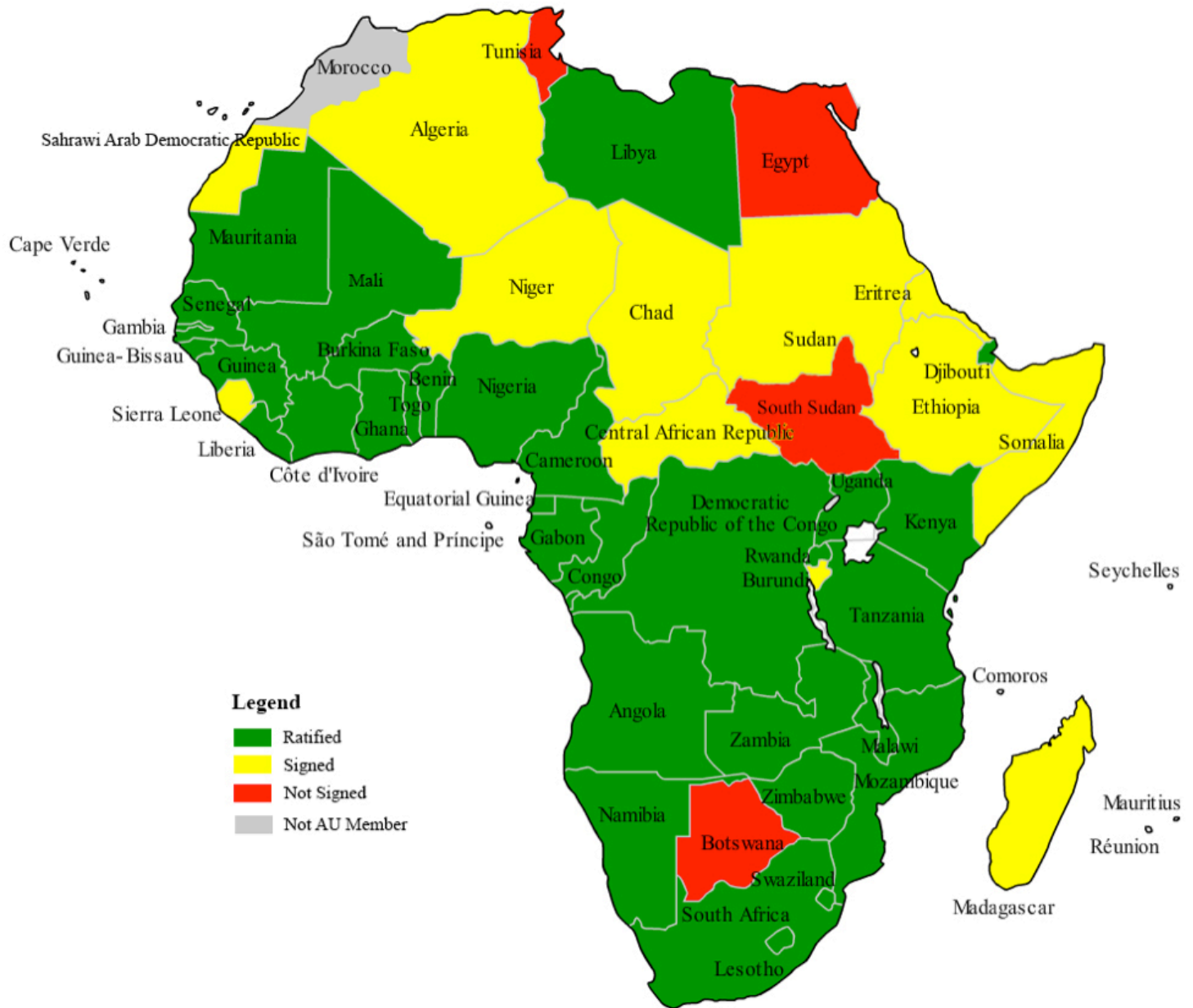


Status of Ratification December 2003



(Courtesy of Roy Gitobu, Fahamu Networks for Social Justice, 2013)

Status of Ratification May 2013



(Courtesy of Roy Gitobu, Fahamu Networks for Social Justice, 2013)

## AN ANALYSIS OF THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA

**Muthoni Muriithi**

In Africa, women's rights have often been viewed as controversial, creating a blurry line between the need to protect human rights in general and the preservation of African identity, culture and morality. This is despite the universal ratification of the African Charter on Human and Peoples' Rights (the "African Charter") by African states and the explicit human rights guarantees. The African Charter begins by stating that all individuals are entitled to the enjoyment of the rights and freedoms within it without distinction of any kind including sex<sup>14</sup>. To further reinforce state obligations towards women, the African Charter called on State Parties to end all forms of discrimination against women and to guarantee the protection of women as provided for within other international instruments that state parties have ratified.<sup>15</sup> Despite these clear provisions within the African Charter, women's rights have still been underrated especially when juxtaposed with the African Charter provisions on the protection of the family unit, which is the custodian of morality and traditional values<sup>16</sup>. The key challenge of course is not the protection of the family unit but the vagueness of the concepts of 'morality and traditional values'.

Too often culture is used as a justification for the denial of women's rights. While every community has traditions and customs which it holds dear, some can be beneficial to the whole community and others can be harmful to women, for example, Female Genital Mutilation (FGM); early marriage; denial of property rights and inheritance to mention a few.

This lack of clarity of human rights vis-à-vis the preservation of traditions, coupled with the mass violations against African women, led to the women's movement demanding an African legal framework deriving from the African Charter that would spell out clearly the rights of women in Africa vis-à-vis culture and religion and once and for all end the debate on whether or not African women were entitled to the protections guaranteed within the African Charter and other human rights instruments that African countries had ratified. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women ("The Protocol") was adopted on 11 July 2003 by the Head of States and Governments of the African Union (AU), becoming the first women's rights legal framework for the protection of women's rights in Africa and creating an obligation on state parties to respect and protect these rights. On 25th November 2005, the

Protocol came into force marking a turning point for the women of Africa.

As we celebrate ten years of the adoption of the Protocol by the AU, it is worthy to examine some of the promises that the Protocol presents. This paper will look at a number of rights and freedoms within the Protocol, situate the same within today's context ten years after its adoption, and identify opportunities for the realization of these rights. The paper will also identify some shortcomings of the Protocol and propose ways to remedy these. Although the paper will not address each of the Protocol's individual provisions, it will interlink them, recognizing the overarching issues that various provisions address.

### THE PROMISE

The Protocol has been hailed as one of the most progressive women's rights instrument globally and although it borrowed heavily from the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), it took some bold steps to articulate additional women's human rights that had not been explicitly provided for within CEDAW and other international human rights instruments. In its preamble, the Protocol observes that state parties are "*determined to ensure the rights of women are promoted, realized and protected in order for them to enjoy fully all their human rights.*" This can be seen to be a firm commitment by state parties to honour all the rights within the Protocol and deliver the promise of the full realization of women's human rights.

### DISCRIMINATION AGAINST WOMEN

Many post-independence constitutions --such as the old Kenyan Constitution and the current Zambian Constitution among others--provided for non-discrimination and gender equality clauses<sup>17</sup> but placed an exemption to their applicability in relation to matters of personal law, where customary law was instead applied. Judges in these jurisdictions interpreted these constitutional derogation provisions as permitting the application of provisions of customary law that discriminate against women<sup>18</sup>, failing to take into consideration the state's obligations under international and regional human rights instruments. In addressing this challenge, "*the Protocol calls on state parties*

*to eliminate all forms of discrimination against women, and further urges them to 'modify the social and cultural patterns of conduct...with a view of achieving elimination of harmful cultural and traditional practices which are based on the idea of inferiority or the superiority of either of the sexes.'*<sup>19</sup>

To avoid any doubt as to the stance of the Protocol on the application of negative customary laws and practices, it provides for the rights of women in marriage and dissolution of marriage<sup>20</sup>, re-emphasizes the minimum age of marriage as eighteen years, and provides for protection of women in polygamous marriages<sup>21</sup>. The rights in marriage and divorce are intricately linked to women's access to land and property. Marriage for many women in Africa is the means through which they gain access to land and property. It provides access to land just as long as the woman is still married to the man. Upon divorce or death of the husband, women often find themselves denied access to the land and property, as they do not have the right under customary law to inherit.

The Protocol took cognizance of these factors and proceeded to spell out clearly the rights of widows including the rights to be the guardian of their children, the right to re-marry and to marry a person of their choice<sup>22</sup> as well as their right to inherit their deceased husband's property and the right to live in the matrimonial home.<sup>23</sup> Women also have the right to inherit in equitable shares their parents' properties.

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#### VIOLENCE AGAINST WOMEN

One of the most progressive elements of the Protocol is that it provided clarity on the public/private dichotomy debate, especially revolving around state obligation to protect women from violence. It specifically calls on State Parties to enact and enforce laws to protect women and girls from all forms of violence whether this violence takes place in public and private.<sup>24</sup> For a long time a debate has ensued among states and human rights scholars on the extent to which states can intervene in the private sphere. It was noted by many that state legal regulations within the public sphere was natural and necessary, whereas similar regulation in the private sphere interfered with the right to privacy. Unfortunately for many women, it is within so called 'private spheres' that numerous human rights violations occur, for example domestic violence, rape and other forms of sexual violence perpetuated by persons often well known to these women. Feminists have argued for a long time that shielding the private sphere from public scrutiny serves to perpetuate male domination in the family<sup>25</sup> and, I would add, justify the violence occurring within these spaces.

The Protocol notes a number of violations related to the right to life, integrity and security<sup>26</sup> of the person including the protection of women from trafficking. It notes that women should be protected from medical and scientific experiments without their informed consent and importantly calls on state parties to allocate adequate budgetary and other resources for the implementation and monitoring interventions geared towards preventing and eradicating violence against women. From our experience, prosecution of violence against women and more specifically sexual violence is very difficult. Governments often lament that they do not have resources to provide adequate services for survivors of sexual violence or, related to this provision, ensure equal access to justice for these women. The failure of state machinery to provide adequate remedy for these violation further contravenes Article 25 which requires states to provide 'appropriate remedies' for all violations within the Protocol and ensure that remedies are determined by competent authorities. Where Governments fail to protect women and girls, activists must find ways to hold them accountable. For example in Zambia, a 13 year old girl sued the Government of Zambia<sup>27</sup> for sexual abuse in the school and was awarded damages for her pain and suffering with the decision citing Article 4 (1) and (2) of the Protocol on the Rights of Women, which spell out clearly state parties' obligations to protect women from all forms of violence and the need to place measures to prevent and address sexual violence. The Judge went ahead to call on the Government to put in place guidelines to address sexual violence in schools<sup>28</sup>. This case can be seen as one way that the rights within the Protocol have been realized over the last 10 years and shows how the Protocol can be a tool for change.

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#### HARMFUL TRADITIONAL PRACTICES

The Protocol is the first human rights treaty to explicitly call for the elimination of FGM<sup>29</sup> and other traditional practices that negatively affect the human rights of women. State parties are also required to 'eradicate elements in traditional and cultural beliefs, practices, stereotypes which legitimize and exacerbate violence against women', to ensure further clarity on harmful traditional practices, and to end all forms of harmful practices that negatively affect the human rights of women. While calling for the elimination of harmful traditional practices, the Protocol recognizes that culture is not all bad and provides for the right to a positive cultural context where women can contribute to the progressive development of their culture. This provision offers a number of opportunities and the women's movement have the chance to determine through progressive judicial interpretations what this means for women, including women's role in shaping the culture within their societies.

For example, can this provision be used to advocate for more women in traditional leadership structures to reflect the dynamic nature of culture? This question was recently raised in Lesotho, where the daughter of a chief challenged the Kingdom's Chieftainship Act, which only allowed men to succeed their fathers to chieftainship. Unfortunately, the Constitutional Court ruled that the law was not discriminatory.<sup>30</sup> This decision contradicts the provisions of the Protocol and other international human rights instruments and may present an opportunity to litigate before regional human rights mechanisms.

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#### ECONOMIC, SOCIAL AND CULTURAL RIGHTS<sup>31</sup>

One of the beauties of the African Charter is that it acknowledged in its preamble that it was important to “pay attention to the right to development and that civil and political rights cannot be disassociated from economic, social and cultural rights” and went further to say that “the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights”.

It is therefore no wonder that the Protocol follows the same path and identifies women’s Economic Social and Cultural Rights realizing that these rights, just like other rights, apply to women differently, but more so that it is the denial of these rights that leave women vulnerable to further abuse. It acknowledges women’s right to work and access to opportunity and places state responsibility to ensure that women overcome the barriers faced in breaking the glass ceiling in pursuit of their career aspirations. It is interesting to note that the Protocol acknowledges the state parties and private sector as having secondary responsibility in the care of children. One of the things state parties can be required to do is adopt progressive policies that support mothers in the work place and create conducive working environment for mothers by providing child care facilities and other measures aimed at enabling women to access opportunities.

The Protocol also provides for the right to food security and adequate housing and even goes a step further to note that women have rights to a healthy and sustainable environment as well as sustainable development. These provisions are very relevant in Africa, at a time when communities are faced with food shortages and the continuous erosion of the environment by various actors including multi-national companies in collaboration with governments. The Protocol presents a gendered perspective that can be adopted in tackling these issues which are often not viewed as relating to women or rather ‘gender issues’ due to the limited scope on the understanding of women’s rights. The women’s movement have basic standards through the Protocol that they can expand to enable them to frame policies on food

security, economic and social development in Africa and the preservation of the environment while ensuring that women are at the core and centre of these debates continentally.

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#### SEXUAL AND REPRODUCTIVE RIGHTS

The Protocol was the first human rights instrument to explicitly provide for the right to medical abortion in specific instances such as rape, incest and where the continued pregnancy endangers the life of the mother. This is a highly controversial provision within the Protocol and has seen a number of states place reservation on the same, including Kenya and Uganda.

The Protocol clearly articulates the reproductive rights of women, which are very intricately related with all other human rights within the Protocol. These rights were further elaborated when the African Commission issued its first set of General Comments on the Protocol. These comments on Articles 14(1)(d) and (e) were adopted at the African Commission’s 52<sup>nd</sup> Session in Yamoussoukro, Côte d’Ivoire, and provide guidance to States parties on fulfilling obligations with regard to women and girls’ rights in relation to HIV.

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#### SPECIAL PROTECTIONS

The Protocol notes that even among women, there are those who are more vulnerable due to a number of factors and may need additional protection to ensure that they are not discriminated against. The Protocol takes note of elderly women as a special group; refugees and internally displaced women; women with disabilities; pregnant women in detention; and poor women by calling on State Parties to an environment suitable to their condition and provide for their special needs.<sup>32</sup>

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#### SHORTCOMINGS

Despite the numerous progressive provisions on the Protocol, it does have some limitations and may have missed on opportunities to address a number of issues that continue to plague African women. Below I highlight some of these shortcomings and opportunities for overcoming them.

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#### ACCEPTANCE OF THE DEATH PENALTY

The Protocol calls to those states that still have the death penalty not to carry the death sentence on pregnant and nursing mothers. By doing so it legitimizes the death penalty and misses an opportunity to encourage states to remove the death penalty in totality, thus contributing to global

development of human rights where more and more states are repealing the sentence of death penalty. Perhaps it was too much for the Protocol to do at the time. However, if the same Protocol mentioned that monogamy should be encouraged as the preferred form of marriage despite the controversy, why not have similar provisions that encouraged or pushed states to abolish the death penalty? South Africa is the only country that entered a reservation on this article noting that it did not support the death penalty and would not be seen to be condoning the same.

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#### EQUAL RIGHTS IN RESPECT TO NATIONALITY

While the Protocol is clear on the elimination of all forms of discrimination against women, notably it does not pose an obligation on states to address the issue of the right to pass on nationality and citizenship to one's children. Instead it states as follows: *"a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or contrary to national security interest"*<sup>33</sup> Many countries have legislative limitations on the right of women to pass nationality to their children, for example until 2010 the Constitution of Kenya only permitted men to pass on their nationality. Botswana had the same law until the case of *Attorney General vs. Unity Dow*<sup>34</sup> where the Court of Appeal upheld the decision that section of the Citizenship Act, which prohibited women from conferring citizenship to children borne of foreign fathers, was discriminatory. Unfortunately for women in many other countries only men can pass their nationality to their children. Therefore, the Protocol in this instance failed to guarantee the equal rights of women in respect to nationality leaving it at the state parties' discretion despite the fact that this provision contradicts Article 2 on the elimination of all forms of discrimination against women. It is worthwhile seeking an advisory opinion from the African Commission on Human and Peoples' Rights or the African Court on Human and Peoples' Rights vis-à-vis the rights to non-discrimination as already national courts have taken a progressive stand, as in the case of *Unity Dow*, in declaring this differential treatment between men and women discriminatory. Despite the fact that the Protocol applies to both men and women, looking at the widespread applicability of these types of laws, it is clear they always disadvantage women and not men.

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#### RIGHTS OF WOMEN LIVING WITH HIV/AIDS

The Protocol missed the opportunity to protect the rights of women living with HIV/AIDS as a special interest group who suffer due to their HIV/AIDS status. Women living with HIV/AIDS face violations on their reproductive and health

rights and are discriminated when accessing these services. Recently the High Court of Namibia in the case of *LM, MI and NH vs. The Government of the Republic of Namibia*<sup>35</sup> held the Government of Namibia liable for the sterilization of women living with HIV/AIDS without their consent in Government hospitals, putting on record that these violations were occurring in government hospitals and providing monetary compensation to the women for their suffering.

The Court, however, failed to find that these sterilizations were performed on the women due to their HIV status despite the overwhelming evidence that this procedure was only done to HIV positive women and not HIV negative women. The case demonstrates the magnitude of the problem and similar cases have been taken up in South Africa and Kenya. Yet the Protocol was silent on these and other violations against HIV positive women.

The Protocol was also blind to the implications that certain policies can have on women living with HIV/AIDS. Article 14 (e) provides for the right to be informed on one's status and that of one's partner. Women's access to health care is often compounded with social, economic and political inequalities.<sup>36</sup> Due to their reproductive role women visit medical centres more frequently than men and undergo HIV test during prenatal care.

Knowing what we know about women's lived experiences in a society where women face discrimination, violence and other forms of violations, the revelation of a woman's HIV status to her partner can have very dire effects including GBV and excommunication from her family. This requirement under the Protocol takes away women's right to privacy and confidentiality and may restrict women from seeking medical attention with the fear that, once their status was discovered, their partners would be notified.

The Protocol failed to address HIV/AIDS from a human rights perspective by omitting to connect it with other women's human rights such as freedom from discrimination, freedom from violence, right to dignity and bodily integrity. However, all is not lost, as Article 14 should be interpreted within the spirit of the Protocol and interlinked to other human rights to ensure comprehensive protection for women living with HIV/AIDS as emphasized in the General Comments on Article 14(1)(d) and (e) that the African Commission recently adopted.

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#### CONCLUSION

It is acknowledged that the Protocol is the product of eight years of negotiations between Member States of the African Union and civil society and therefore many provisions were

watered down to gain the consensus of the Member States. However, despite this, activists have an opportunity to expand these rights further through the African Human Rights mechanisms and through the application of creative strategies.

This paper has presented an analysis of some of the interesting provisions in the Protocol and the opportunities it provided.

It is clear that some of the issues addressed by the Protocol have begun to be addressed and more needs to be done. It is necessary to test these provisions within local and regional courts to realize these rights on behalf of women. Additionally, the Protocol must truly become the blue print for the evolution of African women's rights and consequently women's rights globally. Ten years have passed since its adoption. Let's ensure that in the next ten years women will start to live the dream of the Protocol.

## PART II - DOMESTICATION AND IMPLEMENTATION OF VARIOUS PROVISIONS OF THE PROTOCOL AT THE NATIONAL AND REGIONAL LEVELS

### DOMESTICATION AND IMPLEMENTATION OF THE PROTOCOL (ARTICLES 2, 6, 8, 14, 21)

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This paper highlights some achievements and challenges in implementation of the following selected provisions of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Protocol): Article 2 (non-discrimination); Article 6 (marriage); Article 8 (access to justice); Article 14 (health and reproductive rights); and Article 21 (inheritance). Some promising practices are also highlighted. The examples included in this paper were drawn from existing academic analysis on the implementation of the Protocol as well as country reports to the African Commission on Human and Peoples' Rights, reports to the United Nations treaty bodies as well as information provided by women's organisations working on implementation of the Protocol in Africa.

#### ARTICLE 2: ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Violations of women's human rights are manifestations of discrimination against women. Therefore, non-discrimination is one of the most important principles enshrined in the Protocol. Article 1 of the Protocol includes the definition of discrimination against women. It means any distinction, exclusion, restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.

Article 2 provides that States parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. Towards doing so, a number of specific measures are enumerated including: to include the principle of equality in national constitutions and legislation; enact and effectively implement legislation to eliminate discrimination against women; to integrate a gender perspective in policy decisions, legislation, development plans, programmes and activities, and all spheres of life; and to take corrective and positive action to eliminate discrimination against women. Recognizing the limits of the above prescriptions, amidst patriarchy and deeply entrenched gender stereotypes and roles, the Protocol borrowed from the UN Convention on the Elimination of all Forms of Discrimination against Women and provided that:

*'States parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.'*

This is arguably one of the most difficult provisions of the Protocol to implement, and one of the most difficult provisions to measure in terms of progress. With respect to other components of article 2, specific progress and challenges can be noted.



### PROGRESS

In accordance with article 2 of the Protocol, all State parties have the principle of equality in their constitution. Some constitutions go further to guarantee equality, such as the constitutions of Swaziland and Lesotho, which provide for affirmative action.<sup>37</sup> The Kenyan Constitution enshrines equality of treatment and opportunity in political economic and cultural spheres and pregnancy is included as a ground for non-discrimination.<sup>38</sup> This constitution also requires that no more than two thirds of the members of elective or appointed bodies shall be of the same gender. Similarly, the Constitution of Rwanda decrees a quota of 30% of women in decision-making positions, which has led to a significant increase of women in Parliament.<sup>39</sup>

Almost all countries have established a Ministry dedicated to gender equality. Commonly other institutional measures have been put in place, such as independent gender commissions or gender focal points in other government ministries. Many countries have also integrated a gender perspective into policies and programmes in accordance with article 2. For example, the government of Rwanda has adopted strategies to ensure gender parity in secondary schools and universities through effective implementation of the Economic Development and Poverty Reduction Strategy.<sup>40</sup> In 2009, Côte d'Ivoire adopted the National Policy Document on Equal Opportunity, Equity and Gender to include women in all sectors and created a Ministry of Family and a Directorate for Equality and Gender Promotion. The Malawi Growth and Development Strategy has included gender mainstreaming as one of the priority areas.

### CHALLENGES

The existence of claw back clauses which limit the right to freedom from discrimination, particularly in the application of customary law, remains a challenge in many of the member states. In Zambia for instance, the Constitution permits discriminatory laws in the areas of personal law and customary law.<sup>41</sup> Other African countries share similar personal law exemptions from discrimination in the constitution. They include Burundi, Ghana, Lesotho, Malawi, Mauritius, Nigeria, Sierra Leone, The Gambia and Zimbabwe.

Laws that contain discriminatory provisions are obstacles to implementation of the Protocol. For instance, in Nigeria, a female police officer, on first appointment shall be unmarried for an initial period of two years after which she could apply in writing for permission to get married.<sup>42</sup> In the Democratic Republic of Congo, like many other Francophone countries, the Family Code places the wife under marital authority, which limits women's enjoyment of numerous rights, including the right to reproductive autonomy. Mali adopted a new Family Code in 2011, which, unfortunately, failed to take cognizance of several of its obligations under the Protocol, and instead, perpetuates discrimination against women. For example, it provides that the legal age for marriage is 18 years for males and 16 for female, men are considered the head of the family, and a woman must obey her husband.<sup>43</sup>

Plural legal systems exist in all countries in the region. Where statutory law protects women from discrimination, it is not enforced and women are not aware of the provisions of the law and unable to use it to claim their rights. Inheritance is one area in particular, where statutory law and customary practice often conflict and women are unable to claim their rights. In Benin, for example, women continue to be subject to '*Coutumier du Dahomey*' which limits their rights to inheritance in violation of articles 630 and 631 of the Family Code of 2004 which recognise the same right to inheritance for men and women.<sup>44</sup>

Cultural and traditional practices that discriminate against girls and women are also prevalent in Africa. While practices differ, according to the region, female genital mutilation, widow inheritance, early and forced marriage, and violence against 'witches' are some examples of traditional practices that are harmful and discriminatory. Many of these practices continue within plural legal systems despite statutory provisions, which prohibit them. For example, many African countries have outlawed FGM, yet it is still widely practiced.

Although most state parties have institutional mechanisms for gender equality, such as women's ministries, these are usually under resourced with respect to human and financial resources, and consequently unable to operate effectively.

### Promising Practices

Mozambique and Zimbabwe have established Women's Rights Commissions, which are charged with periodically assessing the effectiveness of laws.<sup>45</sup>

The Rwandan Gender Monitoring Office was established in 2003 in order to monitor progress on gender equality and addressing GBV.<sup>46</sup>

In the DRC, the Fund for the Empowerment and Protection of Women and Children (FONAFEN) has been established to mobilise resources to fund projects initiated by women.<sup>47</sup>

In February 2013, Malawi passed the Gender Equality Law, which explicitly prohibits discrimination, sexual harassment and harmful cultural practices.

To address stereotypes against women and girls, Burkina Faso, removed stereotypes of women from textbooks and teaching content.<sup>48,49</sup>

#### ARTICLE 6: MARRIAGE

Article 6 of the Protocol requires State parties to ensure that both men and women enjoy equal rights and are regarded as equal partners in marriage, and to enact appropriate national legislative measures to guarantee these rights. The Protocol requires legislative measures to include provision requiring free and full consent of both parties, and prescribes 18 years as the minimum age for marriage of women. The Protocol goes further to say monogamy is the preferred form of marriage but all forms of marriages are protected. It also requires that every marriage shall be recognized and registered. The equal right to choose the matrimonial regime and residence and the right to retain and use her maiden name, jointly and separately with her husband are also recognised. Under the Protocol, a woman shall have the right to retain her nationality or acquire the nationality of her husband and have equal rights with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests. This requirement under the Protocol weakens the right because states have national legislation based on patriarchy. The Protocol guarantees the rights of women to jointly contribute to safeguarding the interests of the family, protecting and educating their children and to freely own and administer property during her marriage.

#### PROGRESS

In many African countries the legal age for marriage is 18 for men and women. For example Burkina Faso, Cape Verde,

Djibouti, Equatorial Guinea, Mali and Swaziland, have legislated 18 as the minimum age for marriage.

The Protocol provides also that monogamy be encouraged but many state parties still recognise polygamy as a legal marital regime. In that regard, in Djibouti, the 2002 Family Code provides under article 22 that polygamy is authorized but women have the right to challenge the husband's new marriage.<sup>50</sup>

Equatorial Guinea recognizes equal rights and responsibilities of spouses in the guardianship of their children in line with the requirement of the Protocol.<sup>51</sup> In South Africa a constitutional case found that laws allowing only males to inherit under customary law were invalid and unconstitutional.<sup>52</sup>

#### CHALLENGES

Early and forced marriage is a challenge in many African countries. For example, the legal minimum age of marriage is 21 in Swaziland, but with parental consent a female can marry at 16 and a male at eighteen years. Customary marriages have no minimum age, and girls are considered ready to marry upon reaching puberty. In the Comoros, under Muslim law, the age for majority is 14 and in the Family Code it is 18. The inconsistency between statutory law and cultural or religious laws is a problem that allows early marriage to flourish<sup>53</sup>.

Early marriage is exacerbated by cultural norms, poverty and illiteracy. Early marriage limits the opportunity of girls to go to school and it exposes them to the risk of early pregnancy and childbirth, which is the leading cause of death

for girls ages 15-19 in developing countries.<sup>54</sup> The risk of experiencing physical and emotional abuse, as well as physical and psychological trauma is high in early marriages. Early marriage also contributes to the high prevalence rate of HIV amongst girls and adolescents.

Legislating a minimum age of 18 for marriage is not sufficient to eliminate the practice in the region, which is why the Protocol also requires states to change social and cultural patterns of behaviour through education and other measures.

### Promising Practices

In Swaziland, traditional marriages are registered and wives will obtain a certificate in accordance with the requirement of recognition and registration of marriages in order to offer legal protection on the basis of law.<sup>55</sup>

Kenya, Libya and Rwanda have reformed their nationality laws to allow women to pass their nationality to their children. In Rwanda article 6 of the 2008 Nationality Code provides that all individuals born from Rwandese parents (male or female) can acquire Rwandese nationality. In Kenya, article 14 of the Constitution provides that nationality can be acquired if a person is born from Kenyan parents irrespective of gender. Libya adopted in July 2010 the Law No 24 on the Provisions of Libyan Nationality in which women who are married to foreign spouses can pass their own nationality to their children.

### ARTICLE 8: ACCESS TO JUSTICE AND EQUAL PROTECTION BEFORE THE LAW

Despite constitutional and statutory guarantees of equality, the reality is that for many African women justice remains out of reach, yet justice is essential to the realization of women's human rights.<sup>56</sup> The Protocol recognizes equality of men and women before the law. It requires state parties to ensure that women are equally represented in the judiciary and establishes appropriate measures to sensitize on women rights and to create legal funds to promote women's access to justice.

#### PROGRESS

To comply with the obligations under the right for women to access justice, some states parties have established legal funds to improve women's access to the law. For instance, in Burkina Faso, the government created a legal assistance fund to improve access to public legal aid services. In Rwanda, through the planning of reconstruction programmes, women have been appointed judges to the High Court in Kigali.

#### CHALLENGES

Women face social challenges, such as low levels of education, less money and less time to pursue justice. Furthermore, social pressures from within the family and community often prevent women from accessing justice. This is particularly prevalent in cases of domestic violence.<sup>57</sup> The legal capacity of women to approach courts unassisted by male relatives or spouses can also present a challenge. For instance, in the DRC, article 448 of the Family Code requires prior authorization from the husband for instituting legal proceedings.

Another challenge is that the reach of formal justice is usually in the administrative towns. For example, UN Women reports that in Sierra Leone, there are just 100 trained lawyers working mostly in the capital city serving a population of 5 million people.<sup>58</sup> The backlog of cases in most courts, as well as the language barriers in proceedings, remain obstacles for women to accessing justice.

The lack of harmonization in national legal systems is problematic as well. In Nigeria, for example, laws on violence against women vary from state to state. There are some states that have a law on domestic violence, but there is currently no national law.

### Promising Practices

The Thuthuzela care centers located in hospitals in South Africa have received international acclaim as best practice. They provide victims of sexual assault with legal and psychological assistance. Lesotho has followed suit by establishing the Lapeng care center for victims of violence, which also aims to serve as a one stop center for legal medical psychological and safety house for victims.

The government of Burkina Faso created a legal assistance fund in 2009, which has led to improve access to public legal aid services and has increased Women's access to justice.

Through the Program for Reform of the Justice sector (2010-2014) Mali is working to address obstacles to access to courts.

The government of Sierra Leone worked with Action Aid International to implement the Justice Sector Reform Programme. Police officers were trained in investigative and prosecutorial skills, particularly relating to women's rights cases, and violence against women.<sup>59</sup>

The Mozambican government has worked with civil society organizations to introduce women's rights courses into training at the Police Academy. The Zambian Police Training College has also integrated gender violence training into its curriculum.

#### ARTICLE 14: REPRODUCTIVE HEALTH RIGHTS

State parties are bound by article 14 to ensure that the rights of women are protected to control their fertility, to decide whether to have children and the number and the spacing of children. Under the Protocol, women in Africa also have the right to choose any method of contraception, to be informed on their health status and on the health status of their partner, particularly if affected with sexually transmitted infections, including HIV/AIDS. The right to self-protection and the right to be protected against sexually transmitted infections including HIV/AIDS are also ensured. This, along with the right to medical abortion under specified circumstances, are examples of innovations in the Protocol.

#### PROGRESS

Some countries have taken positive steps to provide integrated and comprehensive family planning services, maternal health, reducing infant mortality and morbidity, and preventing and treating sexually transmitted diseases (STDs), including HIV/AIDS. For example in Liberia, access to sexual and reproductive health services is provided free of charge at health facilities.

There has also been progress in Malawi in reducing the maternal mortality rate from 984 deaths per 100,000 live births in 2004 to 635 in 2010.<sup>60</sup>

#### CHALLENGES

Despite improvements in the access of reproductive health services, some countries have recorded escalating maternal mortality rates. For example, South Africa's maternal mortality ratio has more than quadrupled in the last decade, increasing from 150 to 625 deaths per 100,000 live births.<sup>61</sup> In Mozambique low use of contraceptives, HIV prevalence, and maternal mortality due to unsafe abortion remain persistent problems for the country. Furthermore, the prevalence of modern contraceptive use among married women has remained at only 11%.<sup>62</sup>

HIV remains a significant challenge in the region and women are disproportionately infected and affected. Most recent figures indicate that women comprise 59% of people living with HIV in this region.<sup>63</sup> In Sub-Saharan Africa, young women aged 15 to 24 years are as much as eight times more likely than men to be living with HIV.<sup>64</sup>

### Promising Practices

The African Commission adopted General Comments on article 14(1)(d) and (e) to provide clarity on state obligations with respect to these provisions.

In Angola, the government launched campaigns to educate women on their rights in regard to reproductive health and HIV/AIDS issues.<sup>65</sup> The Women's Health Programme launched by the state contributed to reduce the mortality rate and to let citizens know their health status.<sup>66</sup>

In Malawi, the State adopted the Safe motherhood transport plans to address transportation and emergency obstetric care. In that regard, training has been provided for birth attendants in villages and telephones and radios have been installed in some health centres to communicate with the referral hospital and request ambulance transport for women in distress.<sup>67</sup>

#### ARTICLE 21: RIGHT TO INHERITANCE

The right to inheritance in Africa is a mode of acquiring property to sustain livelihoods and to use to earn money and guarantee life with dignity. The right to inheritance is crucial for the survivor spouses and children.

Article 21 of the Protocol states that, women and men shall have the right to inherit equitable shares of their parent's properties. Widows shall have the right to an equitable share in the inheritance of the property of her husband, including the right to continue living in the matrimonial house even in the case of remarriage.

#### PROGRESS

Several countries have repealed discriminatory inheritance laws and enacted new laws in conformity with the requirements of the Protocol. Malawi enacted the Deceased Estates Act no 14 of 2011, which provides widows' inheritance rights and daughters' equal rights to inherit.<sup>68</sup>

In Mauritius, women have equal inheritance rights even if the deceased did not leave a written will. There are no legal or customary restrictions that favour male heirs over

Females.<sup>69</sup> In Rwanda, the 2005 Land Law formally abolished traditional customary law land rights and women can inherit property from their fathers and husbands.<sup>70</sup>

#### CHALLENGES

Women's legal rights to land are still undermined by the continuation of customary discriminatory practices, which perpetuate negative attitudes towards women's land rights. In Swaziland, the traditional political system known as the Tinkhundla system marginalizes women at decision-making levels, which consistently sidelines women into non-political traditional roles. Women in Swaziland still have limited land and inheritance rights and in 2010, a case of land rights granted to a woman was overturned by the Supreme Court.<sup>71</sup> Women in Northern Ghana are particularly vulnerable as it is a patrilineal society; inheritance and succession pass through the male line. Hence, women do not traditionally own property, large livestock or land and so are unable to support themselves and their families.<sup>72</sup> In Burundi, Article 21 of the Protocol has emerged as one of the obstacles to the ratification process. In light of contentions over whether or not women should be allowed to inherit, the Burundian government has commissioned a study on inheritance, which will inform its decision on whether or not to place a reservation on this particular provision.

### Promising Practices

In Rwanda, procedures to ensure that women are included in the land registration process have been put in place. NGOs, such as LandNet Rwanda, Imbaraga and Haguruka, have disseminated information booklets on the Succession Law, explaining their content in simple terms for everyone to understand. Research on the impact of the laws on women's land rights in Rwanda found that legal changes are affecting land inheritance patterns in practice and many male family heads commented that under the new law they felt obliged to give their daughters land.<sup>73</sup>

In Namibia, to address the traditional practice known as 'widow chasing' or 'property grabbing', the government is increasing the number of participation of women in traditional courts referred to as the 'Uukwambi Traditional Authority'.<sup>74</sup>

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### CONCLUSION

Despite progress in the enactment of laws and policies, the Protocol requires States to go further to change social cultural patterns of behaviour through advocacy and education and states are still lacking behind in this obligation.

Furthermore, strengthening women's access to justice, in order to protect their rights, is still a challenge. Cultural and traditional practices cannot be changed overnight and require more efforts such as education and inclusion of men and boys to be addressed.

## ENDING FEMALE GENITAL MUTILATION IN AFRICA

Grace Uwizeye and Efua Dorkenoo

As we celebrate the 10<sup>th</sup> year anniversary of the Protocol's adoption and subsequent entry into force, it is important for us to reflect on the gains made in protecting girls and women from harmful practices, particularly female genital mutilation (FGM).

Article 5 of the Protocol calls upon states parties to prohibit and condemn all forms of harmful practices, which negatively affect the human rights of women, through public awareness and education in practicing communities. The provision also obligates State parties to adopt legislative measures backed by sanctions, including protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance. State parties are also required to provide necessary support to victims of FGM through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting.

The Protocol places an obligation on the state parties for the development of enabling conditions that would facilitate girls and women's full enjoyment of rights set out in this article. This article describes the current status of FGM elimination and highlights some of the challenges in implementing Article 5 of the Protocol in the practicing African countries.

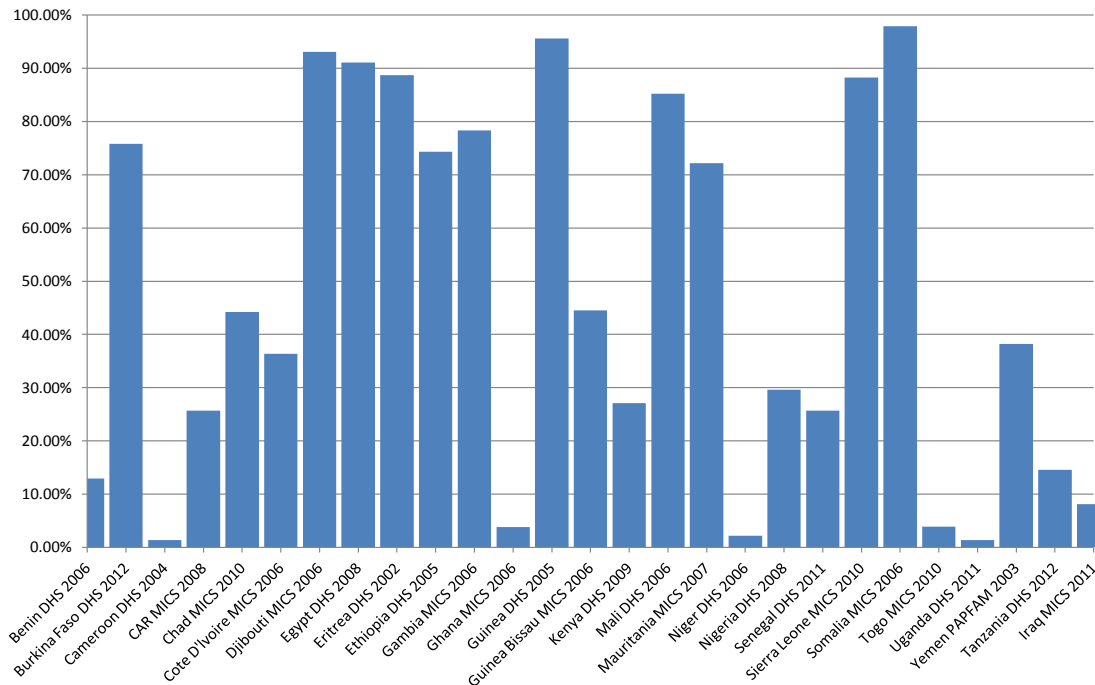
FGM comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.<sup>75</sup> The World Health Organization (WHO) estimates that globally 100-140 million women and girls have experienced some form of FGM.<sup>76</sup>

### FGM IS CLASSIFIED INTO FOUR TYPES<sup>77</sup>:

- Type I: Partial or total removal of the clitoris and/or the prepuce (clitoridectomy)
- Type II: Partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision)
- Type III: Narrowing of the vaginal orifice with creation of a covering seal by cutting and re-stitching the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation)
- Type IV: Unclassified – all other harmful procedures to the female genitalia for non-medical purposes, for example, pricking, piercing, incising, scraping and cauterization

FGM is documented to be practised in 28 countries in Africa (Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Ethiopia, Eritrea, The Gambia, Ghana, Guinea-Bissau, Guinea, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Togo and Uganda). Estimates based on the most recent prevalence data indicate that 91.5 million girls and women above 9 years old in Africa are currently living with the consequences of female genital mutilation.<sup>78</sup> Three million girls in Africa are estimated to be at risk of undergoing the procedure every year.

## Graph showing the most up to date FGM prevalence data by country (age 15-49)



The age at which the FGM procedure is performed varies from one community to another. It is carried out during infancy, on girls under ten years old (or adolescent girls) and occasionally on adult women, including pregnant women. Most experts agree that the age at which FGM is performed is decreasing and although FGM continues to be mostly performed by women who use crude knives without anaesthetics, there is a noticeable trend towards medicalization of FGM in some countries. More than 18% of all girls and women who have been subjected to FGM in the countries, from which data are available, have had the procedure performed on them by a health-care provider and the trend is increasing.<sup>79</sup>

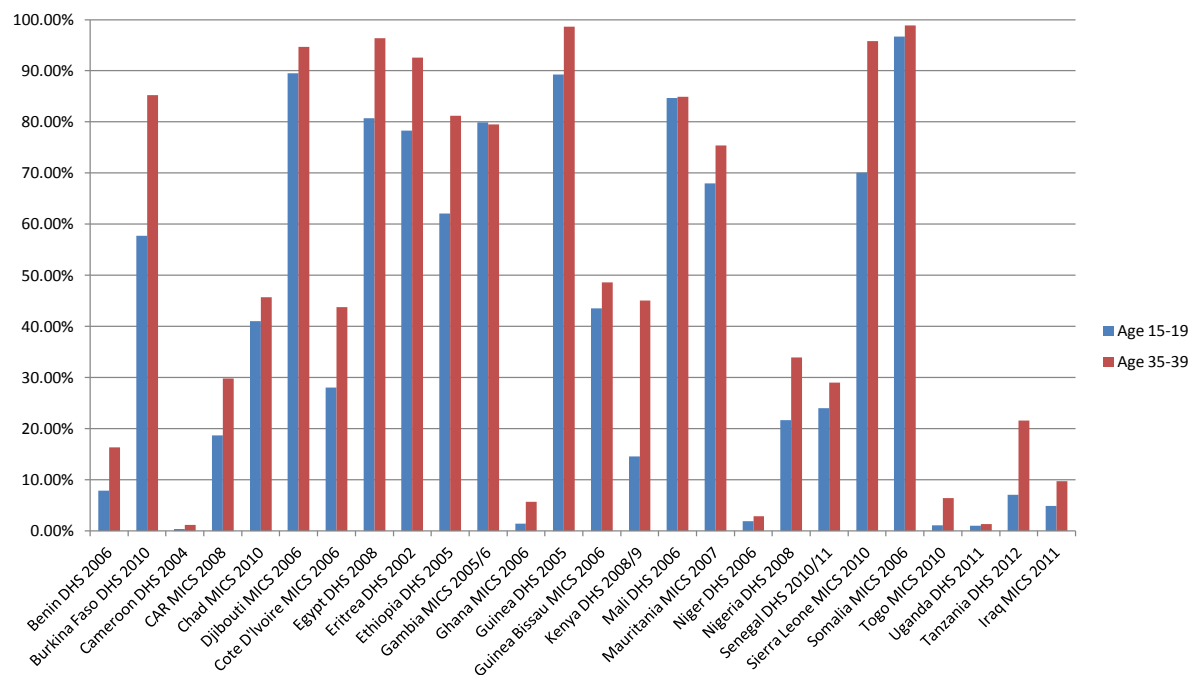
The damage FGM does to female sexual organs and their functions is both extensive and irreversible. Aside from the physical, psychological and emotional damage which include excruciating pain and trauma as well as risks of haemorrhage, infection and death at the time of the procedure, to be followed by long term health complications such as pain and lack of pleasurable sexual sensation during intercourse, cysts and keloid formation, there is evidence of increased risk of complications at childbirth putting mothers and new-borns at risk<sup>80</sup>.

Apart from the potential health risks associated with FGM, the practice is recognised as discrimination based on sex, as it is rooted in gender inequalities and power imbalances between men and women, inhibiting women's full and equal enjoyment of their human rights; and is considered a violation of international and regional human rights instruments.<sup>81</sup> FGM is almost always carried out on minors who do not have sufficient knowledge to understand its implications and who cannot withhold their consent.<sup>82</sup>

According to Demographic and Health Surveys (DHS) and the UNICEF Multiple Indicator Cluster Surveys (MICS) carried out in a number of countries, the practice is declining in some countries.<sup>83</sup> This can be observed when looking at data from countries in which at least two surveys are available, showing advanced prevalence in a number of countries. This can also be observed by comparing the youngest and oldest age-group in one survey, showing that women aged 15–19 years are less likely to have been subjected to FGM than are women in older age groups. The decrease in number of girls being subjected to FGM can be attributed to on-going rigorous campaigns across the continent with many individuals and organizations working tirelessly to end the practice.



## Graph showing prevalence data by age category and country



Education and awareness efforts are at the core of strategies to end FGM in Africa, but they alone will not be sufficient to end FGM as in the final analysis, FGM has to do with gender power control. Areas where anti-FGM efforts are holistic in combining education, legislation and protection measures are beginning to see reduction in FGM.

A key example can be seen in Burkina Faso, where there has been adoption of an 'end FGM' policy since 1983, and implementation of a national plan of action to end FGM. These efforts have contributed to the decline in the number of girls undergoing FGM, as people are aware of the law and are afraid to be caught in the act. A UNICEF report shows that only 13.30% girls aged between 0 and 14 years have been cut.<sup>84</sup>

### FACTORS SUPPORTING CHANGE IN BURKINA FASO ARE AS FOLLOWS:

- *Political will:* A specific law banning FGM was passed in 1996 that is enforced, and creation of a secretariat, which is

government-funded, to oversee work on FGM at national level.

- *Multiplicity of interventions:* In addition to the enforcement of the anti-FGM law, there is involvement of several advocates from many sectors-religious leaders, members of the police force, medical professionals, teachers, youth and women's organisations. This has ensured that messages on FGM are broadly disseminated to reach the wider public. Most importantly, FGM messages are mainstreamed within existing development and reproductive programmes.
- *Outreach:* A range of resources and outreach programmes exist, including awareness-raising campaigns by the police and army teams, information, education, and communication projects, media exposure and a free Child Help hotline for both the public to report suspected cases of FGM and for survivors or other affected parties to receive counselling.
- *Clinic:* In addition to integrating FGM into reproductive health programmes, Burkina Faso is developing a specialist clinic to address the complications of FGM.
- *Data:* keeping up-to-date information on the prevalence on FGM, the government is able to monitor trends and other

behavioural factors influencing FGM through periodic DHS surveys. The data helps the government modify strategies to tackle the factors that sustain the practice.<sup>85</sup>

In Narok District of Kenya, there was reduction in FGM prevalence from 93% (2003) to 73% (2009).<sup>86</sup> Tasaru Ntomonok Initiative (TNI), a community-based organisation has been working in Narok for more than a decade. TNI promotes a multiple strategy campaign to ensure various stakeholders are reached and influenced.<sup>87</sup>

- *Education and awareness within the community:* TNI conducts several intergenerational dialogues within the Maasai community to raise awareness on FGM and obtain the community consensus to end the practice. The target group includes elders, chiefs, practitioners, women, men, youth, media, health workers, teachers and law enforcement officers.
- *Protection of girls from FGM:* TNI created a temporary shelter for girls running away from FGM and early marriage which has housed over 300 girls. The girls are supported morally, socially and educationally, and are eventually re-integrated with their families through a reconciliatory process, involving community elders and children officers, working within a state structure that watches out for the interest of children.
- *Alternative rite of passage:* within the Maasai community, the practise of FGM marks a rite of passage to womanhood. During the initiation the girls are taught the role of the woman in the family and community in preparation for marriage. TNI introduced an alternative rite of passage, which allows the girls to undergo training and graduate into womanhood without the cut.
- *Girl's education:* TNI ensures that all runaway girls who stay at the centre remain in school. Using role models within the community outreach programme, TNI emphasises the importance of educating the girls instead of marrying them off.

Article 5 of the Protocol on the rights of women in Africa places an obligation on states parties to provide “appropriate measures” in their domestic legal systems to ensure the practice is eliminated. Unfortunately, African governments have left this issue for civil society to deal with for far too long and need to step up their work to eliminate this brutality once and for all. Currently 21 out of the 28 FGM-practicing African countries have laws against the practice. But even though laws have been passed in these countries there are few cases that have gone through the courts. According to UNFPA’s annual report of 2011, over 141 cases of violations of national laws against FGM were prosecuted in fifteen countries

(Burkina Faso 62, Eritrea 54, Ethiopia 8, Kenya 5, Senegal 2, and Sudan 3).<sup>88</sup>

Where laws have been implemented, lenient sentences have been given and perpetrators have been let off with a suspended sentence, which sends the wrong message that FGM will be tolerated. The State of Niger, for example, failed to follow the minimum sentencing requirements in its FGM law with perpetrators being left off the hook with light sentences. In January 2010, nine parents and an excisor were convicted of subjecting seven girls to FGM. They were each sentenced to three months suspended jail term and a fine of 40,000 CFA (US\$ 89), which is contrary to the minimum sentence of six months to three years and is ineffective as a deterrent to communities carrying out the practice.

Despite ratifying the Protocol on the Rights of Women in Africa, countries such as the Democratic Republic of Congo, Liberia, The Gambia, Mali and Nigeria are still reluctant to introduce laws that prohibit FGM. Women and girls continue to be forcibly mutilated due to lack of laws to protect them. In Liberia, Ruth Berry Peal was kidnapped from her home and mutilated by two women from the *Sande* society – a politically influential secret women’s association. Ruth filed a lawsuit against the two women who drugged her, dragged her into the bush and forcibly mutilated her. Ruth sought justice through the courts. Despite receiving numerous death threats, as well as being sent to prison on two occasions, the court finally found the two defendants guilty of kidnapping, felonious restraint and theft of property, and they were sentenced to three years imprisonment. In 2012, a journalist was forced into hiding as members of *Sande* society threatened to forcibly subject her to FGM after publishing a story. In Mali, the country’s National Anti-FGM Programme reported that over 1,116 Malian women received medical treatment for complications arising as a result of FGM in 2012 alone.<sup>89</sup> Women and girls are being failed by their governments by not educating the public and enacting and implementing laws against FGM.

The African Union (AU) passed a resolution on 1st July 2011 in support of a resolution at the United Nations General Assembly (UNGA) to ban the practice. This was facilitated by the human rights group - No Peace Without Justice working in partnership with the Inter-African Committee on Harmful Traditional Practices, Equality Now and grassroots groups active in the campaign against FGM. The United Nations General Assembly passed a resolution banning FGM globally on the 20 December 2012. The resolution re-affirms universal agreement that FGM constitutes a violation of human rights, which all countries of the world should address through “all necessary measures, including enacting and enforcing legislation to prohibit FGM and to protect women and girls from this form of violence, and to end impunity”.<sup>90</sup> Although

the resolution is not binding to member states it carries considerable moral and political weight. It also serves as a reminder of member states' commitment to work towards elimination of FGM, including promoting and protecting the human rights of women and girls.



**Women participation in the "16 Days campaign " in Liberia - UN  
Photo**

POLITICAL PARTICIPATION

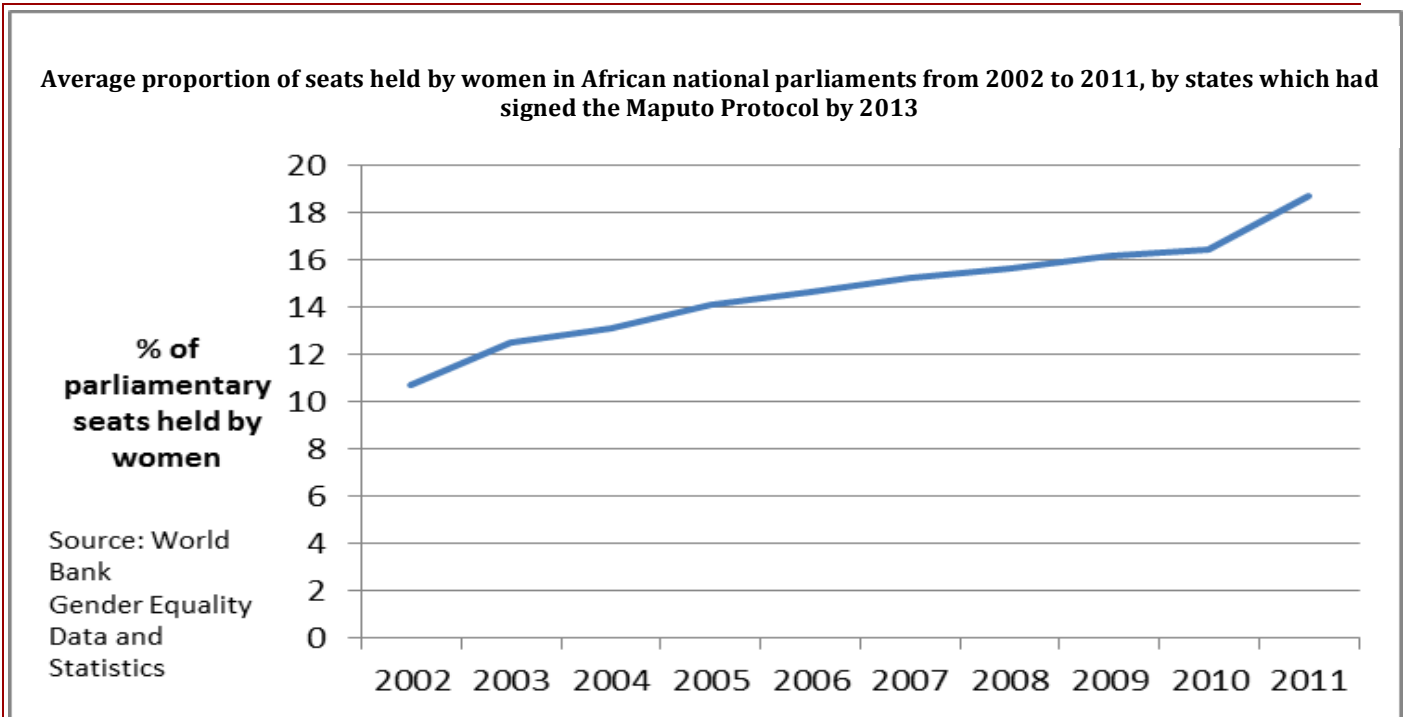
Make Every Woman Count (MEWC)

The aims of Article 9 of the Maputo Protocol are to address institutional violence against women, and support the empowerment of women to change the political landscape of Africa. Its core functions are to increase the participation and representation of women in governance, and broaden access and equality for women in politics and positions of power.

The impact of the Maputo Protocol on the representation and participation of women in governance and political life in Africa is difficult to measure accurately as there are many indicators to consider. Numbers of female members of parliament and female ministers in government are two key indicators however, and these are what we will focus our attention on in reviewing the impact of the Protocol on women’s right to participation in the political and decision-making process.

There are many examples of progress across the continent; Rwanda continues to be a world leader in female representation and in 2012, Senegal made the highest electoral gain for women, with female Members of Parliament reaching 42.7%. There has also been progress in North Africa, where Algeria made significant gains and became the first Arab country to reach 30% female representation in parliament.

In light of the achievements mentioned above, we consider some of the remaining challenges to the realization of the goals of the Protocol, assess the progress made across the continent in terms of representation at parliamentary level and at decision-making levels, and make recommendations for future action. We begin with the central achievements of African States in their commitment to Article 9 of the Maputo Protocol.



ACHIEVEMENT

Since the adoption of the Maputo Protocol in 2003, there has been significant progress made in women’s political

participation and representation at all levels among member states of the African Union.

Women have achieved major positions of power in Africa, including Ellen Johnson Sirleaf of Liberia being elected as the

first African female Head of State in 2006 and Joyce Banda becoming President of Malawi in April 2012.

The current Chair of the African Union Commission, Nkosazana Dlamini-Zuma of South Africa is the first woman to head the Commission in 2012.

The progress in building signatories and ratification of the Maputo Protocol also demonstrates a strengthening political will and commitment to women's political participation.<sup>91</sup>

In **Sub-Saharan Africa** today, women occupy an average of 19% of seats in national parliaments, an increase from 9.8% in 2005.<sup>92</sup> Sub-Saharan Africa is a world leader in implementing quotas that enhance women's representation in parliament. By the end of 2012, the region averaged 20.4% women MPs, a significant gain from a 13.6% average in 2002.<sup>93</sup>

**North Africa** had also experienced an increase in female political participation amid the Arab Spring revolutions; women are demanding more political space and representation in countries like Algeria, Egypt, Libya and Tunisia. Algeria has made significant progress in relation to the status of women since it signed the Maputo Protocol in December 2003. Between 2002 and 2007, women made up 8.26% of representatives in local government.<sup>94</sup> The elections in June 2002 saw the appointment of five women, one minister and four delegate ministers. But just four years later the number of female ministers had dropped again to three, although in 2004, Louisa Hanoune became the first woman to run for President in Algeria<sup>95</sup>.

Prior to the 2012 elections, Algeria adopted a quota law stipulating 30% of women's participation.<sup>96</sup> This enabled 7,700 women candidates to be present on party lists, an achievement in itself considering the very few women who had previously made it this far to being elected. The quotas enabled women to make up 31% of the new parliament, an increase from just 7% at the 2007 elections.<sup>97</sup> Today the National Algerian Assembly includes 146 female members.<sup>98</sup>

Comparing 2012's legislative election to the election in 2007, women made strong gains in representation in the Algerian Upper and Lower houses. Algeria went from being in the world's 112th place for the number of women in parliament to 28<sup>th</sup> place.<sup>99</sup> In 2012, Algeria became the first and only country in the Arab world to have more than 30% of its parliamentary seats held by women.<sup>100</sup> This sharp increase from 7.7% in 2007 was due to an *organic law*, which requires between 20-50% of the candidates to be women.<sup>101</sup>

In **West Africa**, Senegal is providing a strong example for promoting and increasing women's political participation. Since ratifying the Maputo Protocol in December 2004, Senegal has adopted laws and policies aimed at improving respect for women's rights. A National Strategy for Gender Equality adopted in 2005 for the period until 2015 focuses on increasing women's social standing by investing in their economic potential, and raising their economic status in rural and urban areas.<sup>102</sup>

Senegal's electoral law was amended in 2010, to be replaced with improved electoral legislation, which obligated that half of each party's candidates must be women.<sup>103</sup> The reformed electoral law was applied for the first time during the 2012 parliamentary elections. The law, which was welcomed and praised by women's groups and associations, has been credited with doubling the representation of women in the national assembly.<sup>104</sup> A record number of women were elected to Senegal's parliament in 2012. sixty-four (42.67%) women now have seats in the country's 150-member National Assembly, up from twenty-seven (18%) in 2007<sup>105</sup> in part due to this law.

During the 2012 elections in Senegal, 2 of the 13 presidential candidates were women, setting an important precedent for Senegalese women participating at the highest national level, reinforcing the impact of Liberia's President Ellen Johnson Sirleaf in the region.

In **East Africa**, states are doing well in terms of women's representation and many have seen tremendous progress despite recovering from civil war and political emergencies. Rwanda is currently by far the most female friendly legislature in the world, with women holding over 50% of the parliamentary seats.<sup>106</sup> Uganda ratified the Protocol on 22<sup>nd</sup> July 2010. In 2011, Rebecca Kadaga became Uganda's first ever female speaker, with women making up 35% of members of parliament.<sup>107</sup>

Kenya's Constitution of 2010 requires that women representatives are elected in each of Kenya's 47 counties, a benchmark used in the recently concluded elections of March 2013. This is hoped to mark a significant step forward from the elections in 2007, when women made up only 9.8% of parliament.<sup>108</sup> Kenya has also seen an increase women serving as ministers, making up 6 of the 22 members of the cabinet (27%), which is a first for Kenya. Women have also taken up portfolios that were traditionally reserved for men such as Defence and Foreign Affairs.

Rwanda ratified the Maputo Protocol in June 2004 and has shown great commitment by domesticating its provisions into law, reflecting its significant progress in women's

political participation. In October 2003, women won 48.8% of the seats in Rwanda’s Lower House of Parliament.<sup>109</sup> This built upon the constitutional commitment to gender equality adopted in May 2003.<sup>110</sup> In 2008, Rwanda made history when 56% of legislators elected to parliament were women, the highest in the world.

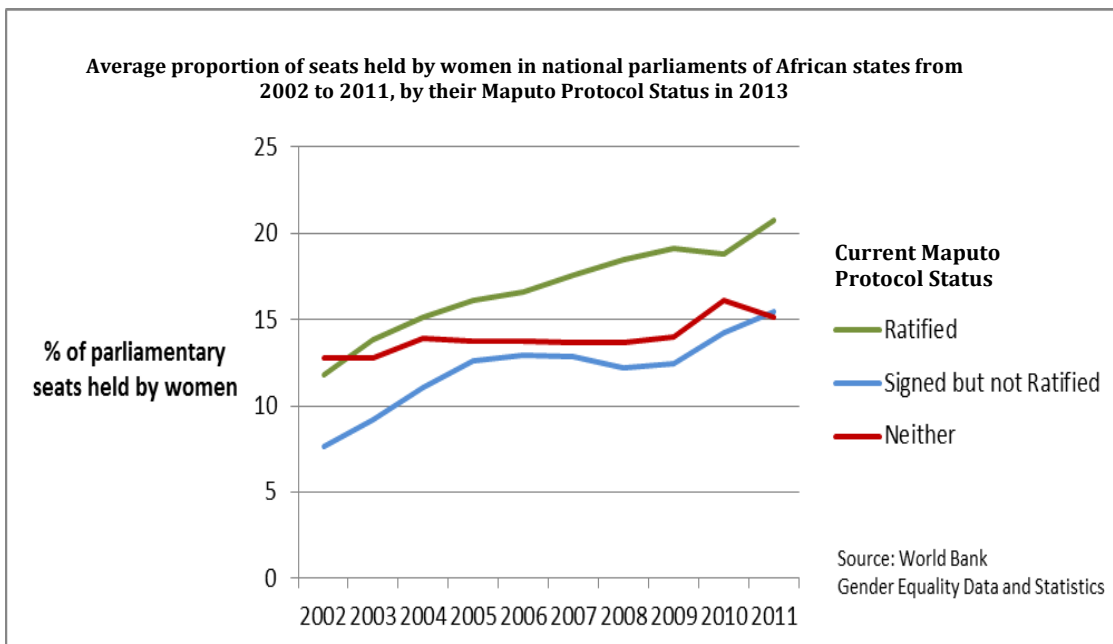
Rwanda’s dramatic gains have followed specific mechanisms used to increase women’s political participation, among them a constitutional guarantee, a quota system and innovative electoral structures.<sup>111</sup> The genocide was also a contributing factor to women’s increased role in public life in Rwanda, leaving a society with more surviving women than men. Rwanda has a parallel system of women’s councils and women’s only elections guaranteeing a women’s mandate for all elected bodies. The electoral law for local authorities ensures that 30% of members in all indirectly elected councils at district and city of Kigali levels shall be women.<sup>112</sup> According to the Gender Monitoring Office, women massively participated in the February-March local elections, with 54.5% of the registered voters being women.<sup>113</sup>

**Southern Africa** is home to some of the biggest democracies in Africa with South Africa having 169 (42.25%) women members of parliament.<sup>114</sup> South Africa also has a 50-50 gender equality policy which has supported female voting registration; in the 2009 elections 12,722,622 women were registered compared to 10,459,375 men.<sup>115</sup> South Africa ratified the Protocol in December 2004.

The trend of increasing women’s political participation has been made in the region, including Lesotho, which at 58% has the highest number of women in local government<sup>116</sup> in part because of a quota law set in place to address inequality. Regionally the South African Development Community (SADC) countries adopted a Protocol on Gender and Development in August 2008, which has further reflected their commitment to achieving many of the goals of the Maputo Protocol.

Malawi has been very progressive in its pursuit for gender equality in political participation and representation. In 2012, Malawi became the second member state of the African Union to have a female president, Joyce Banda, despite facing tremendous resistance from male politicians.<sup>117</sup> Malawi currently has 22.28% female members of parliament.<sup>118</sup>

Significant milestones have been achieved on the progress of women’s participation and representation in African politics, and the influence of Article 9 has shaped many states’ reforms. Yet there is much progress still to come, and the identification of challenges to further expand women’s political rights, and risks of regression, is necessary to ensure that their full realization can be achieved across Africa



## CHALLENGES

Each struggle for women's participation and representation in the public sphere is distinct, and each activist faces new challenges and opportunities particular to their own community, region or nation. But there are themes and threads that run through these struggles.

Article 9 of the Maputo Protocol commits participating states to actively support the advancement of women in political spaces: as representatives, as leaders and as active citizens.<sup>119</sup> The capacity of African states varies considerably, therefore the relative success and durability of efforts across the continent ought to be understood within these broader challenges of national cohesion and state resources. Yet across these contexts we can identify common areas in which all states can invest. The core areas we see across Africa's struggles for gender equality in politics are: the formal expansion of political space for women; expanding access to voting and eliminating violent political suppression; the reconciliation of women's human rights with traditional institutions; and the overcoming of socio-economic barriers to full political participation.

Expanding space for political activity is fundamental to sustainable reforms in gender politics and female representation. Strong grassroots activity, led by diverse alliances of women, ensures that reforms are not simply unsupported top-down diktats but rest upon the consent and participation of citizens. Space for such an active civil society is opened up by removing repressive laws and practices that limit political meetings and organization, and recognise the role of peaceful protest, campaigning, and industrial action in a modern state.<sup>120</sup> In weaker and fragile states, which closely control political activity, these challenges are significantly greater. In these situations, the overarching challenge is to distinguish political activity that threatens national security from that which strengthens state legitimacy and citizen participation, as not to let the threat of instability override the threat of tyranny.<sup>121</sup>

While preventing violence against women is a principle aim of women's empowerment, expanding the political participation of women is also contingent upon addressing violence directly. The lack of safe accessible voting for women remains a challenge; even without the specific targeting of women, elections are often triggers for widespread unrest and violence leaving women particularly vulnerable.<sup>122</sup> Restraints such as cultural and religious conventions, which prevent women from having the opportunity to vote and attend public meetings, must also be explicitly addressed. Special attention must be given to those

with disabilities and health challenges, those who are pregnant or have dependants requiring care.

Development, growth and democratisation are no guarantors of women's political empowerment. Challenges to women's roles in public life come from traditional leaders, political groups, media outlets and religious institutions, particularly in dissuading women to run for office.<sup>123</sup> It is up to states to reconcile these interests with those of the women's movement, bringing traditional precedents for female participation to the fore, and building a consensus around the universal benefits of female leadership and representation. Enforcing women's rights and access to political participation from the state level is an absolute necessity, yet without a public consensus any gains remain fragile.

Women's interests are broad and diverse, and women of poorer and marginalised backgrounds are invariably poorly represented. Aside from the challenge of gaining the time, skills, education and resources required for organizing and engaging politically, formal costs of running for election, such as a ballot deposit, and funding a campaign are also major obstacles. Working as a representative often requires giving up an income, so another achievable goal for states would be to ensure adequate compensation for elected positions in order to allow those without personal financial support to be effective representatives, and additionally to make representatives less susceptible to corruption.

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## PROGRESS IN REPRESENTATION

Quotas are the primary tool for increasing women's representation and participation in elected bodies in Africa. By ensuring political parties select more female candidates and also ensuring parliaments have a minimum number of female members, the cultural and political barriers for women entering politics are counterbalanced. This is expressed in Article 9 of the Maputo Protocol where it stipulates that *affirmative action* must be taken to "promote participative governance and the equal participation of women."<sup>124</sup>

North Africa is behind the rest of Africa's regions in women's representation and has also made least commitment to the Protocol. However, the Arab Spring has led to a wider use of the quota system in the region, leading to a modest improvement in the proportion of parliamentary seats held by women.

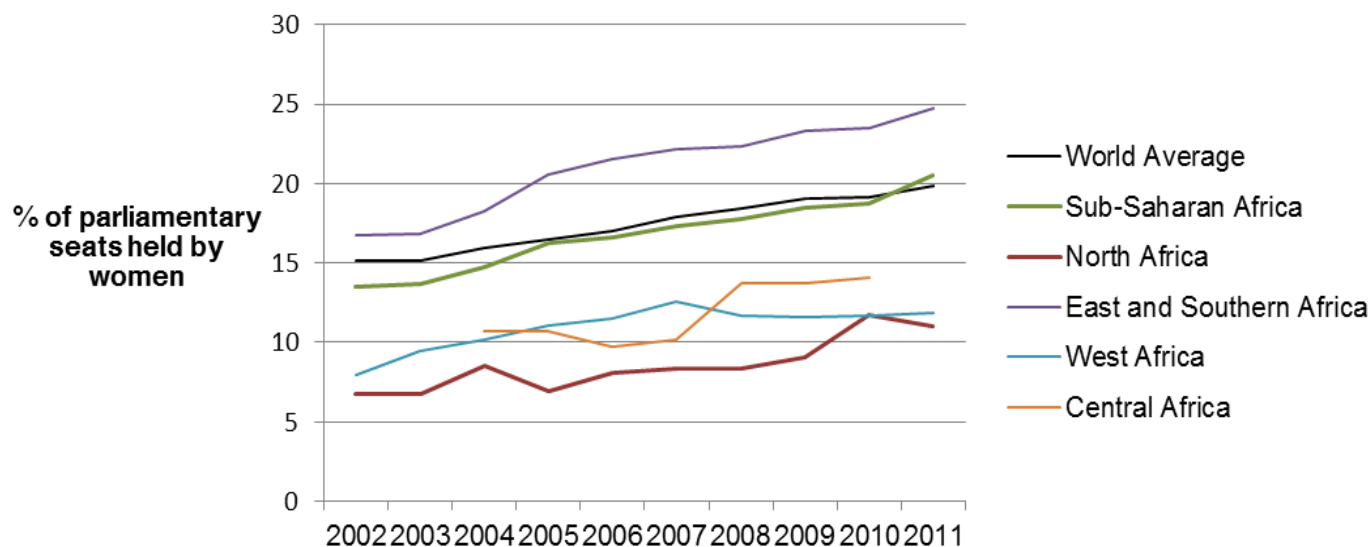
In October 2011, Tunisia implemented a 'zippered list' gender quota in parliamentary elections, requiring all political parties to ensure gender parity in their candidate

lists. While this does not guarantee that there will be overall gender parity in the legislature, it has helped female candidates win 23% of parliamentary seats.<sup>125</sup>

Egypt attempted a similar zippered list quota framework but women were not required to be at the top of the candidate list, resulting in only 10 women elected to a nearly 500 seat

legislature.<sup>126</sup>In contrast, Eastern and Southern Africa have more States that have had quota systems in place for longer periods and have successfully and seemingly sustainably, increased the number of women in parliaments. Burundi passed the milestone of 30% representation of women in the lower house and reached an impressive 46.3% in its upper house, due in large part to the impact of its quota system.<sup>127</sup>

Average proportion of seats held by women in national parliaments, by region



In São Tomé and Príncipe, which signed the Protocol but has no quota system in place, women’s representation has also increased significantly from 7.3% in 2006 to 18.2% in 2010.<sup>128</sup>Quotas are not the only influence over the level of women’s political participation. Other key factors include the strength of electoral systems, gender sensitive electoral arrangements and accessibility; female literacy; the impact of family laws; visibility of female candidates; and violence during elections.<sup>129</sup>While these factors are not explicitly addressed in the Protocol, these are examples of “specific positive action” that can be taken to address women’s representation and political participation.

African states, which have ratified the Protocol, have made the most progress in increasing female representation in parliaments. These states have, prior to ratifying the Protocol, actually began with a lower proportion of women in parliament in 2002, with an average of 11.8% female representation compared to a 12.7% average representation for states which had not yet signed the Protocol. Yet, within a

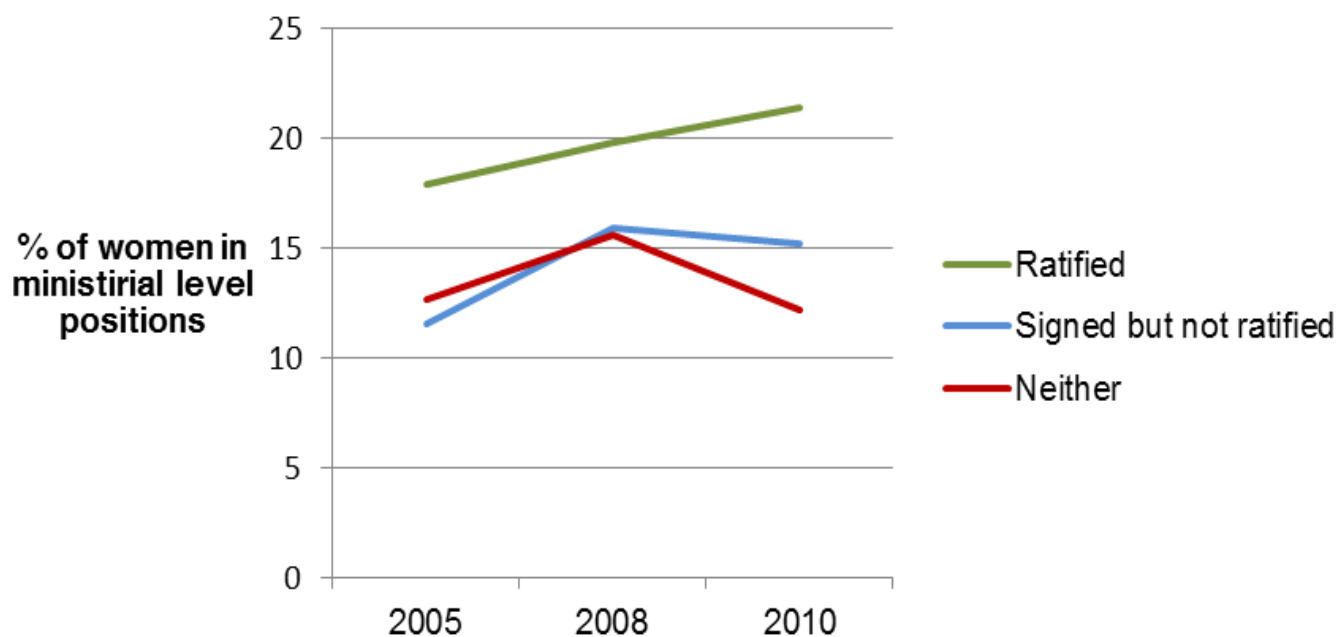
decade, the member states that ratified the Protocol lead those that had neither signed nor ratified the Protocol by over 5%, with a 20.8% average female representation in 2011 compared with more stagnant 15.4% average of those that neither signed nor ratified.

While African states’ overall average has increased modestly, those that have signed and/or ratified the Protocol have made better progress than those that have not. Altogether states have increased female representation by over 8%, from a 10.6% average in 2002 to an 18.8% average in 2011.

States that signed but have not yet ratified the Protocol had a very low average in 2001 of just 7.6% female representation in parliaments. Yet this group of States have made almost as strong gains as the groups of States which signed *and* ratified the Protocol, more than doubling their average representation to 15.4%--an increase of 7.8%--yet with an average still nearly 5.4% short of the average of those states which both signed and ratified the Protocol.



### Average proportion of women in ministerial level positions by Maputo Protocol status in 2013



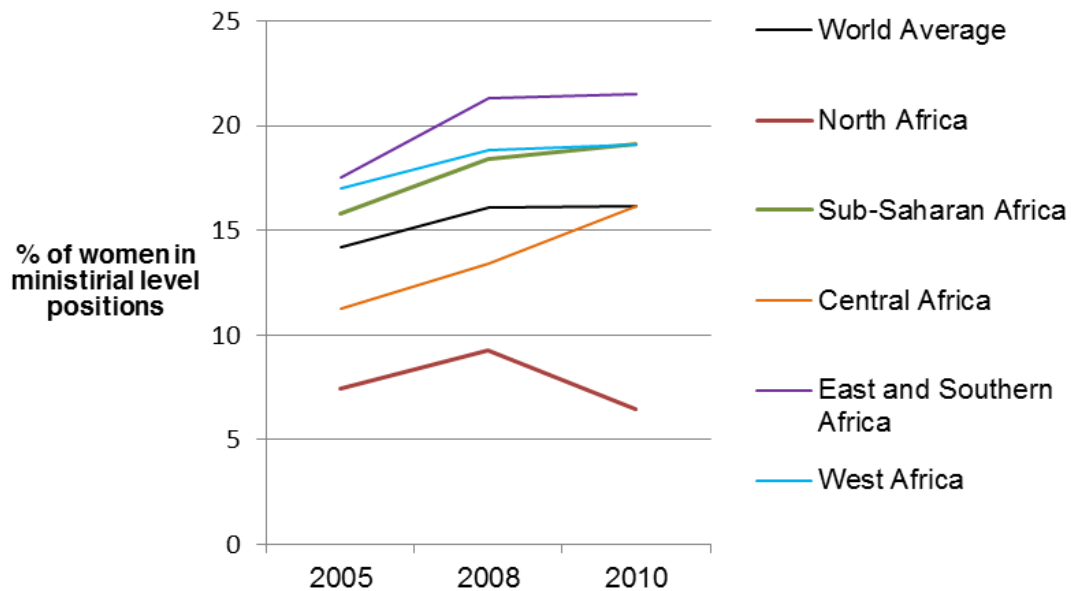
#### PPROGRESS IN LEADERSHIP

There is strong evidence that the states, which have ratified the Protocol, have much stronger female leadership at ministerial level and the trend shows it to be increasing steadily. This may also indicate that ratification of the Protocol was effected by the role of female decision makers in government, while those who had not ratified or signed the Protocol had fewer female ministers in government and as such made less progress between 2005 and 2010.

Each region of Africa showed an increase in female leadership at ministerial level with the notable exception of North Africa, declining from a 7.5% to 6.5% average between

2005 and 2010 to nearly 10% below the world average. In contrast the average for Sub-Saharan African states was over 3% higher than the world average in 2010. This demonstrates a clear regional divide over the progress of female leadership in Africa, with Eastern and Southern Africa maintaining the highest average, and Central Africa making the fastest progress over this period. These regional differences reflect institutional and cultural obstacles, as well as whether states signed and ratified the Protocol or not. While Tunisia and Algeria, which did not ratify the treaty, each had fewer female ministers over this period, Mauritania, which did ratify the treaty, increased its female ministers by 14%. Progress was also noted in Egypt, which although it did not sign the Protocol, has implemented its own electoral reforms.

### Average proportion of women in ministerial level positions by region



While measuring the numbers of women in ministerial level positions is not a complete illustration of the changes to female political decision-making roles, it does provide a reasonably informative indicator of the progress in each of these states. Further research showing the types of roles and seniority of women in political, monetary, civil and military positions of power would help broaden our understanding of the progress of female leadership in Africa.

#### RECOMMENDATIONS

The 1995 Beijing Fourth World Conference on Women recommended many programs to promote women's political participation and decision-making. However, recent data indicate that the process has been slow and has achieved uneven results worldwide. Comparative studies of women's representation in formal political positions reveal that despite some progress, the level of women's political representation is still very low. Political challenges facing women include unfavourable electoral systems, a lack of political party support, and a history of male-dominated leadership in politics and governmental institutions.

The Beijing Conference recommended that the international community and civil society (including non-governmental organizations and the private sector) take strategic action in order to reduce inequality between men and women in

power sharing and decision-making. Despite political, societal, cultural, economic, and psychological barriers, women are finding ways to participate in the political life in record numbers. Across Africa women are pushing to gain more representation in the local and national legislatures where they can lobby for the needs of women and give them a voice in politics.

In order to enhance women's political participation, Member states of the African Union should:

- Aim to secure gender parity in all decision-making bodies, by establishing incremental time-bound targets for increasing women's representation.
- Guarantee that besides national laws, relevant international instruments relating to full political rights for women, such as the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Maputo Protocol are ratified, integrated into national law and implemented, especially in countries where women are still denied the right to vote and stand for election.
- Establish or support programmes providing training to women candidates in the skills needed

for effective campaigning, and to support elected women in the skills needed for effectively carrying out their functions and pursuing equality objectives.

- Analyse the existing constitutional, political, legislative, and regulatory frameworks, particularly in countries in transition and post-conflict states, for provisions that may hinder women's equal participation, such as rules requiring high numbers of signatures to register as a candidate or high monetary deposits that can be discriminatory against women candidates.
- Ensure that women and men have equal opportunities during election campaigns, such as

providing public funding, access to the state media, setting campaign spending limits, and ensuring that campaign finances and expenditures are disclosed.

- Foster and promote gender-sensitive curriculum and train school teachers on civic education for men and women.
- Promote and support the Use of ICT training as a tool in education and training efforts, in particular to overcome the digital divide between men and women in the use of new technologies and to provide women with equal access to information. Adopt temporary measures such as quotas to accelerate progress toward gender balance in elected office.

## RIGHT TO PEACE AND THE PROTECTION OF WOMEN IN ARMED CONFLICTS

### Femmes Africa Solidarite (FAS)

Current conflict trends in Africa show increased reductions in inter-state conflicts, however intra-state and communal armed conflicts remain on the rise. As recent developments in the Central African Republic, the Democratic Republic of Congo, Kenya, Mali, Nigeria and South Sudan has shown, these conflicts undermine Africa's progress towards socio-economic development and the consolidation of peace and stability and adversely affects the lives and livelihoods of its people, especially women, children, the aged and disabled. Nevertheless, Africa has made significant efforts to settle conflicts, initiating a number of home-grown solutions.

Over the last decade, the African Union and African sub-regional organizations have among others, operationalized the Africa Peace and Security Architecture, with the aim of enhancing African capacities to prevent, manage and respond to conflicts. Africa has also undertaken a variety of initiatives aimed at addressing the negative impact of conflicts on the lives and livelihoods of its peoples, especially women and children. It is in this respect that tremendous progress has been made to domesticate and implement Articles 10 and 11 of the Protocol, which respectively focus on the '*right of women to peace*' and the '*protection of women in situations of armed conflicts*'.

African Governments, regional institutions and civil society organizations have individually, collectively and with the support of their international partners, undertaken a variety of initiatives aimed at ensuring the provisions of the Protocol, in these areas, are achieved. This is with respect to the participation of women in programmes of peace education and a culture of peace; in structures and processes for conflict prevention, management and resolution; in structures for the management of camps and settlements; and in all planning, formulation and implementation processes for post-conflict reconstruction and development. Specific efforts and initiatives have equally been made towards ensuring that in situations of armed conflicts, State Parties and parties in conflict undertake to, and ensure respect for the rules of international humanitarian law, by protecting civilians, including women against all forms of violence, rape and other forms of sexual exploitation. Concerted efforts in these areas have also led to the criminalization of rape and categorization of any acts of violence against asylum seekers, including women as refugees, returnees and internally displaced persons as well as the recruitment and use of children, including girls less

than 18 years of age, as war crimes, genocide and/or crimes against humanity.

It is indisputable that these efforts have resulted in increased recognition of women's right to peace, including with respect to their protection in situations of armed conflicts. It has also facilitated and promoted the participation of women in processes and structures for humanitarian assistance and peace building. However, it is also worth noting that the implementation of especially Articles 10 and 11 of the Protocol has been accelerated and buoyed up by simultaneous efforts to domesticate, harmonize and implement the United Nations Security Council Resolution 1325 (UNSCR 1325) of October 2000 on Women, Peace and Security. Like the Protocol, UNSCR 1325 emphasises and calls for the prevention of violence against women, addresses the inordinate and differing impact of wars and armed conflicts on the lives of women, and takes a rights-based approach in making the role and participation of women pivotal to processes and structures for conflict prevention, peacekeeping, conflict resolution and peace building. Over the last decade, as different African countries and African regional organizations intensified efforts to develop and implement national and regional action plans on the resolution, UNSCR 1325 has sustained momentum on the promotion of the rights of women to peace and protection in situation of armed and post conflicts.

Yet, despite this dual approach towards the same goal, implementation continues to lag behind. Progress in implementation has both been uneven across the continent and with respect to certain aspects of the provisions of Articles 10 and 11. For instance, countries in conflict or post-conflict such as Liberia, Rwanda and Sierra Leone have made more gains in implementation, than countries that are in 'peace'. There has been more significant progress in the formulation of national laws and policies<sup>130</sup> to domesticate certain aspects of these Articles than there has been with respect to taking concrete "measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular"<sup>131</sup>.

A study by the Stockholm International Peace Research Institute (SIPRI) that compared military and social (health and education) spending in Africa from 1998 to 2001<sup>132</sup> reveals these disparities. In addition, some Africa countries have further taken legal and policy measures to prevent reductions in military expenditure.

In fact, the Government of Kenya, for example, entered a reservation on Article 10(3) of the Protocol, regarding such efforts to reduce military expenditure. Likewise there has been uneven progress in the implementation of measures to protect women against all forms of violence, rape and other forms of sexual exploitation. Implementation is particularly lagging with respect to measures to end impunity including by prosecuting perpetrators of such violence before a competent criminal jurisdiction.

While efforts should be made to accelerate the full implementation of the provisions of Articles 10 and 11, especially in areas where the least progress has been made, it should be noted there is a huge cost associated with taking only reactive action in the aftermath of the violation of the rights of women to peace and protection in armed conflicts.

Preventive measures are more cost-effective and sustainable and therefore, should be prioritized. Among others, this would entail measures that aim to create a culture of peace and zero-tolerance for violations of the rights of women in both situations of peace and conflict.

This, however, requires collective responsibility and action at various levels, to prevent violence against women as well as protect and promote women's rights in all social, economic, political, military, humanitarian and development spheres.

This section briefly assesses efforts made in domesticating and implementing Articles 10 and 11 of the Protocol on the basis of two broad thematic areas, 'conflict and violence prevention' and 'conflict and violence management and resolution'.

Actions under these two broad thematic areas have collectively aimed to promote women's right to peace (Article 10) and protect women in armed conflict (Article 11).

In both areas, we highlight a variety of initiatives and best practices on, as well as challenges and gaps to, the full participation of women in structures and processes for conflict and violence prevention, management and resolution.

The aim is to highlight progress in implementation and areas where additional efforts are required.

As the section shows, there is still a lot more focus on 'reactive' rather than 'preventive' measures. Yet, as experiences across Africa has shown, the right of women to peace and the protection of women in armed conflicts cannot be achieved through fragmented measures. It can only be

truly achieved through comprehensive, multidimensional and integrated approaches that include both prevention and response measures, across a range of policies and sectors.



Women carry placards with messages of peace during Secretary-General Ban Ki-moon visit in DRC - UN Photo

#### CONFLICT AND VIOLENCE PREVENTION:

Initiatives to prevent conflict and violence against women have ranged from the formulation and enactment of policy and legal frameworks that specifically outlaw gender-based violence and promote women's rights; to the delivery of related trainings for a variety of actors working in structures and processes for conflict prevention, resolution and management. It has also included the development of plans of action and in some cases the establishment of women or gender-related structures that are primarily responsible for implementation. More specifically, it has involved the integration of gender perspectives and initiation of targeted action to include women in structures for conflict early warning and response. Recent trends in this area have included efforts to establish women's situation rooms. Other preventive measures include actions that have been taken in a number of countries, to criminalize rape and other sexual violations. Mechanisms such as the Special Rapporteur on Rights of Women of the African Commission on Human and Peoples' Rights have been equally instrumental for taking proactive and preventive action to promote women's rights to peace and their protection in situations of armed conflicts.

With respect to laws and policies, the Constitutions of all African countries provide that everyone has inherent rights, which are universal and fundamental, and should be respected and protected. Some constitutions take a further step by providing specific clauses with respect to women. For instance, the Constitution of the Democratic Republic of Congo provides for the "elimination of all forms of discrimination against women"<sup>133</sup> and mandates "public

authorities to take measures to fight all forms of violence done to women in public and private life.”<sup>134</sup> Similarly, the Constitution of Ethiopia guarantees that “women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men”<sup>135</sup> and calls on the State to particularly “enforce the right of women to eliminate the influences of harmful customs.”<sup>136</sup>

In addition, some countries have enacted further national legislation and other measures to prevent gender-based violence, especially sexual and domestic violence. Liberia passed a criminal law on rape in 2006 and in 2008 enacted the Gender and Sexually Based Violence Act, which provided for the establishment of a specialised court to try cases of sexual violence. Liberia has also developed a National Gender-based Violence Plan of Action (2006) and a National Policy on Girls’ Education (2006), in addition to ratifying the Maputo Protocol in 2008. The government and civil society organizations have also undertaken specific campaigns and outreach activities to raise awareness on the issue of rape through billboards and radio broadcasts, among others. Kenya has passed the Sexual Offences Act in 2006<sup>137</sup>; South Africa its Criminal Law (Sexual Offences and Related Matters) Amendment Act in 2007<sup>138</sup>; and Namibia its Combating of Rape Act in 2000<sup>139</sup>.

Eleven African countries have also developed and are implementing National Action Plans on UNSCR 1325 (and its additional resolutions) that include actions to prevent violence against women and promote the participation of women in structures and processes for conflict prevention at all levels. These include Burundi (2011), Cote d’Ivoire (2007), DRC (2010), Ghana (2010), Guinea (2011), Guinea Bissau (2011), Liberia (2009), Rwanda (2010), Senegal (2011), Sierra Leone (2010) and Uganda (2006).<sup>140</sup>

The Acts of outlawing rape and other sexual violence and developing concrete plans of action to leverage the protection of women’s rights and promote the participation of women in conflict prevention is indeed good practice. However, failure to implement, or inadequacies in implementation have undermined the relevance of such actions for transforming the lives of women. Often, political will is lacking and where it exists, does not translate into the

allocation of appropriate resources for implementation and enforcement. In many remote parts of Africa, there is the absence of state presence and authority. Consequently these laws, policies and action plans remain largely unknown. Where known, implementation is still undermined by persisting patriarchal cultural practices that are entrenched in traditional African societies. The role of non-state institutions, structures and actors, including traditional and religious, is essential in this regard. However, their engagement has been largely ad hoc rather than systematic and sustained.

Training is also one key methodology that has been frequently used to raise awareness and develop capacities to prevent conflict and violence, protect women and strengthen women’s capacities to participate in related structures and processes. Specific activities have ranged from the development and delivery of training curriculum on conflict early warning and response, gender mainstreaming and the protection of civilians, to gender-based violence including sexual exploitation and abuse, particularly for peacekeepers. For instance, the African Union’s Women, Gender and Development Directorate, with the support of UN-Women, developed a Gender Training Manual for AU Peacekeepers to serve as a resource for the African Standby Force and other hybrid operations, peacekeeping training institutions and troop-contributing countries. It continues to partner the African Peace Support Trainers’ Association (APSTA) to deliver training on this. Similarly, Femmes Africa Solidarite (FAS), through its Pan-African Gender Training Centre, is partnering the University of Peace and Cheikh Anta Diop University to consolidate efforts to launch a Master’s Programme in Gender and Peacekeeping. The Women, Peace and Security Network Africa in collaboration with UNIFEM (now UN Women) and the Sierra Leone Ministry of Social Welfare, Gender and Children’s Affairs, engaged the Ministry of Defence to develop a Gender Training Manual for the Republic of Sierra Leone Armed Forces in 2010. The African Women’s Development and Communication Network (FEMNET) developed a Training Manual on Gender-Based Violence in 2005<sup>141</sup> and has used this extensively in its training programmes, particularly for civil society organisations.

African National Action Plans on Resolution 1325

Country	Name of Plan	Year Adopted/ Launched
<b>Burundi</b>	Plan d'Action National 2012-2016 – Plan d'Action pour la mise en œuvre de la Résolution 1325 (2000) du Conseil de Sécurité des Nations Unies	2011
<b>Côte d'Ivoire</b>	Plan national d'action de la Résolution 1325/2000 du Conseil de Sécurité de l'ONU (2008-2012)	2007
<b>Democratic Republic of Congo</b>	Plan d'action du Gouvernement de la République Démocratique du Congo pour l'application de la Résolution 1325 du Conseil de Sécurité des Nations Unies	2010
<b>Ghana</b>	Ghana National Action Plan for the Implementation of the United Nations Security Council Resolution 1325 on Women Peace and Security (GHANAP 1325)	2010
<b>Guinea</b>	Plan national d'action stratégique pour la mise en œuvre des Résolutions 1325 et 1820 du Conseil de Sécurité des Nations Unies	2011
<b>Guinea Bissau</b>	Plano de Acção Nacional para a Implementação da Resolução 1325	2011
<b>Liberia</b>	The Liberian National Action Plan for the Implementation of United Nations Resolution 1325	2009
<b>Rwanda</b>	National Action Plan 2009-2012: The United Nations Security Council Resolution 1325/2000 on Women, Peace and Security	2010
<b>Senegal</b>	Plan d'action national – Mise en œuvre au Sénégal de la Résolution 1325 (2000) du Conseil de Sécurité des Nations Unies	2011
<b>Sierra Leone</b>	The Sierra Leone National Action Plan for the Full Implementation of United Nations Security Council Resolution 1325 (2000) and 1820 (2008)	2010
<b>Uganda</b>	The Uganda Action Plan on UN Security Council Resolutions 1325 & 1820 and the Goma Declaration	2006

The Economic Community of West African States (ECOWAS) has integrated a gender dimension into its indicators for early warning. A number of women's organizations have also conducted training programmes that are specifically adapted to the needs of women in the areas of human rights and international humanitarian law, early warning and conflict prevention, conflict resolution, dialogue and reconciliation, civic education including campaign strategies, negotiation and leadership, among others.

When critically assessed, these programmes have often not been truly effective. This is because they tend to be ad hoc rather than systematic; without concrete measures to ensure

on-going support and reinforcement. For training on gender that aims at qualitative and transformative change, continuous learning is essential. However, gender training often tends to span between one hour (when integrated in a broader training agenda) and one week (when structured as a stand-alone programme). Gender training also tends to be abstract and unrealistic. This is often because gender trainers rarely align training to the real work requirement of trainees. The more technical the area is, for instance military expenditure, the less likely are gender trainers to include practice on real job requirements into the sessions. This undermines trainees' ability to translate and apply learning to the job and thus relegate gender training to mere

awareness-raising sessions. Here again, adequate political will (including on the part of the trainees) and resources are crucial for continuously engaging and accompanying trainees in their day-to-day work to enable trainers to provide technical advice that is applicable to the job.

A recent trend with respect to conflict and violence prevention is the phenomenon of Women's Situation Rooms. These were initiated by FAS and the Angie Brooks International Centre (ABIC) as a "political process that aims at mobilizing, harnessing and employing the expertise and experiences of women in taking action to prevent or mitigate potential conflict that could emerge before, during and after the elections."<sup>142</sup> It involves a wide range of activities to promote women's contribution to peace and stability. It entails a process of consultation with electoral stakeholders aimed at creating spaces for women's involvement in peace advocacy, mediation, coordination, political analysis, observation, and documentation. As a deterrent and measure for peaceful elections, they are involved in this process through a Peer Peace Process that enables them to express themselves during the elections without having to resort to acts of violence. The Women's Situation Room "offers a unique opportunity to apply the Track Two or 'citizen diplomacy' which is an informal and unofficial form of conflict resolution."<sup>143</sup> The Women's Situation Room model has been implemented in Liberia (2011), Senegal (2012), Sierra Leone (2012) and Kenya (2013). As Ambassador Anne Anderson of Ireland noted, the Women's Situation Room "is great example of a grassroots initiative to empower women peace builders to proactively get involved in preventing conflict"<sup>144</sup>.

The process of establishing the Women's Situation Room is highly participatory. As Bineta Diop, the President of FAS, recounted, the process of setting up the Women's Situation Room in Senegal applied the "3M"<sup>145</sup> principles. She noted it commenced with an outreach and *mobilization* campaign involving 1,000 women that aimed to pressurize political parties to recognize and incorporate women's concerns in their agendas. It also entailed the formation of alliances with other key constituencies such as youths and the utilization of non-traditional tools such as the social media. The process also comprised of a *mediation* element that entailed the creation of a "contact group of wise women"<sup>146</sup> whose role was to encourage and facilitate dialogue between rival political parties. Additionally, the contact group of wise women engaged traditional and religious leaders in its preventive diplomacy work. Lastly the process included a fundamental *monitoring* component with elements of training of election observers, deployment of field teams to polling stations and hourly reporting of incidences. The field

teams comprised of trained "analysts on legal or constitutional, gender and political affairs as well as a technical teams of statisticians, film crews and phone operators"<sup>147</sup>.

The "Gender is my Agenda Campaign" (GIMAC) at the African Union in January 2012 on the margins of the 18<sup>th</sup> African Union Heads of State Summit in Addis Ababa adopted the Women's Situation Room as a "best practice" and asked for it to be replicated in all electoral processes in Africa. Its classification as a best practice is linked to its direct contribution to increasing the participation of women in politics, as in the case of the last elections in Senegal, where the elected numbers of women increased from "17% to 43%"<sup>148</sup>. In order to sustain this practice, President Ellen Johnson Sirleaf of Liberia was requested, and she agreed, to be the Champion of the Situation Room and supporter of its replication. Indeed, the initiative is one that can be adapted to other thematic issues and areas such as violence against women, camps and settlements management, and access to justice for women. This, however, will require predictable and sustained funding as well as political will to undertake timely action, if it is to bring about real changes for women.

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#### CONFLICT MANAGEMENT AND RESOLUTION:

In situations of conflict and post-conflict, a range of actions have been undertaken to protect women and promote their rights to peace. In Côte d'Ivoire's post-elections crises, Egypt's revolutionary crises, Sierra Leone, Liberia and Sudan, women's groups have advocated for their involvement in both stabilization and peace processes, especially with respect to the negotiations of peace agreements. While some gains have been made, women's engagement in this process is still not a given. The exclusion of women from these processes potentially compromise their protection and rights to peace, especially in the drafting of new constitutions that emerge. Therefore, it is imperative that proactive measures also be taken to ensure that women and women's perspectives are an integral part of peace processes.

Specific actions have also been made to promote women's participation in electoral processes. Strong examples of the positive impact of these measures come from Rwanda, Sierra Leone as well as Liberia<sup>149</sup> where the first female president was elected. A number of countries have taken measures to promote women's participation in this area. For instance, Burkina Faso and Uganda have constitutional quotas that reserve seats in national parliament for women. Sudan has an electoral law quota, which is enshrined in national legislation; while South Africa and Mozambique have party



quotas for women. While these measures are best practices, women's participation in the political and electoral process is still undermined by the prevalence of discriminatory cultural practices, intimidation, harassment and sometimes violence, lack of resources as well as illiteracy.

Many countries across the continent have also established dedicated structures that are primarily responsible for implementing and coordinating national level efforts on women's rights. These include national gender or women's ministries, national committees on violence against women or on gender-based violence, gender or women's support units within security sector institutions, women's shelters and safe houses, among others. As part of these, women or gender focal points have also been appointed. While the importance of such structures cannot be overemphasized, it should be stressed that often these structures are unable to operationalize their mandates mainly because of the lack of (adequate) resources and political will.

Increasingly the various multidimensional peacekeeping operations on the continent have mandates on gender, sexual violence and the protection of civilians as evident in Darfur, Sudan, South Sudan, Liberia and Sierra Leone. A key challenge for these missions, however, is how to sustain the gains that are made for women. Investing in local capacity building is imperative here, including strengthening the capacities of national gender ministries and gender or women's structures in various sectors, such as the justice and security sector. Addressing the problem of impunity is also essential here.

With respect to the management of camps and settlements, research<sup>150</sup> shows that this has improved significantly with regard to women's participation in food distribution committees in Tanzania, Kenya and Uganda. However, women's participation is lower in decision-making structures such as camp management committees, as a result of cultural prejudices. Measures are required to improve women's involvement in these management structures, including through sensitization campaigns, skills training, adult literacy programs and quotas to increase the representation of women and presence of female staff. Sexual and gender-based violence, particularly against women, also remains a prevailing problem in refugee and internally displaced camps. The United Nations High Commission for Refugees (UNHCR) has developed Sexual and other forms of gender-based violence (SGBV) Standard Operating Procedures for its field offices to help tackle this problem. However, the collection of comprehensive and reliable statistical data, among others, remains a problem.

In spite of the myriad of laws and policies prohibiting the recruitment of children in armed conflicts, across Africa children (both boys and girls) continue to be recruited by parties in conflicts including in the Central African Republic, Mali and the Democratic Republic of Congo. The Office of the Special Representative of the United Nations Secretary-General on Sexual Violence in Conflict and the United Nations Children Fund (UNICEF) have been quite effective in raising awareness on this problem, as well as in getting parties in conflict to sign agreements committing themselves to end sexual violence particularly against women and girls. Progress in the implementation and monitoring of these agreements is however lagging.

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#### SUSTAINING THE GAINS, ADDRESSING CHALLENGES AND GAPS

As shown, various initiatives have been undertaken within the ambit of conflict prevention, management and resolution to promote women's rights to peace and their protection in armed conflicts. While significant gains have been made in a number of areas, progress is lagging in others. On the whole, legal and policy commitments have not been commensurate to implementation. Cultural prejudices, lack of political will, and inadequate and predictable resources, among others, all contribute to undermine implementation. In light of these persisting challenges, prevention remains the best solution and approach. This entails proactivity in undertaking systematic and sustained measures to build a culture of peace and non-violence aimed at bringing about transformative changes for women and their communities. Such a culture of peace and non-violence will prevent the occurrence or relapse to conflict and violence for entire communities. To be relevant and meaningful, such a culture of peace and non-violence must be crosscutting, rights-based and embedded in broad reach of development goals including in the political, socio-economic as well as peace and security spheres. It must, of essence, include collective responsibility and concerted action by a variety of actors, operating from a multidimensional approach but in an integrated manner. In this regard, women's right to peace and protection in armed conflicts should not be perceived as a women-only issue; although the involvement of women must be core to these efforts at all levels. In essence, Articles 10 and 11 of the Protocol must be mainstreamed into all national and regional plans, processes and structures for socio-economic development and peace and security.

## AN OVERVIEW OF THE GIRL CHILD'S ACCESS TO EDUCATION IN AFRICA

**Chikezie Anyanwu and Onuora-Oguno Azubike**

Education is a basic human right for all children. This was recognised over 60 years ago in the Universal Declaration of Human Rights, acknowledged and agreed to by many governments across the world. However, in Africa millions of children, particularly girls, are still denied the right to education and are unable to access the knowledge, skills and capabilities necessary to take an empowered and equal role in society. This violation of basic rights is unjust and must be changed.<sup>151</sup>

The disadvantaged position suffered by women and the girl child in Africa is perpetrated by unfriendly customary law practices. In most African communities, the girl child is denied access to facilities that the boy would ordinarily be allowed to benefit from. She is a domestic burden bearer, not meant to be seen, heard or even allowed to contribute to general discussion in the family. She is a chattel, waiting to be carted away by prospective suitors who in most climes were the ones that emerged as the highest bidders. The continued injustice suffered by the girl child results from their low enrolment ratio in the school system.<sup>152</sup> Aside from the poor enrolment, poor completion rates are also major challenges that the girl child faces.<sup>153</sup> The latest Education for All (EFA) Global Monitoring report 2012 aptly captures the fact that Africa has the largest global population of females who have never attended school as well as the highest number of girls who are dropping out of school. Factors occasioning this are linked to cultural practices, stereotypes, and violence against girls, poverty, sexual exploitation and non-availability of educational facilities.

The importance of education cannot be over emphasized. The UN Special Rapporteur on the right to education describes it as a basis on which the realization of other human rights is premised.<sup>154</sup> Fafunwa opines that education itself is the only means through which an individual is emancipated from the clutches of poverty and nurtured to effectively contribute to his society.<sup>155</sup>

Realising the need for the protection, promotion and fulfilment of women's' rights, the international community put in place the Convention on Elimination of All forms of Discrimination against Women (CEDAW). Taking into consideration the urgency to specifically provide for the protection of women; the member states of the African Union adopted a Protocol to the African Charter on the Rights of Women in 2003. The Protocol which is also

commonly referred to as "the Maputo Protocol" provides in detail steps that must be taken to ensure the protection of the rights of women and girls are inclusive. However, the situation of the girl child still remains poor all over the continent.<sup>156</sup> According to Plan International's report mentioned previously, out of the 29 million primary-aged children currently out of school in sub-Saharan Africa, 54% are girls and in sub-Saharan Africa more than 50% of girls give birth by the age of 20. Girls still suffer from domestic violence, rape, forced labour,<sup>157</sup> lack of access to schools and harmful cultural practices.<sup>158</sup>

Using the Maputo Protocol, the African Charter on Human and Peoples Rights (ACHPR), the African Charter on the Rights and Welfare of the Child (ACRWC) and other related treaties as a framework, this paper analyses the situation of the girl child with particular respect to access to education. The begging question is: has the girl child been nurtured for public integration and ability to contribute positively to the community? What laws if any can be relied on to pursue the realization of access to education of the girl child? The paper is structured into five parts. Part 1 provides an introduction and background information; Part 2 discusses the importance of education to the girl child. Part 3 deals with the challenges facing girl child access to education and Part 4 makes a legal analysis of Article 12 of the Protocol on the Right of Women in Africa with a view to ascertaining how it could come to the rescue of the girl child in terms of access to education in Africa.

### EDUCATION AND THE LAW

The importance of education was first elaborated in the Universal declaration of Human Rights (UDHR) which came into force in 1948.<sup>159</sup> Other international law instruments such as the International Covenant on Civil and Political Rights (ICCPR),<sup>160</sup> International Covenant on Economic and Social Rights (ICESCR) also provide for the importance of education.<sup>161</sup> Regionally in Africa, the ACHPR and ACRWC both reiterate the importance of the right to education.<sup>162</sup> However, it is the Protocol of the African Charter on the Rights of Women that makes specific mention of the girl child in relation to the fundamental right to education. The Protocol provides that 'State parties' must take all necessary measures to ensure the elimination of all forms of discrimination against women with a view of ensuring equal

opportunities'.<sup>163</sup> More specifically, the Protocol in seeking to protect the rights of the girl child to education, specifically mentions the girl child by providing for: protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices<sup>164</sup>

The importance of the above provision reiterates the need for emancipating the girl child to become a major active participant in the affairs of her life at a later stage in life.

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#### IMPORTANCE OF EDUCATION TO THE GIRL CHILD

The benefits of education remain enormous and unquantifiable. Education brings about 'sound knowledge, well-informed habits, sound ideas, skills and enhancement of positive attitudes...it is therefore essential as an important bridge of social, economic and political mobility'.<sup>165</sup> The education of a girl means 'that as a woman, she is empowered and more likely to participate in development efforts and in political and economic decision-making'.<sup>166</sup> Education will enhance the girls' ability to be able to become integrated in the cultural life of her community and seek self-reliance.<sup>167</sup>

To further understand the importance of education to the girl child, it is important to grapple with the dangers of the lack of it. One then must appreciate the fact that without education, the girl child is unable to fully realize her social and political aspirations. In most African societies where the challenge of primogeniture still reigns, the girl child is often at a loss when the father dies intestate. Both the girl and her mother in most situations are unable to lean on whatever legacies were left behind by the late father. With education however, knowledge of accruable rights will empower the girl to lay claim, by means of the law and policy, to what should be her inheritance.<sup>168</sup> Thus, without education access to property become virtually non-existent.<sup>169</sup> The chances of suffering from domestic violence also abound with the girl child not being aware of whatever rights that may accrue to her in any such circumstances. In summary, a non-educated girl child is more vulnerable than her male counterpart.

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#### CHALLENGES FACING GIRL CHILD ACCESS TO EDUCATION

The girl child often faces discrimination from the earliest stages of life, through childhood and into adulthood. Her low status is reflected in the denial of fundamental needs and rights and in such harmful attitudes and practices as a

preference for sons, early marriage, female genital mutilation, domestic abuse, incest, sexual exploitation, discrimination, less food and less access to education.<sup>170</sup>

At household and community level, poverty is a main factor undermining girls' right to education.<sup>171</sup> School fees and additional costs such as transport, clothing and books reinforce the gender gap between males and females in access to education.<sup>172</sup> In Somalia, Niger, Liberia, Mali, Burkina Faso and Benin, just to mention a few African countries with a serious education gender gap between boys and girls, the above mentioned issues contribute to keeping girls out of school. When poor families cannot afford to educate all their children, it is often their daughters who have to stay home until they get married.<sup>173</sup>

Poor infrastructure also inhibits access to educational institutions by girls.<sup>174</sup> In most communities across Africa for instance, the absence of sanitary facilities expose girls to sexual abuse and also girls are used as burden bearers to provide water from far streams. The effect of this is that most girls skip school for fear and the stress they may be subjected to.<sup>175</sup> According to UNICEF the situation is such that 'less than half of all schools in Malawi provide for access to safe water and less than 40 per cent have adequate sanitation facilities'.<sup>176</sup>

In addition to the above, early marriage and pregnancy also lead to girls dropping out of school.<sup>177</sup> As already stated, gender stereotypes leading to gender bias also contributes to drop out rates by girls, occasioned by inadequate knowledge of sexual education, which results in pregnancy and early motherhood. This stereotype 'carries the weight of an ideology, no matter whether its prevalence is comparatively strong or weak according to the cultural milieu' thereby widening the gap between the male and female in access to education.<sup>178</sup>

Another major challenge is in the quality of education. Most schools in rural African communities, for instance, lack adequate structural and human resources. This situation consequently has taken a toll in the quality of education delivered. According to a Plan International report, "in Tanzania, 20% of primary school leavers cannot read a simple sentence... in Uganda the rate is over 25%, and in Mali over 90% of Grade 2 students are unable to read a single word of connected text."<sup>179</sup> An analysis of the Human Development Index (HDI)<sup>180</sup> shows that the quality of education of African States is still very poor.

Another huge challenge that erodes access to education by the girl child in Africa is the issue of discrimination. As discussed above, the quality of education is generally poor in Africa and the girl child is more disadvantaged in this regard. Discrimination in the schools puts the girl child at a greater receiving end with abuse from both teachers and pupils and leads to violence against girls. For instance, in Nigeria's northern region, several girl children are attacked on their way to and from school by the Islamist sect of Boko Haram.<sup>181</sup> Further discriminatory behaviour meted out against the girl child is also shown in the type of 'corporal punishment and public shaming by school authorities and teachers which perpetuates cycles of discrimination which education is supposed to challenge and break'.<sup>182</sup> Increasingly the focus on girls education by governments, donors and other stakeholders across Africa has the tendency to be interpreted to mean that boys and their education is being left behind. This is far from the reality on the ground, for most balanced and gender focused education policies and interventions are ensuring that the gender gap is closed.

The fact is that in many countries across Africa, there has been a recorded increase in the number of boys and girls accessing education, however the dropout rate for girls far out-strips that of boys and in some cases make irrelevant the earlier increased girl child school enrolment. It is also a fact that where the school environment has been made conducive for the girl child it also benefits the boys.

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#### ENHANCING ACCESS TO EDUCATION THROUGH THE MAPUTO PROTOCOL

Since the adoption of the Protocol in 2003, 36 out of 54 African countries have ratified the Protocol.<sup>183</sup> Many of these African states have introduced national policies to enact their commitments to girls' education under these international and regional frameworks like the Maputo Protocol. Policies aiming for the achievement of universal primary education and the removal of school fees are common across the continent. With the abolition of school fees in many countries, the last decade has seen a rapid increase in primary school enrolment rates. According to UNESCO (2011) in Sub-Saharan Africa an additional 52 million children enrolled in primary education from 1999 to 2008, and during the same period girls' primary enrolment increased from 54% to 74%. Despite this progress, 29 million children remain out of school in the region, 54% of them are girls. The likelihood of achieving universal primary education in Africa by 2015 thus looks increasingly remote. In the area of education therefore, despite the concrete progress made by some African countries, the problem of the

education of girls and ensuring their school attendance beyond primary education remains limited and unresolved.

The limitation in the application of the provisions of the Protocol is attributed to the still existing discriminatory laws against women in most policy and legal frameworks in some African States.<sup>184</sup> However, despite the challenges, it is our conviction that an application of the provisions of article 12 of the Protocol and article 11 of the African Child Rights Charter working together, will enhance the benefit of the girl child at least in states that have ratified the Protocol. It is also the conviction of the authors that as the African Union celebrates its fifty years of existence and ten years of the Protocol there is need for a deep reflection on how far the continent has gone and done for its women and the girl child. The need to embrace the provisions of the Protocol with particular respect to Article 12 and other related treaties thereof is hinged on the very poor situation of the girl child in Africa towards realising education. For instance, in Sierra Leone, the illiteracy rate remains over 70%.<sup>185</sup> The situation in Sierra Leone is not much different from what exists in other West African countries.<sup>186</sup>

An analysis of the content of Article 12 of the Protocol calls for a concerted effort in the protection of the girl child by

1. ensuring elimination of all forms of abuse, including sexual harassment in schools and other educational institutions; and
2. providing for sanctions against the perpetrators of such practices.

This therefore calls for an increased political will by African countries to put in place adequate laws and policies to give effect to the Protocol and other related treaties. There is a need to undertake a gender review of national education sector plans with a view to promoting girl friendly educational environments. There is also the urgent need to remove socio-cultural barriers to girls and women's education, making sure that there are appropriate measures in place to prevent child marriage and enforce policies and laws to enable pregnant girls and young mothers to remain in school.

Some African countries like Mozambique have put measures in place to re-integrate young mothers back to school after they have had their babies and some other countries are following this line of practice. The need for increased advocacy from the community to the continental levels is germane and ensuring efficient and adequate sanction mechanisms against anyone found to be violating

the rights of the girl child in educational institutions. To achieve this, the involvement of the legal framework in engaging in public interest litigation must be fuelled by continuing education teaching and exposure to litigating strategies. The need for proper training and retraining of teachers to ensure that they are not agents of perpetrating discriminatory tendencies in the school place is also equally important. Consequently giving life to the letter of the Protocol in ensuring a safe and girl friendly education environment will enhance the access to education of the girl child.

National laws and policies must also be aligned to meet with the obligations of State parties in ensuring the desired turn around in the education sector.

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#### CONCLUSION

The state of education of the girl child still leaves much to be desired for in Africa. Issues of discrimination, poverty and cultural orientation remain as some of the major obstacles to the realisation of education of the girl child. The importance of education to the total and effectiveness of the girl child is also not arguable; however, the need to ensure a safe educational environment for the girl child is important. The provision of Article 12 of the Protocol on the Rights of Women in Africa provides a good basis towards the enhancement of the right to education of the girl child and therefore States parties to the Protocol are encouraged to show sufficient political will by ensuring the implementation and fulfilling their obligations under the Protocol.



**Boys and girls going to school in Togo**

## ECONOMIC AND SOCIAL WELFARE RIGHTS

**Nebila Abdulmelik**

Article 13 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, better known as the Maputo Protocol and referred to as the Protocol herewith, refers to Economic and Social Welfare Rights of Women and Girls. These rights encompass equal opportunities in choice of and access to decent employment, equal pay for equal work, economic opportunities, social protection including those in informal sectors, recognition and redistribution of work carried out in the home, a minimum wage, and prevention and punishment of all forms of exploitation, including sexual exploitation.

Economic and social welfare rights cannot be overlooked or understated. After all, it is through these rights, that women and girls are able to become agents of their own growth and development as opposed to beneficiaries of other's charity. This will allow for sustainable development that will enable the transformation of lives for generations to come. It is with this line of thought, that access, control over, and ownership of resources, in addition to recognition, remuneration and redistribution of unpaid care work has been a key ask of women's rights organizations in Africa and worldwide in the new Post 2015 development framework<sup>187</sup> that will follow after the expiration of the Millennium Development Goals in 2015.

Article 13 is particularly important considering that globally, 53% of working women are employed in vulnerable jobs, with more than 80% of women in sub-Saharan Africa in this type of employment.<sup>188</sup> Vulnerable jobs, both in the formal and informal sectors offer very little, if any social protection and benefits. Due to their nature, they are rarely regulated, paving the way for widespread abuse and exploitation. This is particularly the case in the informal economy in Africa, which engages an estimated nine out of ten rural and urban workers, most of whom are women and young people who depend on the informal economy for survival.<sup>189</sup>

Economic and social welfare rights, moreover, cannot be examined on their own, but rather must be understood in the wider context of women's rights and more specifically, the elimination of discrimination against women (Article 2) which is at the root of inequities between men and women and girls and boys. Articles 3 (Right to Dignity) and Article 4 (Right to Life, Integrity and Security of Person) further

reinforce this. Without addressing gender inequality and inequities in all areas, there cannot be significant and sustained advances in economic and social welfare. A woman, who earns an income to sustain herself and her family for example, may still not have a say or control over her earnings in the home, that is to say that uneven power distribution within families can result in "hidden poverty".<sup>190</sup> Likewise, inequities in access to education with increasing drop-out rates for girls over boys due to early and child marriage, early pregnancies, lack of segregated toilets and sanitary pads, burden of care in the household amongst many other factors have significant implications for progress, or lack thereof for the realization of women's economic and social rights.



**Women and Health**

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights entered into force on 5 May 2013, giving equal weight to economic, social and cultural rights in the broader context of human rights. This means that individual complaints relating to violations of economic, social and cultural rights – including abuses related to poverty, discrimination and neglect can, for the first time, be made at the international level.<sup>191</sup> Although a number of African countries have signed on to this Optional Protocol, none of them have ratified it.<sup>192</sup> Although this limits citizens of African member states from benefiting from this, the provisions outlined in the Maputo Protocol entitles

citizens of the 36 African member states who have ratified it as of May 9, 2013, to hold their own governments accountable to the Maputo Protocol through the African Commission on Human and People's Rights which was established under Article 30 of the African Charter in addition to the African Court, although this is limited to the very few countries who have made the required declaration.<sup>193</sup>

Challenges harmonising traditional norms and customary law with national laws and the provisions of the Maputo Protocol have resulted in difficulties implementing the Protocol, and Article 13 is no exception. The economic and social rights enshrined in Article 13 cannot be realized without also realizing the basic, civil, political and cultural

rights identified in the other articles of the Maputo Protocol. Implementation of Article 13 requires recognition that the inherent dignity and integrity of girls and women must be upheld, that they must not be subjected to harmful practices, they must have equal rights before, during and after marriage, providing them access to justice for redress, enabling their participation in decision-making, political arenas, promotion of sexual and reproductive health, food security and similar provisions outlined in the Maputo Protocol. The same can be said about these rights; they cannot be comprehensively addressed without recognizing the importance and realization of economic and social rights. Both are mutually enforcing, and will lead to transformation that will last not only for the years to come, but for generations to come.

## REPRODUCTIVE HEALTH RIGHTS: THE QUEST TO REDUCE THE INCIDENCE OF PREVENTABLE MATERNAL DEATHS

**Ambassador Dr Eunice Brookman Amissah and Evelyne Opondo**

### THE PARADOX OF THE PREVENTABLE MATERNAL DEATHS IN AFRICA

The World Health Organization estimates that there were 6.1 million unsafe abortions in Africa in 2008. In the same year, over 29,000 African women died from complications of unsafely procured abortions, a figure which is more than half the global total. Unsafe abortion also accounts for over 5 million disabilities annually.<sup>194</sup>

Maternal mortality is widely acknowledged as a general indicator of the overall health of a population, of the status of women in society, and of the functioning of the health system. It is useful for advocacy purposes, in terms of both drawing attention to broader challenges faced by governments and safe motherhood.<sup>195</sup> Globally, there were an estimated 287,000 maternal deaths in 2010. Developing countries accounted for 99% of all global maternal deaths with sub-Saharan Africa accounting for 56%. At a country level, two countries accounted for one third of all global maternal deaths: India at 19% of all global maternal deaths followed by Nigeria at 14%.<sup>196</sup>

Unsafe abortion is defined by the World Health Organization (WHO) as a procedure for terminating an unintended pregnancy, carried out either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both.<sup>197</sup>

The underlying causes of this regional pandemic include the prevailing lack of value of women and the gross neglect of women's reproductive health and rights, including access to safe abortions. Unsafe abortions endanger women's health in

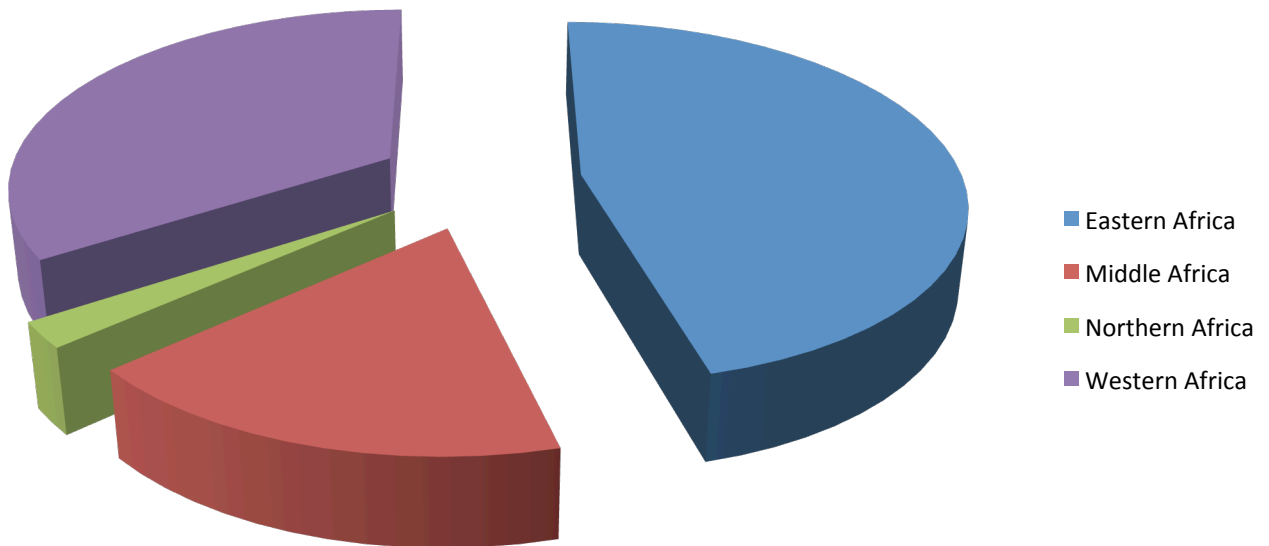
the developing world, and merit the same dispassionate, scientific approach to solutions that other threats to public health are accorded. When women are condemned to die or suffer ill health from unsafely procured abortions their children, families, and communities all suffer. The remedies for preventing unsafe abortions are all available at very low cost. However, governments in developing countries, including in Africa, often do not have the political will to do what is right and necessary.

### FACTORS CONFOUNDING AFRICA'S VULNERABILITY TO UNSAFE ABORTION

The World Health Organisation estimates that in 2008, there were 2.4 million unsafe abortions in Eastern Africa and 1.8 million in West Africa. Eastern and Central Africa had the highest incidence of unsafe abortion of any sub-region with 36 abortions per 1000 women aged 15–44, while the Southern Africa sub-region had the lowest, at 9 per 1000. There was a high contraceptive prevalence rate in Southern Africa among married women with couples relying mainly on modern methods.<sup>198</sup> It is therefore not surprising that this Sub region has lower unsafe abortion rates than Eastern Africa. It is however important to note that these figures are only a reflection of the “tip of the iceberg”. Occurrence of unsafe abortion tends to be unreported or under reported in surveys and in hospital records. Women are often reluctant to admit to having had an induced abortion, and under reporting occurs even where it is legal. There are no records available of women who have had unsafe abortion complications but did not seek post abortion care.<sup>199</sup> The problem of unsafe abortion is therefore more serious than the statistics show.



Estimate Proportion of Unsafe Abortions in African Regions in 2008



In all African countries, abortion is legal for at least one indication: to save the life of the woman. Many have several other legal indications. However factors such as religious fundamentalism, patriarchal culture and restrictive interpretation of laws negate the full realization of the letter and spirit of these laws. A country's law on abortion and availability of legal safe services will largely shape the path that a woman chooses when faced with an unintended and unwanted pregnancy.

Also, the impact of unsafe abortion on already beleaguered health systems is crippling. Studies in several African countries document that up to three-quarters of emergency gynaecological admissions to hospitals are of women suffering from abortion complications. Care for these patients consume a large percentage of personnel time, beds, blood, medicines, and other resources —a heavy burden on African countries with scarce health resources.<sup>200</sup>

THE WOMEN'S PROTOCOL

The primary object of the African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa—The Maputo Protocol, can be summarized as consolidating, as well as advancing, women's rights at the Africa regional level with a focus on equality and non-discrimination.<sup>201</sup> The Maputo Protocol affirms reproductive choices and autonomy of the woman as key human rights.

It is the first treaty to explicitly obligate State parties to legalize abortion. By imposing upon states a duty to permit abortion on the prescribed grounds, Article 14 engraves into the substantive provisions of an international treaty a corresponding woman's right to abortion.<sup>202</sup>

**Article 14 (2)(C) of the Protocol provides that :**

***States Parties shall take all appropriate measures to:***

***c) protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.***

By according abortion rights a human rights status, the Protocol has the potential to impact positively on access to abortion in 3 main areas:

1. It takes forward the global consensus on combating abortion as a major public health concern.
2. It provides African countries with not just an incentive, but also, a legal mandate for reforming abortion laws in a transparent manner; and
3. If implemented in the context of a treaty that has an underpinning philosophy centred on achieving the equality and non-discrimination of women, the Protocol has the potential to contribute towards transforming abortion laws from a crime and punishment model, which has characterized African abortion laws in the colonial and postcolonial periods, to a reproductive health model.<sup>203</sup>

A woman-centred approach to the right to abortion is well articulated in the concept of Comprehensive Abortion Care-CAC, which comprises efforts to reduce death and suffering from complications of unsafe and spontaneous abortion, as well as provision of safe induced abortion for all legal indications, all of which are fundamental for the reduction of maternal mortality.

Comprehensive Abortion Care is premised on 3 levels of medical services including:

- *Primary prevention:* of unwanted pregnancy through contraception.

(However, access to safe, effective contraception can substantially reduce—but never eliminate—the need for abortion to regulate fertility).<sup>204</sup>

- *Secondary prevention:* involves early diagnosis and management of unwanted pregnancy through provision of safe abortion services.
- *Tertiary prevention* through post abortion care of women who have already undergone unsafe abortions which helps prevent deaths and mitigates

ill health and long-term damage including infertility.

#### KEY CHALLENGES TO IMPLEMENTATION OF THE PROTOCOL'S ARTICLE ON ABORTION

Several factors influence the ability of women to fully realize their right to access safe abortion, even where the laws permits it. These include:

- Lack of awareness of what the law permits among health professionals and the general public. Unless women are fully aware of what this right entails, they will not seek safe abortion services;
- Unwillingness among policy-makers and health professionals to implement safe abortion services in spite of permissive laws and treaties and agreements that their countries have signed on to; and
- Social and cultural beliefs and stigma around abortion and the hostile attitude of health providers, which prevent women from seeking, needed care.

#### PROGRESS IN RATIFICATION AND IMPLEMENTATION OF THE PROTOCOL

There has been some modest progress in improving access to safe abortion services in the region.

Kenya ratified the Maputo Protocol in October 2010 with reservation on article 14 (2) (c) stating that “The Government of the Republic of Kenya does not consider as binding upon itself the provisions of Article 10(3) and Article 14 (2) (c) which is inconsistent with the provisions of the Laws of Kenya on health and reproductive rights.”<sup>205</sup>

However, Article 26(4) of the Kenyan Constitution permits abortion if, in the opinion of a trained health professional, there is need for emergency treatment or the life or health of the woman is in danger or if permitted by any other written law. The Kenyan Constitution was passed in August 2010

before Kenya ratified the Protocol on the Rights of Women and, therefore, it did not make legal sense to have such a reservation. Moreover, article 2 (4) of the Constitution provides that any law that is inconsistent with the Constitution is void to the extent of the inconsistency and any act or omission in contravention of the Constitution is invalid.<sup>206</sup> Therefore, for purposes of reporting under the Charter and the Protocol, Kenya needs to appraise the African Commission on Human and Peoples Rights on the efforts it is putting in place towards full implementation of the article on abortion. So far, Kenya has not reported under Article 14 (2) (c) of the Protocol.

Kenya has taken steps to implement the abortion provisions in the Constitution by developing Service Standards and Guidelines for reducing Morbidity and Mortality from Unsafe Abortion which basically sets out the bare minimum standards that each health facility and service provider must meet in offering abortion related services.

Kenya has also developed “The Ministry of Health Guidelines on Medical Management of Rape and Sexual Violence” which provides that if survivors of sexual violence present themselves to a health care provider with a pregnancy resulting from the rape, they should be eligible for safe legal abortion.<sup>207</sup>

Rwanda ratified the Maputo Protocol in 2004 with reservation on article 14(2) (c) but this was waived in 2012, by a Presidential order. The Rwandan Constitution provides in article 190 that Conventions ratified by the State are part of domestic law and take precedence over Acts of Parliament.

Although the revised Rwandan Penal Code (2012) allows for termination of pregnancy in cases of rape and incest, there are considerable barriers to the full realization of these rights. These include:

- The mandatory requirement in cases of rape for a certificate to be issued by a court of law before an abortion permitted by law is allowed to take place. This will deter women from seeking services even though the services are legal. The cumbersome process only negates this time sensitive right and will in fact drive women, especially adolescents, to seek illegal and unsafe abortions,
- The requirement by law of a doctor to give advice on the need for abortion hinders the provision of this service in a country with a limited number of doctors. Abortion is a simple procedure that can be performed by trained health professionals other than doctors -clinical officers, nurses and midwives-

who can be easily accessed especially by low income, rural and young women,

- The requirement for a doctor to consult another doctor before providing safe abortion service creates an unnecessary barrier, which is not replicated in law with other health conditions requiring treatment.

Such barriers can be avoided during abortion law drafting by improving legal literacy on abortion among lawyers and other relevant officials.

South Africa’s Choice of Termination of Pregnancy Act of 1996 specifically allows for legal abortion at the request of the woman in the first twelve weeks of pregnancy and beyond that time in cases of rape, sexual assault and incest. The South Africa Act promotes reproductive rights and extends freedom of choice by affording every woman the right to choose safe and legal termination of pregnancy according to her individual beliefs.

In a laudable move the government of Zimbabwe in August 2012, issued a new policy that health care workers no longer have to report women seeking post-abortion care to the police. The impact of this is easier access to post abortion care.<sup>208</sup> However Zimbabwe ratified the Women’s Protocol in 2008 and needs to move on to implement safe abortion services.

Ethiopia broadened indications for legal abortion in 2005 to cover incidences of rape, incest, foetal incurable and serious deformity, risk to life or health of the mother, risk to health of the child, or physical and mental incapacity—including by reason of minority.<sup>209</sup>

In Ghana, abortion was made legal for certain indications by a 1985 law that amended the Criminal Code of 1960. Abortion is legally permitted if the pregnancy is a result of rape, defilement or incest, when there is risk to a woman’s mental or physical health, or due to serious foetal deformity.<sup>210</sup> In 2006, Ghana developed Standards and Guidelines to implement the abortion laws. The guidelines provide a means for interpreting the law, filling in legal gaps, and clarifying levels of responsibility of various categories of service providers for comprehensive abortion care across the health system as well as approved methods of termination of pregnancy.<sup>211</sup>

In 2008, an estimated 92% of women of childbearing age in Africa lived in countries with restrictive abortion laws.<sup>212</sup>

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## STRATEGIES BEYOND RATIFICATION OF THE PROTOCOL

In addition to the Maputo Protocol, at the Africa regional level, the African Union Summit of Heads of State and Governments, in Kampala in 2010 adopted key actions to improve maternal health and directed that annual status reports of Maternal, Neonatal and Child Health be submitted to the Assembly.<sup>213</sup> This is a clear indication that at the highest political level, the problem of high maternal deaths in Africa has been recognized and efforts are being made to address it albeit minimally. Africa's own regional plan for achieving the Millennium Development Goals (MDGs), which are articulated in the Maputo Plan of Action adopted in 2006, has as one of its nine urgent actions, the enacting of enabling legal frameworks for reducing the high rates of unsafe abortions in the region.

To complement efforts at the regional level, African governments need to integrate the Protocol into national development plans and policies, while African civil society organizations should focus on efforts to ensure that the Protocol is prioritized within relevant state programmes.

Civil society organizations should also familiarize themselves with regional and national dispensations on safe abortion and ensure accountability on a continuous basis for example, by submitting "shadow" reports that deal with access to safe abortion as a right to the African Commission on Human and Peoples' Rights<sup>214</sup>.

The African Commission on Human and Peoples Rights has taken cognizance of the need to implement article 14(2)(c) of

The Maputo Protocol on access to safe abortion and in 2011 the Commission recommended to the Government of Nigeria to provide adequate and comprehensive maternal facilities for women, including ensuring that unsafe abortions are prevented.<sup>215</sup> Civil Society needs to take advantage of this recognition by the Commission and provide the Commission with adequate information to enable it to have meaningful dialogue with State parties on their status of implementation of article 14 (2) (c) of the Protocol.

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## CONCLUSION

African women continue to die and suffer ill-health from unsafe abortion because of little or no political will at the member state level to implement safe abortion services that have been agreed on at the African Union level. The Maputo Protocol offers an avenue to meaningfully decrease the unnecessary and tragic deaths of women from unsafe abortion.

Women's rights advocates should work towards improving this state of affairs by familiarizing themselves with this issue and demanding that their governments fulfil the promise of the Protocol to eliminate preventable maternal deaths from unsafe abortion.

## LEGAL ACTION ON THE PROTOCOL FOR WOMEN'S LAND RIGHTS

Moreen Majiwa

Land is an integral component of Africa's development. In the Sub-Saharan region the agricultural sector accounts for approximately 67 per cent of employment, 40 per cent of exports, and over 20 per cent of the Gross Domestic Product.<sup>216</sup> Women form approximately 70 per cent of the continent's agricultural workers and 80 per cent of her food producers.<sup>217</sup> Women also undertake 60-90 per cent of the rural marketing, making up more than two-thirds of the workforce in agricultural production.<sup>218</sup>

African women's access to and ownership of land is critical, not only to economic development but to ending poverty and ensuring food security on the continent. Despite this, the majority of development strategies adopted by African states and the legal arrangements that come with them do not take into account the role of women in development or the right of women to own, control and access land. Despite their contribution to agriculture, and by extension to Africa's development, only 2% of land titles are registered to women.<sup>219</sup>

Global financial, food and fuel crises, population growth, climate change and privatization of large portions of customary land through land grabs contribute to the pressure on land and pose a significant threat to women's already fragile land rights.

In the last decade, foreign companies or governments have acquired 227 million hectares of land in Africa, according to a recent report by Oxfam.<sup>220</sup> Growing pressures on land means that women are routinely disposed of land, or lose what little access rights they may have.

*"I am aged 70 years and I have lost my land to the foreigners who came and put fences around our land as they have told us they bought the land. I had been farming on this land for more than 50 years. I used to grow maize, sweet potatoes, water melons and beans. My family had enough to eat but now we have to rely on piece jobs and food parcels that my other children send." (Oxfam, "Promises, Power, and Poverty: Corporate Land Deals and Rural Women in Africa" Oxfam Briefing Paper 170, 9 April 2013)*

The inequality that women experience, when it comes to access and control of land, hampers the quest for widely shared, environmentally sustainable and socially responsible economic growth.

Large body of work has been done documenting women's precarious situation with regard to their right to land and much of the work to secure women's land rights has already begun. Women at the grassroots are adopting various strategies to secure their land rights:

In Kenya and Malawi, women have formed watchdog groups with the aim of holding leaders to account for land deals.<sup>221</sup>

In Zambia, women have formed collectives to buy land in groups, a strategy used to overcome high land prices and to ensure that women gain secure title to land.<sup>222</sup> In Tanzania women, with the help of development partners, are negotiating for land ownership with traditional leaders.<sup>223</sup>

Despite these initiatives, women still face numerous challenges in securing their land rights through the legal process. Laws and policies at national and local levels foster discrimination against women in issues of ownership, access and control of land. In countries where laws that protect women's right to land exist, these laws and policies are poorly implemented or not implemented at all. Gender-neutral programmatic interventions and initiatives in agriculture often serve to compound discriminatory practices that women face when exercising their land rights.



## THE PROTOCOL ON THE RIGHTS OF WOMEN IN AFRICA 2003: CONTINENTAL NORMS ON WOMEN'S LAND RIGHTS

Women and women's organizations have been at the front line, as the main agents in advocating cultural, attitudinal, and legislative change with regard to women's rights generally and women's land rights in particular. Consequently, over the last ten years there has been extraordinary growth in terms of the development of laws and policies on women's rights generally and more specifically on women's right to own, access and control land.

At the continental level, these frameworks set the standard on women's land rights as well as delineate clear and specific responsibilities of national governments requiring that the African Union member's states take action to ensure women's land rights are protected.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa recognizes the important role women play in agriculture and sustainable development. Articles 15 and 19 of the Protocol require African States to protect a woman's right to property and land, while Article 21 stipulates their right to inheritance. The Protocol specifically requires African states to "promote women's access to and control over productive resources such as land and guarantee their right to property." The Protocol then goes further establishing women's right to food security and adequate housing.

Women activists have lobbied for the ratification of the Protocol at the national level; as a result of these efforts 36 out of 54 African States have ratified the African Women's Rights Protocol.

*THE FRAMEWORK AND GUIDELINES ON LAND POLICY IN AFRICA*<sup>224</sup> adopted by the African Union in 2009, calls on states to ensure equitable access to land and recognizes the role of colonization in cementing patriarchy in land ownership laws by "conferring title and inheritance rights on male family members" and permitting discrimination against women on matters of personal law (marriage and inheritance). The AU Land Policy recognizes the need to reform national legislation to protect women's lands stating:

*"If law and policy are to redress gender imbalances in land holding and use, it is necessary to deconstruct, reconstruct and re-conceptualize existing rules of property in land under both customary and statutory law in ways that strengthen women's access and control of land while respecting family and other social networks."*

*The framework calls on governments to "prioritize land policy development and ensure that land laws provide for equitable access to land and related processes among all land users."*

Regional economic blocks have incorporated the African Women's Right Protocol into their legislative and policy framework by adopting gender policies heavily based and informed by the African Women's Protocol. The Southern African Development Community (SADC) has the **SADC Protocol on Gender and Development**<sup>225</sup>, which recognizes mainstreaming of gender as key to sustainable development. ECOWAS has a **Gender Policy**, and the ECOWAS Parliament has developed a 10 year ECOWAS **Gender Strategy** that runs from 2010-2020<sup>226</sup> meant to ensure the ECOWAS countries meet continental and regional obligations including obligations on women's land rights.

## DOMESTICATING AND IMPLEMENTING THE AFRICAN WOMEN'S PROTOCOL PROVISIONS ON LAND RIGHTS AT THE NATIONAL LEVEL

Women's land rights as elaborated in the African Protocol on Women's Rights are not intended to be descriptive or reflective; rather the rights enshrined in the Protocol are binding on State Parties to the Protocol and are intended to be tools for legal reform and creation of continental norms and standards on women's rights. The powerful promise of women's rights, including women's land rights, is that women will be able to access them.

At the national level, women's organizations have advocated for constitutional and legal reform to ensure the removal of the discriminatory constitutional and legal provisions on women's rights. Women's rights organizations have worked with governments to ensure national constitutions and laws are aligned to international, continental and regional standards on women's land rights.

As a consequence, in the last five years several African countries have reformed their national constitutions and laws to reflect principles on equality with regards to the right to land.<sup>227</sup> For instance, Kenya's constitution and her National Land Policy reflect both the principle and spirit of the African Women's Protocol and the AU Land Policy Framework and Guidelines, providing equality rights and access to land for women. This is mirrored in Kenya's Land Acts passed in 2012.

Tanzania's constitution and laws make equal provision for men and women to own and control land<sup>228</sup> and prohibits discrimination on the basis of gender.<sup>229</sup> Tanzania's Land Act and Village Land Acts have been reformed and contain provisions for every woman to, "acquire, hold, use and deal

with land” under the same rules as their male counterparts. The Village Land Act goes further to prohibit application of customary land law when it discriminates against women’s lawful access, ownership, occupancy and use of land.<sup>230</sup>

Uganda’s constitution provides for affirmative action<sup>231</sup>, equality between men and women<sup>232</sup> including equality in the area of land rights. Article 33 (6) of Uganda’s constitution specifically prohibits, “laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status.”

South Africa’s constitution, born out of the apartheid struggle, provides for equality before the law and non-discrimination on the basis of gender. Article 25 of South Africa’s constitution which deals specifically with property rights provides that no one may be deprived of property and obligates the government to take reasonable legislative measures to enable citizens to gain access to land on an equitable basis. While this provision is gender neutral it does provide a strong basis for women to claim their land rights.

Mozambique’s Land Law of 1997, was lauded for its protection of land rights of local people. The law protects the equal rights of men and women to own land based on the equality and non-discrimination clauses of the country’s constitution.

However the existence of equality and non-discrimination laws does not result in equitable outcomes for women as far as their land rights are concerned. Furthermore, despite the domestication of the Protocol’s, for instance in the Gambia which has domesticated the Protocol almost wholesale in the Women’s Act 2010, provisions on land law and the existence of equal right to property clauses, women are still disadvantaged when it comes to the exercising of their land rights.

In many countries contradictory laws still exist within the realm of women’s land rights, particularly in the area of the inheritance rights of women and girls. While statutory law may provide for women’s equal right to acquire and inherit land customary and religious law may prohibit the same. In plural legal systems the choice of which law to apply is often left to discretion of judges or local justice administration.

### Case study:

Naliaka is 25 year old widow whose husband recently died of HIV, and she has 5 children under the age 7. Naliaka formerly lived and farmed her late husband’s land. The land provided her family with food and the surplus she sold at the market. Since the death of her husband, her husband’s family has kicked Naliaka out of the marital home and off the family land, and blamed her for her husband’s death.

Naliaka has gone to the village chief about the issue. However, she has received no support, as traditionally women are barred from inheriting land. Naliaka has gone to the Provincial administration to ask for help with her land issue. However, the Provincial authorities have asked her to pay 5,000 shillings before they look at her case. Naliaka has been unable to raise the 5,000 shillings and has tried to go back to her parents home where she hoped they might give her a portion of their land to sustain her five children and herself.

However her parents have left most of the land to her brothers. Naliaka has now come to the city and is living with her five children in one of the city’s largest informal settlements and working as a maid. Naliaka lives in Kenya. Kenya has ratified the AU Protocol on Women’s Rights and has a progressive constitution that provides for the equality and non-discrimination as well as provides for women’s equal right to own land. However, Naliaka has been unable to access these rights.

*“As regards the Protocol, a speedy ratification process does not always bring about the desired results – i.e. gender equality. As a former law reformer for almost 13 years, I can testify that the road ahead is still long. Because, after the processes of ratification and domestication are completed, it is still important to ensure that all the women are aware of the existence of law and know how to use the laws to realize their rights” Advocate Bience Gawanas, Former AU Commissioner for Social Affairs<sup>233</sup>*

### LEGAL ACTION ON THE PROTOCOL TO CREATE NORMS AND STANDARDS ON WOMEN’S LAND RIGHTS

Despite the challenges that remain, the law constitutes a powerful tool to improve the situation of women. National courts have been willing to draw from the international and continental instruments to negate customary laws that

discriminate against women. Tanzania's High Court has been particularly progressive in this regard, and in several instances has ruled for the nullification of customary laws that discriminate against women in the area of land rights.

For instance in *Ndossi v. Ndossi*, Civil App No. 13 of 2001, Tanz. High Ct a case involving a dispute between the widow and the brother of a deceased man's estate, the Tanzanian High Court confirmed a lower court decision to replace the deceased's brother with the deceased's widow as the administrator of the deceased's estate. The High Court held that the Tanzanian Constitution provided that "every person is entitled to own property and has a right to the protection of that property held in accordance of the law" and that Article 9(a) and (f) of the Constitution generally domesticated human rights instruments ratified by Tanzania, including the anti-discrimination principles contained in Article 2(b) and (f) of CEDAW.

This precedent has been followed in other cases: *Mohamed v. Makarmo*, Civil App 45 of [2001] (Tanz. High Ct) the Tanzania High Court found that customary law awarding almost all of the marital assets to the man upon divorce, without determining the contribution of each spouse to the acquisition of property during marriage, violated the prohibition against discrimination based on gender under the Constitution and CEDAW.

In 2010, a Swaziland court overturned a law that prohibited women married under community law from having, 'immoveable property' registered in their name. The ruling deemed the law to be in contravention of the provisions of the law on equality between men and women.<sup>234</sup> In October 2012, the High Court of Botswana issued a landmark decision on women's inheritance rights, for the first time according women the right to inherit a family home despite customary law practices. The court held that a tribal law that gave that rights only to the youngest-born sons contravened the country's Constitution, which guarantees gender equality.<sup>235</sup>

In countries where certain provisions of the Protocol have been domesticated but are not being effectively implemented, strategic litigation can be a powerful tool for structural and legislative change.

Strategic litigation is broad and multi-faceted in nature; it does not consist of a single strategy and is definitely not an instant remedy for securing women's land rights. At the core of strategic litigation is the use of law to specifically strengthen, clarify and transform the national legislation on women's land rights and brings it into alignment with continental obligations under the Protocol.

#### USING A LEGAL EMPOWERMENT APPROACH TO ENFORCE WOMEN'S LAND RIGHTS

Naliaka's situation is not uncommon; many women are dispossessed of their land for lack of ability to negotiate land rights, discrimination, the tension between statutory law and traditional customary practice, lack of knowledge about land rights, poverty and the lack of resources to access formal justice mechanisms. Having the legal right to land does not mean that women can access land.

Women's ability to access, own and control land does not take place on a level playing field. The law provides a powerful tool to tackle the power asymmetries that exist with regard to women's ability to exercise her land rights. In situations where the national laws discriminate against women, continental frameworks such as the AU Protocol on Women's Rights and the AU Land Policy form the basis of legislative interventions and changing discriminatory laws.

Where the Protocol has been domesticated or where the laws on women's land rights are progressive, the Protocol forms the basis for interventions focussed on strengthening existing legal instruments, and building political will and capacity of national governments to implement provisions of the Protocol on women's land rights.

Most importantly the Protocol forms the basis for empowering women to lay legal claim of their land rights through raising awareness of the existence of the rights, increasing the 'know-how' of women to apply the law to claim their rights, and supporting the women to claim their rights. Legal empowerment would enable women to have greater control over the processes that affect their land rights.





## RECOMMENDATIONS

- At the continental level, international and African organisations should ensure that, in addition to including women in development of continental policies on land, women and women's rights organisations are included at the centre of the development process and articulating their specific concerns.
- In the development of the new African Union Commission Strategy and the Africa Union Agenda 2063 the African Union Commission should ensure that women and women's land rights are not displaced in the push for the economic growth of the continent.
- At the national level, governments should undertake gender-sensitive land reform. They should audit national laws and constitutions for compliance with women's land rights provisions, as provided for under the AU Protocol on Women's Rights as well as the AU Land Policy. National land audits, and publicly accessible land registries should be established and reinforced by community mapping that engages women.
- Legal land reforms should not take place in isolation and should address the crucial issue of land tenure regimes, as these have traditionally and in modern times been disadvantageous to women.
- Legal services should be extended to rural women, including court and paralegal systems.
- For development partners and CSOs working on women's land rights, a dual track holistic approach should be taken to legal empowerment: at the community level, women should be trained on their land rights and how to claim these rights. However, as these rights do not operate in isolation, community members and justice administrators should also be trained on the women's land rights and how to apply and enforce them.
- Strengthen the capacity of marginalised women and women's organisations to actively engage governments by holding them to account at local, national and at the continental policy-making forums.

## PART III - COUNTRIES CASE STUDIES ON DOMESTICATION OF THE PROTOCOL

### THE STATE OF DOMESTICATION OF THE PROTOCOL IN BURKINA FASO

Pascal L.W. Zombré

Burkina Faso is a country nestled in the heart of Western Africa. The country returned to democracy in 1991, following the adoption of a constitution<sup>236</sup>

Burkina Faso signed the African Women Rights Protocol (The Protocol) on July 11, 2003. She ratified it on **September 6, 2006** through Decree n° 2006-179 of April 24, 2006 (Gazette N° 19 of May 11, 2006) and from that date it is in force in Burkina Faso.

How can one assess the past ten years of implementation of the Protocol?

#### ASSESSMENT

##### ELIMINATION OF DISCRIMINATION AGAINST WOMEN

In Burkina Faso, the constitution devotes Article 1 to the prohibition of discrimination<sup>237</sup>.

Several forms of discrimination persist. However, all these discriminations are not necessarily the result of the state's lack of principles, measures or decisions, or even economic or social policies. Other factors must be considered, such as social and cultural forces and harmful traditional practices.

##### THE RIGHT TO DIGNITY

Dignity is also enshrined in the Constitution of Burkina Faso and in international instruments for the protection of human rights to which the State of Burkina Faso has subscribed. The country has a Code of Persons and the Family, which has established the principle of the permanent protection of the dignity of women.

##### THE RIGHTS TO LIFE, INTEGRITY AND SECURITY OF THE PERSON

Female circumcision exists in Burkina Faso and the social exclusion of women accused of witchcraft is a serious social issue that is still prevalent in spite of its repression. These two phenomena are prejudicial to the lives of women and undermine their safety.

And yet, the government has taken the necessary steps, at the instigation of the civil society. Burkina Faso has enacted legislation to fight against female circumcision. However, the country can be criticised for not having a specific text addressing witchcraft.

##### ELIMINATION OF HARMFUL PRACTICES

These are remnants of belief in the founding traditions of post-modern societies painfully looking for their points of reference. Despite the existence of protective legislation, repression has barely served as a deterrent and sensitisation fails to convince.

##### MARRIAGE

Freedom of marriage is enshrined in the Burkinabe constitution. It covers the freedom that all persons have to marry the person of their choosing, or not to marry which is consistent with article 6(a) of the Protocol.

The Code of Persons and the Family is clear: no marriage is legitimate unless it is performed in the presence of a Civil Registrar and this is in compliance with article 6(d) of the Protocol.

The Burkinabe code makes provisions for polygamy as an option and is not in line with the spirit of the Protocol, which encourages monogamy (article 6(c)). This option was criticised when Burkina Faso underwent the Universal Periodic Review.

##### LEGAL SEPARATION, DIVORCE AND ANNULMENT OF A MARRIAGE

Divorce is the indirect result of the freedom of marriage. One is free to divorce, when couples no longer wish to remain within the marriage bond, in accordance with the conditions set forth by the law.

Legal separation is also provided for. It can be a temporary measure at the request of one or both spouses, but it can also be a transitional measure leading to the annulment of a marriage.

However, in most cases, judges note the existence of de facto legal separations. Generally, it is when dealing with an application for spousal support as part of the separation that the judge finds and draws legal conclusions, usually in favour of women. Cases in which men request spousal support are rare.

#### ACCESS TO JUSTICE AND EQUAL PROTECTION BEFORE THE LAW

Access to equal protection before the law is a constitutional right. It means that every person regardless of sex, colour, race, economic status or ethnicity should be protected by the law and has access to justice. This conforms to Article 8 of the Protocol.

#### THE RIGHT TO PARTICIPATION IN POLITICAL AND DECISION-MAKING PROCESSES

In Burkina Faso, the coalition of women's organisations within the civil society secured a law on a gender quota from the Government in 2010. This law institutes a minimum level of 30% representation of each of the sexes on the electoral lists of both municipal and legislative elections. However, it is clear from the last elections that some political parties did not meet this legal requirement. For those that adhered to it, the majority of the women were alternates. Women's rights organizations conducted a post-electoral review and deplored the non-respect of the law by almost all political parties.

#### THE RIGHT TO PEACE

This right does not pertain specifically to women. Burkina Faso is a stable country that is not at war. However, it must be noted that women were raped during the crisis brought about by young soldiers from the army. This demonstrates, if there is any need to do so, that they are the first victims when peace is compromised. The military mutineers were arrested and are awaiting trial. Certain civilians are also perpetrators of rape. It is necessary for victims to report the crimes and try to identify the perpetrators with the assistance of the police.

#### PROTECTION OF WOMEN IN ARMED CONFLICT

There is no armed, internal or international conflict in Burkina. However, the socio-political unrest which has occurred since the 1960s and the attendant violations of human rights have not spared women, albeit indirectly through the loss of their husbands, sons or parents.

#### THE RIGHT TO EDUCATION AND TRAINING

In all statistics, the rate of education and training for women in Burkina Faso is far below that of men. The delay in addressing this issue is glaring and the divide enormous.

In spite of the existence of policies in support of girls and women, the problem remains relevant. Since the 1990s, the government has introduced a policy of affirmative action in favour of girls attending school, but at the end of the day, the results are mixed. School dropout rates among girls are high. The same challenges have been observed in the area of training.

#### ECONOMIC AND SOCIAL WELFARE RIGHTS

Women's economic rights are protected in Burkina Faso. Unfortunately, the combined effects of illiteracy and lack of education and training mean that they are not always able to benefit from the opportunities available to them in terms of access to credit facilities at concessionary interest rates from the banking system, exemptions etc.

With regard to social protection, this remains weak, given that it has for a long time focused on civil servants who are the minority. The basic social services only provide the minimum requirement, which is not adequate.

#### THE RIGHT TO HEALTH AND TO THE CONTROL OF THE REPRODUCTIVE FUNCTION

There are efforts, which have been agreed upon by stakeholders in the public sector, to make health services accessible in terms of the distance covered and cost.

Maternal and Child Health services provide health cover in terms of monitoring pregnancies and subsidising costs of delivery, offering free basic immunisation services and follow-up of babies' Health. Even though these services are provided, extreme poverty and the condition of roads in some areas make medical evacuation to referral health facilities, which exist in every region, difficult in some areas.

### THE RIGHT TO FOOD SECURITY

The right to food security is one that is difficult to achieve. Moreover, it calls for everyone's participation, adequate rainfall and for insects to be controlled during the harvesting season.

To enable the most vulnerable groups, largely composed of women, to benefit, the State has enacted a land law and also a rural land policy. This policy reiterates the equal access to land in a predominantly agricultural country.

### THE RIGHT TO ADEQUATE HOUSING

The Ministry of Housing has carried out sensitisation sessions on how to construct houses using traditional materials and also how to build houses in a sustainable manner. Following the September 2009 floods, the government realized the necessity and urgency of securing houses. For want of providing housing to benefit the people, technicians sensitized the people on how to construct with local materials in a durable and secure manner. Additionally, the construction work for shelters for affected populations took gender into account by employing women for the construction of culverts and other labour intensive work.

### THE RIGHT TO A POSITIVE CULTURAL ENVIRONMENT

Burkina Faso is recognised throughout the world as an important cultural crossroads (SIAO, FESPACO). Culinary arts competitions are organised with the aim of perpetuating and conserving the cultural heritage that is peculiar to each region. These are organised by associations with support from government structures. Shows initiated by women on how to organize a family and educate children are broadcast in different languages. Women are owners of private radio stations either as individuals or in groups. The spaces and opportunities to redefine positive cultural values are not lacking. Nevertheless, under rule of law, only the law can control or suppress behaviours that has a negative impact on community life.

### THE RIGHT TO A HEALTHY AND SUSTAINABLE ENVIRONMENT

With the assistance of technical and financial partners, households can, after making a small contribution, benefit from the construction of latrines, septic tanks for the removal of waste water and a bio-digester for the production of natural gas from cow dung.

Solar energy lamps and improved homes have been popularised. These efforts are intended to inculcate environmental awareness among the people. However, the increase in initiatives targeting women often lack coordination and make it impossible to know their real impact in terms of quantity and quality.

A sustainable environment is one that is protected from the over exploitation of natural resources and an environment protected from pollution. Burkina Faso experiences problems of pollution especially in big cities where there is the challenge of household waste removal.

The biggest problems are: the destructive exploitation of wood fuel, wandering animals, bush fires and the abusive use of pesticides and cyanide by gold miners. Consequences are manifested essentially in relation to the soil quality, which is poor. They are also measured in economic terms for women, in terms of lost revenue.

### WIDOWS' RIGHTS

Widows have rights in Burkina Faso. The Code of Persons and the Family recognises their rights except in situations where they were not married to the deceased spouse. When women have children, the Code provides for their upkeep and the management of property.

The loss of certain traditional values of solidarity, as well as the economic difficulties faced by the State, contributes to weakening the situation of women and orphans who are often left to themselves. Family solidarity is becoming rare and widows are abandoned to their fates.

### RIGHT TO INHERITANCE

The right to inheritance is acknowledged for both men and women without any form of discrimination. Women inherit from men and vice versa. For this to be effected, a legal marriage is a prerequisite.

### SPECIAL PROTECTION OF ELDERLY WOMEN

Older women who form the majority of the population of seniors in Burkina Faso do not have specific protection associated with their age. Worse still, older women are often victims of social exclusion.

### SPECIAL PROTECTION OF WOMEN WITH DISABILITIES

Women with disabilities are fairly well protected. In most cases, they form associations and engage in income generating activities. They may have access to financing. However, free urban and intercity transport, access ramps in public buildings, are often non-existent, in spite the existence of binding legislation.

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#### SPECIAL PROTECTION OF WOMEN IN DISTRESS

Steps are being taken by the Gender Ministry as well as certain civil society organizations to accommodate the plight of women. The counselling centres, centres for free legal advice and the opportunity to report to the police, the gendarmerie or the justice system exist. Unfortunately, justice process is slow to respond and there is no quick process outside the normal procedure to handle these types of emergencies

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#### REMEDIES

Women can obtain reparation from perpetrators of a crime or indirectly from the state because it has failed to honour its national and international commitments by taking all the steps necessary for their protection.

The process is very technical and long. It calls for patience, money but also familiarity with the process.

For example, as part of the national reconciliation process, certain women who are direct and indirect victims, or their dependents have been able to benefit from reparations from the government. Apart from this important process, women regularly bring cases before the courts to claim their rights (spousal support, property, divorce, custody of children, or violence).

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#### RECOMMENDATIONS

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#### IMPLEMENTATION

The implementation of the Protocol is not the sole responsibility of any ministry of human rights or women's rights. The issue of women's rights is a cross-cutting one that requires the efforts of all stakeholders: government, the civilian population and the civil society. In such a scenario, the multi-sectorial approach seems to be the best for its implementation in countries that have already ratified the Protocol and started to implement it.

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#### MONITORING

Monitoring should be carried out periodically and without complacency. Responsibilities must be established in order to move forward. In this regard, governments will have to demonstrate tremendous political will in order to counter socio-cultural constraints and harmful traditional practices.

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#### CONCLUSION

Ratification of the Protocol is not enough to ensure that all the rights of women are implemented and respected. Each State shall ensure this by taking internal legal measures.

Over and above these measures, it should ensure the effectiveness of these rights among people in the social, political and economic spheres in order to monitor the slightest deficiencies. This effectiveness requires social, economic and legal policies.

However, responsibility for the effectiveness of women's rights lies not only with the State but with everyone, beginning with the State.

This calls for a culture of human rights that implies openness to universality.

## DOMESTICATION AND IMPLEMENTATION OF THE PROTOCOL IN SOUTH AFRICA

Nonhlanhla Sibanda

The question of South Africa's domestication and implementation of the Maputo Protocol (the Protocol) is an important, albeit contentious one. This paper seeks to explore the extent to which the country has domesticated and implemented the Protocol, especially with regards to Article 4 that refers to issues on violence against women. The country's legislative framework requires that international instruments such as the Maputo Protocol be domesticated if they are to be fully recognized as part of national law. This paper advances the argument that, given South Africa's relatively progressive legislative and policy framework on the protection and promotion of women's rights, there may not be a need for the country to undergo a domestication process, but rather, the benefit and value of the Protocol lies in the efforts to popularize its existence and promote its implementation.

### RATIFICATION

South Africa ratified the Maputo Protocol on the 17<sup>th</sup> of December 2004 and deposited its Instrument of Ratification with the Chairperson of the African Union Commission on 14th January 2005<sup>238</sup>. At the time of ratification, South Africa made three reservations and two interpretative declarations to the Protocol. The reservations were entered with respect to Article 4 (j) which deals with the imposition of the death penalty on pregnant and nursing mothers because it has been abolished in the country; Article 6 (d) on the registration of customary marriages because the national laws already provide for such registration in order for the marriages to be recognized; Article 6 (h) which confers equality between the man and the wife where the nationality of their children is concerned, South Africa considers that its national laws on citizenship are more advantageous for the children than this provision of the Protocol. South Africa also made interpretative declarations to Article 1(f) which defines 'discrimination against women' and Article 31 that deals with the question of whether the South African Constitution offers more favourable human rights protection than the Protocol<sup>239</sup>. Article 31, was also interpreted in a manner that would preclude the violation by the national laws of the rights guaranteed in the Protocol.<sup>240</sup> Arguably, these reservations and interpretative declarations have not in any way undermined the enjoyment by South African women of the relevant rights and freedoms guaranteed in the Protocol. On the contrary, they offer more favourable conditions for the enjoyment of those rights and freedoms.

### DOMESTICATION OR NOT?

Once a state has ratified the treaty, the next stage is to ensure that that treaty is domesticated into municipal or national law. Domestication refers to the process of transforming or incorporating international laws into national legal systems. In the South African context, the Constitution provides some guidance in understanding the role of international law and the ways in which it can and should be implemented. Section 231(4) provides that:

*"An international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is in the Republic unless it is inconsistent with the Constitution or an Act of Parliament".<sup>241</sup>*

Ordinarily, South Africa would be required to domesticate a treaty such as the Maputo Protocol because it is not a self-executing treaty. However, given that in many instances, South Africa's legislative and policy framework exceeds the provisions laid out in the Protocol, the necessity of its domestication becomes debatable. The South African Constitution recognizes, promotes and protects a wide range of human and women's rights. This coupled with an extensive national legal framework of laws and policies aimed at promoting women's autonomy, their political participation, and efforts towards gender equality further questions the legitimacy and cost benefit of domesticating the Protocol. Most of the provisions of the Maputo Protocol correspond to the provisions of the Bill of Rights in the South African Constitution. For example, while the Protocol imposes obligations on member states "to ensure maximum protection of women's rights, prevent discrimination and undertake measures to ensure women are given appropriate space for development, equal opportunities and full protection of social, economic and civil rights,"<sup>242</sup> on the other hand the Bill of rights, in addition to the full range of rights provided for, also includes sections that are designed specifically to protect the rights of women. In fact, it has been argued that it is the introduction of the Bill of Rights that led to the formal recognition of women as equal citizens in South Africa.<sup>243</sup>

More specifically, the provision on equality stipulates that "everyone is equal before the law and may not be discriminated against"; and further provides that "affirmative action and fair discrimination are allowed"<sup>244</sup>.

The concept of equality is also firmly entrenched in the value system of the country as set out in Chapter 1 of the Constitution, “the democratic state is founded on the values of human dignity, achievement of equality and advancement of human rights and freedoms; and non-racism and non-sexism.”<sup>245</sup>

South Africa’s constitutional provision is further reinforced by specific obligations under the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000.<sup>246</sup> This Act proposes the setting up of Specialist Equality Courts which focus on discrimination cases. While the National Education Policy Act (1996) provides a framework to achieve equality in terms of access to education, with the Further Education and Training Act (1998) setting the basis for equal access to further education for marginalised persons, including women. Additionally, the National Health Act 2004 promotes equal access to health care and gender-sensitive measures with regards to privacy and dignity in the health care sector. Finally, the Employment Equity Act ensures an equal enjoyment of the right to work.<sup>247</sup>

Added to this, the South African National Policy Framework for Women’s Empowerment and Gender Equality (2000) also provides for the establishment of a comprehensive National Gender Machinery (NGM) and the location of Gender Focal Points in national departments as the operational arm of Government to drive the gender agenda in the country. The Policy also provides for the coordination of these structures. In this regard, a coordination mechanism for the NGM was established in 2001. Since 2002, the mechanism meets frequently, typically once in two months, to evaluate the progress in achieving equality for women in all spheres of life. Other independent bodies constitute an important component of the NGM. These institutions include the judiciary, the Commission for Gender Equality (CGE, Gender Commission), and the South African Human Rights Commission (SAHRC, Human Rights Commission). Within the Judiciary, the Equality Courts are particularly mandated to address issues related to discrimination including gender discrimination. It also provides for the establishment of a Commission on Gender Equality, which is an advisory body, which monitors and evaluates government measures to ensure that gender equality is protected and promoted.<sup>248</sup>

Consequently, in light of the country’s comprehensive legislative and policy framework for responding to issues relating to equality, discrimination against women, violence against women and sexual offences, it has been argued that the Protocol may not offer much in the way of improvement for South Africa’s legislative and policy framework.<sup>249</sup> Indeed, given that the country’s legislation and policies already reflect the provisions in the Maputo Protocol, and in most

instances, are even more progressive, this paper argues that it will thus not be necessary or even useful to domesticate the Protocol. Rather, the Protocol holds more persuasive value to South Africa providing the minimum standards and framework for the protection and promotion on women’s rights in the country. More specifically, the Protocol has the potential of contributing to the enhancement of policy development in areas such as harmful traditional practices, and deepening discussions around the implications of living a positive cultural life. Additionally, the Protocol serves to provide a ‘gentle reminder’ to improve South Africa’s track record on slow and uneven implementation of legislation, policies and programmes.<sup>250</sup>



#### IMPLEMENTATION: THE REAL CHALLENGE

Following domestication, the state party to the treaty must then begin the process of implementation - translating policy into practice for the benefit of the woman on the ground. Based on the assumption that, by virtue of its relatively progressive legislation and Constitution, South Africa has somewhat given effect to and by default made efforts towards implementing the Protocol, we need to interrogate the extent to which this has been effective. Indeed, this is where the real challenges lie. Nine years have passed since the ratification of the Protocol, yet women in South Africa still continue to face the same challenges with very little recourse for action. For purposes of this paper, only Article 4 of the Protocol (relating to violence against women) will be considered in order to ascertain the extent to which implementation has been achieved.

We need to realise that while the South African constitution plays a huge role in codifying gender rights, this is just the starting point. The signing and ratification of protocols and the enacting of laws alone is hardly enough to achieve transformation and positive changes for women. The stark

reality is that despite the removal of discriminatory laws and policies, patriarchy has become so well perfected in our societies that women are unable to immediately enjoy the benefits because the pressures of society demand that women remain in an inferior position to men<sup>251</sup>. There is therefore a need to institutionalise democratic norms of women's equality, autonomy and freedom in society. This means that the principles and values entrenched in laws and policy must be translated into the private spheres of women's lives. Government needs to design a gendered approach to addressing the basic issues of poverty if the results of costly legislative reform processes are to be enjoyed<sup>252</sup>.

Article 4 of the Protocol mandates states to enact and enforce laws that prohibit all forms of violence against women in private or public life. Violence has been found to increase women's vulnerability to HIV infection and South Africa has one of the highest rates of gender-based violence reported owing to various factors including an ineffective criminal justice system.<sup>253</sup>

South Africa has undertaken legal reform to provide protection and support services for survivors and victims of sexual offences and domestic violence. Areas that have been strengthened include sentencing and victim empowerment. At an operational level, a multi-sectorial integrated approach focuses on prevention, reporting, transformation of the criminal justice system, and fast-tracking effective processing of cases. Further, victim support services have been strengthened through the development of a Service Charter for Victims of Crime. An anti-rape strategy has also been developed, with guidelines for service providers such as the police and health-care workers. There are also two national prevention and awareness-raising campaigns: the 365 Day Action Plan to End Gender Violence and the 16 Days of Activism Campaign.

However, despite the apparent good policy and legislative framework, and the fact that the Constitutional Court has provided ample guidance to the state and clarified the content of women's rights as entrenched in the Constitution, violence against women in South Africa continues unabated and perpetrators continue to enjoy widespread impunity. Further, numerous pieces of legislation and policies have been developed and adopted, yet despite these developments, the following challenges (though not exhaustive) are important to note:

#### HIGH LEVELS OF VIOLENCE DENY WOMEN THE RIGHT TO FREEDOM FROM DISCRIMINATION

South Africa has sought to develop a comprehensive response to GBV that includes legislation, public awareness programmes and shelters for abused women. However, many women remain at risk in South Africa, which has one of the highest global rates of GBV. Official statistics are unreliable due to under-reporting, corruption and lack of disaggregation. Even if one uses only the official statistics, there is no doubt that the rate of violence against women remains extremely high. South African Police Services (SAPS) statistics for reported rape were 69,117 in 2004/5, 68,076 in 2005/6, 65,201 in 2006/7, 63,818 in 2007/8, and 71,500 in 2008/9.<sup>254</sup>

#### Legislative and policy framework

*Lacunae in existing legislation:* in theory, the Domestic Violence Act is indeed a progressive piece of legislation. However it does have some loopholes as it fails to take into account how violence, poverty and HIV and AIDS relate across sectors of society. It does not make reference to HIV/AIDS anywhere in the text despite the fact that the majority of women affected and infected by HIV/AIDS also experience domestic violence. Another example is the silence in respect to delays in criminal trials and its impact on complainants; the Criminal Procedure Act only protects the rights of the accused to a speedy trial<sup>255</sup>.

#### LACK OF EDUCATION FOR PUBLIC AND TRAINING FOR IMPLEMENTERS AROUND NEW LEGISLATION - EQUALITY ACT AND SEXUAL OFFENCES ACT

Despite the passing of the minimum sentencing legislation, courts continue to disregard the minimum sentencing principles and continue to give out lenient sentences. One such example is the case of Molefe, a convicted rapist who was given a sentence of only four years instead of the prescribed life sentence because he was a "well educated man" and the complainant was a "grown up woman".<sup>256</sup> The court failed to take into consideration that Molefe was also facing charges of sexually assaulting 13 other women.

#### INADEQUATE COSTING AND BUDGET ALLOCATION FOR THE IMPLEMENTATION OF LEGISLATION

The Sexual Offences Act provides for survivors to give their statements to female police officers, in practice this often results in delays while survivors wait for female officers to be called to take the statements; a study conducted in 2005 found that no specific budget dedicated to its implementation and that allocations were only for ad-hoc once off projects for training and publicity around the Domestic Violence Act and that these funds were provided



by international donors rather than the State (Goldman Budlender,1999; Vetten and Khan, 2002b). Furthermore despite the State's reliance on civil society organizations to provide services to survivors of violence, it fails to adequately resource these organizations. Without the NPOs and community-based organisations, women experiencing gender-based violence would have very few options. Funding by government is very difficult to access despite it being available. Many organisations need funding as they provide services such as shelters or court programmes, which are essentially government functions.

#### Implementation of laws and policies

South Africa is greatly challenged by an apparent lack of political will to implement laws that have been designed to protect women from violence and discrimination. A recent study commissioned by the Department of Justice on Implementation of the Domestic Violence Act demonstrates the huge gaps between theory and practice. One such example is Government funding for the establishment and operation of Thuthuzela Care Centres as a flagship response to the need for one-stop services for survivors of violence. However, funding has been minimal. The establishment of

these centres at Thohoyandou and Ntlaza (for example) can only go ahead with donor funding. Another example is all training in support of the establishment of the sexual offences courts, that are an integral part of the one-stop centre concept, is currently funded by international donors such as the Canadian High Commission<sup>18</sup>. Women in Tembisa who make use of the Thuthuzela Centres have revealed that in most instances the women are not fully informed of the process relating to medical examination, in some instances receive no treatment at all, and complain of the insensitivity of the medical personnel, hence secondary victimization by a government institution.<sup>257</sup>

#### DELAYS IN COURT CASES

State response to justice is grossly inefficient and causes further victimization of survivors of sexual violence, which in turn creates a barrier to access to justice. This is one of the reasons for low reporting rates and consequently further inappropriate development of structures and institutions to respond to sexual violence. Figure 1 is a clear illustration of gross delays and poor responses of the judicial system where appropriateness and political will is left to innovative and sustained engagement of civil society. This is in light of the fact that civil society funding by government is minimum.

#### Justice delayed

Buyisiwe was gang raped in 2005 and filed charges against eight men. Due to the Department of Justice negligence; loss of her official statement and transcripts from the bail hearing, in 2006 her case was struck off the court roll and the men were released without trial. A coalition of NGOs' campaign: One in Nine Campaigns, the Department of Justice and National Prosecuting Authority acknowledged the negligence and reinstated the case. However, this was without re-arresting of the accused. During the period from 2005 to 2009 the case has been struck from the roll twice, postponed more than twenty-two times owing to several reasons ranging from absence of accused, defence counsel, judges, and missing court documents. Eventually trial date was set for 21st of April 2009 and the accused were consequently found guilty and sentenced in September 2009. The travesty was that Buyisiwe had to wait four years before justice was served.

1 in 9 campaign 2009

#### DUE DILIGENCE IN RELATION TO VIOLENCE AGAINST WOMEN

The criminal justice system in South Africa fails to respond adequately to incidents of violence against women. The system places more value and consideration on the rights of the accused in direct conflict with the rights of the survivor. A rape survivor (usually women) goes through rigorous processes to access justice only to have the accused receive a lenient sentence. The legal process in itself tends to be traumatic for rape survivors. The Constitutional Court in *S V Baloyi* summed up the situation as follows; "The

*ineffectiveness of the criminal justice system in addressing family violence intensifies the subordination and helplessness of the victims. This also sends an unmistakable message to the whole of society that the daily trauma of vast numbers of women counts for little. The terrorisation of individual victims is thus compounded by a sense that domestic violence is inevitable. Patterns of systemic behaviour are normalised rather than combated".*

Therefore, the failure of the Government to address the problems of backlog and delay in many court systems could constitute denial of access to justice. Despite having courts

that are specifically designated to handle sexual offence matters, many are under-utilized or have ceased to function all together. Clearly laws have not manifested themselves in substantial change in the lives of people within communities and legislation is not being implemented at sufficient speed to ensure that the rights enshrined in the constitution become a reality in people's daily lives.

In conclusion, if women in South Africa are to fully enjoy the benefits of the country's ratification of the Maputo Protocol, it is important that there be greater political will and determination from government to see it to its full

implementation. Given the country's enabling legislative and policy framework, the Protocol provides for a minimum standard and gentle reminder to commitments already made. The signing and ratification of international instruments and the enacting of national laws and policies is a good starting point, yet that alone is not enough. Women in South Africa need much more than rights written on paper and stored in cupboards. The practical implementation of these rights is indeed of much urgency if women in South Africa are to fully enjoy their rights, especially with respect to violence against women.



## WOMEN WITH DISABILITIES AND THE PROTOCOL: THE CASE OF ZIMBABWE

### Disabled Women in Africa (DIWA)

The Protocol on the Rights of Women includes specific provisions on the rights of women with disabilities. Article 23 of the Protocol elaborates States Parties' responsibility to provide special protection to such women, including taking measures to "facilitate their access to employment, professional and vocational training as well as their participation in decision-making" as well as to protect them from violence and discrimination. Zimbabwe ratified the Protocol in September 2008. Since then, Zimbabwe has made some progress in the implementation of the Protocol.

Women are human beings and they are entitled to all rights as prescribed in the Universal Declaration of Human Rights. These include among others, right to participate, right to education, right to health, right to protection, right to love and found a family. In Zimbabwe, some of these rights have been promoted, but to a lesser extent. Some of the hindrances may be rooted in cultural backgrounds. In earlier years, a girl child's needs would be sacrificed over a boy child, and this would result in a girl child not attending school beyond the primary level.

One observes that, a girl child with a disability was and continues to be worse off than other children. First, for being an African girl and, secondly, for having a disability – this is a double challenge for her. Efforts have been made by the Government of Zimbabwe to promote persons with disabilities through signing the international treaties, but the implementation is limited.

#### EQUALITY

One area of progress in Zimbabwe is in the 50/50 quota systems. Although, the system is rather slow, women have taken up positions of Vice Presidents and served as Members of Parliament. Women also seem to be gaining access to employment and they are occupying managerial positions as well. For example, there are reserved seats in parliament e.g. the Vice President seat. It is hoped that this increasing representation of women will contribute to better promotion and respect for women's rights and that women with disabilities will also be increasingly represented in decision-making positions.

#### EDUCATION

Zimbabwe has managed to develop an Education policy and has disseminated subsequent circulars, which clearly state that all children have a right to access education. Although the levels of enrolment of girls and boys may vary, some positive changes have been noted where the mind-set of the community has slightly changed and now people generally view education as an important factor for both sexes – unlike in the earlier years where a boy child was more valued than a girl child. Affirmative action has also been helpful in enabling a girl child to reach tertiary education. This now puts a girl child in a competitive position with her counterpart, in terms of marketing herself for jobs. The selection is now wider than before.



The Education policy is a vital tool, but it does not take into cognizance of the fact that by the time these children go to school, they would have already been socialized into unequal positions. Some scholars have flagged that gender differences are inculcated into the children by the age of three. With this in view, there is need for the Education policy to devise strategies that address the anomaly.

The Government of Zimbabwe has also introduced Basic Education Assistance Module (BEAM). This aims to provide education-related assistance to the less advantaged children and it clearly states the quota system of the beneficiaries. As a result, less disadvantaged children, regardless of their sex enrol in schools.

The Special Needs Education initiative has seen quite a number of persons with disabilities, including girls and women, enrolling in schools. This initiative takes into

account the different educational needs of people with disabilities. This has also led to the introduction of mainstream schools where disabled children and non-disabled children enrol in one school. Despite this move, there are gaps that need to be addressed when it comes to mainstream schools. Some of the school facilities are not disability friendly and this still hinders some of the persons with disabilities from attending school. Within the disability groups, there are those who use wheelchairs for mobility, others use crutches, and some are visually or hearing impaired, to name but a few. If all of these individuals are in one class, then it means that the school teachers should be available who know how to use braille and sign language, and that school buildings or classrooms are accessible to allow disabled children to move about freely like any other children. The transport system which takes them from their homes to school and back will need to be disability friendly. The learning materials will have to be in accessible formats. The Education policy is good, but such provisions are not mentioned, making it unclear how these issues will be addressed.

The introduction of satellite schools in most rural areas is a good development as this has seen some school children in rural areas travelling shorter distances to get to school. On the other hand, some children with disabilities may still be affected and not attend school if the terrain is bad as this will impose physical barriers to them.

An article in the Sunday News of 31 March 2013 suggested that Zimbabwe is still a long way from ensuring that children with disabilities are educated. The article talked about issues of access, lack of training to deal with children with various disabilities and the need to sensitize parents of children with disabilities on the need to send their children to school. Education is an important basic tool. It enables one to make informed decisions. It enlightens someone. But if children with disabilities are not accessing education, then it becomes a recipe for disaster for the future.

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## HEALTH

According to the Zimbabwe Health report (2011), the deterioration in Zimbabwe's health-care services coincided with a fall in demand for services, following the introduction of user fees. These fees, which are often applied in an ad hoc way and so vary from provider to provider, act as a barrier to basic health services for many of the most vulnerable people in Zimbabwe. Government policy is to provide free-of-charge health services for pregnant and lactating mothers, children under five and those aged 60 years and over, but the policy has proved to be difficult to implement.

The Zimbabwe Government, UNICEF and international donors have formulated a five-year plan titled the Health Transition Fund to reduce high maternal and child mortality rates. Abolishing health-care user fees is one of the plan's key goals.

Following the formation of the Government of National Unity in February 2009, the government developed the National Health Strategy for Zimbabwe. A health-sector recovery plan sought to reverse the decline in the performance of the country's health delivery system, especially as it impacted on universal access to primary health care by vulnerable populations. The goals of the plan included tackling levels of health financing and thus improving access to basic medical equipment and essential medicines; taking steps to attract and retain health workers in the public health sector; and laying the foundations for an investment policy to fund the rehabilitation and development of the health-services infrastructure.

Again the issue of access, physical and attitudinal barriers hinders a woman with a disability in their enjoyment of access to health facilities and information. Hospital beds are too high for them and health material is not disability friendly, among other challenges. Those with visual and hearing impairment find it difficult to get assistance as expected, when the need arises.

Uganda recently came up with a documentary on Sex by CHANCE not by choice. This is being said by women with disabilities in rural Uganda. If they have sex by chance, what does it mean to their general health and their reproductive health? It means that they are on the bottom of the ladder when it comes to negotiating safe sex and this makes them vulnerable to HIV / AIDS related diseases. In the same documentary, a health officer confirmed that it is difficult to provide health services when women with disabilities visit the health centres, due to physical and communication barriers.

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## ADDRESSING THE RIGHTS OF WOMEN WITH DISABILITIES

A WHO report estimates that 15% of the world population are persons with disabilities. This is a big constituency. In Africa, the percentage could even be higher due to poverty, wars and diseases like HIV / AIDS. According to the current population census, it is reported that there are more women in Zimbabwe than men and almost 60% of women stay in the rural areas. The same may be true for women with disabilities who may be more restricted than their counterparts.

This means that women with disabilities should be targeted at all levels and aspects of development if change is to be attained holistically. We thus recommend the following:

- Zimbabwe is urged to ratify the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The UNCRPD clearly stresses the need to empower persons with disabilities. The Zambia government has established an Independent Monitoring Unit (IMU), which monitors the implementation of the UNCRPD. Persons with disabilities are part of this Unit. They reported positive progress.<sup>258</sup>
- Need to mainstream gender and disability at all levels. DIWA has developed a manual on this. This training manual brings together two key issues, namely, gender and disability - aspects that have, for a long time, been treated independently by advocates of either gender or disability mainstreaming. Accordingly, this training manual is an instrument for capacity development so that participants use the gained knowledge to promote gender and disability mainstreaming in development processes.
- HIV prevention strategy should also target persons with disabilities, especially women with disabilities. Awareness needs to be raised on sexual needs of women with disabilities. They are not asexual and “virgin rapes” should stop. With such myths, women with disabilities are more vulnerable to HIV / AIDS. Hence the need to target them on health related issues, including HIV / AIDS. In April 2013, Rwanda held a national workshop focussing on their HIV prevention strategy, which was not benefiting persons with disabilities. The recommendations made included the following:
  - The Ministry of Health and Rwanda Biomedical Center (RBC) should ensure follow up on HIV as a disabling disease and the impact of the side effects of ARVs which is recorded as a factor that increases the number of people living with disabilities;
  - RBC and the Umbrella of People with Disabilities in the Fight Against HIV and AIDS in Rwanda (UPHLS) should conduct a comprehensive assessment on availability and accessibility of HIV and health services by People With Disabilities (PWDs);
  - All HIV care and treatment actors should ensure that the HIV minimum package is made accessible to PWDs;
  - Categorization of persons with disabilities, overdue since 2010 (according to a Ministerial order of

2009) should be undertaken without delay. This activity, under the responsibility of the Ministry of Health and various partners, will serve as a foundation for the implementation of various government policies, as well as support the mainstreaming of disability into the planning processes of various health and developmental actors;

- Provisions should be made to avail a state budget allocation that can help to serve PWDs affected and infected by HIV&AIDS;
- A study on the relationship between begging and the risks of infection with HIV should be conducted;
- Collaboration with Disabled People’s Organisations and engaging with persons with disabilities themselves is key for development. This approach will enable all concerned to be aware of different needs of women with disabilities. This will then inform decision makers to come up with programmes and budgets that are disability friendly.



#### DIWA'S WORK

In one of its projects, DIWA was aiming to lobby for the domestication of the United Nations Convention on the Rights of Persons with Disabilities and MDG 2, focussing on Education and Training of disabled women within Southern and Eastern Africa. The project targets countries in Southern and Eastern Africa which have ratified the Convention, and in which the disability women movement structures need support from DIWA. The targeted countries include Ethiopia, Kenya, Lesotho, Malawi, Mozambique, Namibia, Rwanda, Tanzania, Uganda and Zambia.

The main objective of the project is to contribute towards the realization of Articles 6 (Women with Disabilities) and 24

(Inclusive Education) of the Convention on the Rights of Persons with Disabilities in Southern and Eastern Africa. The other objective is on raising awareness of the general public so that they are informed about the challenges that disabled women especially disabled girls face in trying to access the education system.

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## RECOMMENDATIONS

Some of the recommendations coming out of this project include:

1. Turning the DIWA training manual into reference material for the network members by incorporating the hand-outs into the manual. The reference material could also be used by DIWA or

its national networks to organise follow up training.

2. Strengthening the country teams to ensure that stronger national networks are established to start the process of change at that level.
3. Incorporating men as members of the network and partners for effective change by the network at national and regional levels.
4. Establish close working relationship with other networks in the East African region such as EAFOD, EDAN and others for networking purposes.
5. Encouraging inter-regional corporation, and foster learning for example between the Eastern and Southern African networks
6. Documenting the experiences of the country level networks and learning from their experiences to develop regional strategies for action and change.

## RWANDA'S HIGH POLITICAL WILL: FROM COMMITMENT TO ACTION, HIGH YIELDS FROM THE FIELD

Aimée Muziranenge

*"The attainment and the promotion of women's rights in Rwanda is not a miracle, but the result of tremendous efforts made day to day by the leadership of Rwanda with the belief that national development is only possible with equal participation of both men and women."*

From their status as second-class citizens in a patriarchal society not so long ago, Rwandan women now have gained equal rights to land and inheritance, and more girls are enrolled in school than ever before. Rwanda has ensured ratification, domestication and implementation of several important gender-related instruments, among them the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which it ratified in July 2004. The enforcement by domestic courts as well as other governmental bodies is taking root so as to reduce gender inequality and ensure effective women's empowerment for sustainable development. In this regard, the Government of Rwanda has made significant efforts to ensure the respect of women's rights. Rwanda prohibits and condemns all forms of harmful practices which negatively affect the human rights of women and has taken necessary legislative and other measures to eliminate such practices. In and outside Rwanda, one would ask, **how it is possible to implement the Protocol**. The answer that I find most pragmatic is: **high political will - from commitment to action**.

When I personally follow His Excellency the President of the Republic of Rwanda--in print, broadcast and live--quite often, he talks about men and women as **citizens** in the path to *agaciro* (meaning "dignity" in Kinyarwanda). It cuts across my mind and builds confidence in me to understand that "**I am a Rwandan citizen, I am a woman, I have dignity and, therefore, respect and prosperity**".

First of all, in Article 11, the Constitution of the Republic of Rwanda of 4th June 2003 as amended to date stipulates, "all Rwandans are born free and equal in rights and duties. Discrimination of whatever kind based on, inter alia, ethnic, origin, tribe, clan, colour, sex, region, social origin, religion or faith, opinion, economic status, culture, language, social status, physical or mental disability or any other form of discrimination is prohibited and punishable by law. **Does it end here? No, this emphasis on equality crosscuts across laws, policies, strategies and various initiatives.** Quite

often, emphasis is made on gender accountability and the fact that key achievements have so far been realized should be the basis to attain even more and, above all, continued promotion and protection of women's rights.

As the President of the Republic of Rwanda stated at the 63rd United Nations General Assembly in New York (23 September 2008):

*"With regards to empowering women and promoting their socio economic and political participation, we continue to make modest progress. We believe that, besides improving gender relations in our country, this marks healthy progress towards realizing our vision of a united, democratic and prosperous Rwanda".<sup>259</sup>*

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### WHERE ARE WE?

Rwanda has domesticated and implemented the Protocol and has ensured alignment with the Protocol. The leadership of Rwanda has offered many opportunities that contribute positively to the participation of women and promotion of women's rights as a development goal. This ideal is explicitly articulated in national legal and planning instruments and the implementation of such instruments is tremendously hailed both at central and decentralized levels.

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### PARTICIPATION AND REPRESENTATION

Women's participation in political spheres is emphasized and is important in all organs of the government. The significant gains for women's representation in Rwanda is a result of the highest political will that is embedded in the constitutional guarantee, the quota system and innovative electoral structures established with specific mechanisms used to increase women's political participation. Today, it is important to note that Rwanda is ranked number one in the world for numbers of women in parliament, namely 56.3%. Whereas women represent 37.36% in the cabinet and 41.1% in the judiciary, the Rwandan decentralization policy equally promotes active representation of women and statistics show that women represent 38.7% of village executive committees, 43.9% of cell consultative committees and 44.8% of sector consultative committees <sup>260</sup> (Gender Monitoring Office 2012).

The participation of women in decision-making organs is also recognised. Women leaders in Rwanda are notable in their positions as heads of different organizations, both in government and in the private sector. They occupy senior positions and at all levels, leading important sectors of development like Health, Agriculture and Animal Husbandry, Gender and Family Promotion, Disaster Preparedness and Refugees Affairs, Foreign Affairs and are also holding significant posts such as, the Speaker of the Parliament, Chief Ombudsman, and many more.

#### SOCIAL WELFARE, EDUCATION, ECONOMIC, AND INHERITANCE RIGHTS

Many African women dream about having access to property and inheritance rights. Women's access to land and property in Rwanda has historically been linked to their relationship with their birth or marital family and thus very few women in Rwanda owned land in their own right. In this regard, Rwanda has put in place a legal framework that plays a substantial role in overcoming economic hurdles and especially securing women's land rights in Rwanda where the genocide against the Tutsi has resulted in female-headed households constituting 30%<sup>261</sup> of all households in the country. These include, among others the law n° 22/99 of 12/11/1999 on matrimonial regimes, liberalities and succession which gives girls and women the same right to inherit as boys and men and also provides for the protection of property rights within marriage. The land law and subsequently systematic land registration in 2009, which was followed by issuing land title and lease documents, guarantees that land is registered in the name of both a husband and wife, and children, are included as legal beneficiaries, ensuring that all household members enjoy equal rights to land use.

Women enjoy their rights to property. As declared by a woman in the rural Cyanika village of Burera district in the Northern Province of Rwanda, "Numva nezerewe kuba mfite icyemezo cy'ubutaka kiri mu mazina yanjye, ubunshobora gufuta icyemezo kubyo nahingamo<sup>262</sup>" (I am happy about having the land title in my name. I can now decide what to plant on my land).

In order to create conditions to promote and support the occupations and economic activities of women, within the informal sector in particular, a lot has been done by the leadership of Rwanda. In 2012, the government of Rwanda through the Ministry of Gender and Family Promotion, and the Ministry of Youth, Information and Communication Technology, in collaboration with the Business Development Fund and the Rwanda Cooperatives Agency sketched out a program that addresses the financial barriers faced by

women. This entailed the establishment of a Business Development Fund with credit guarantee which provides supplementary collateral for women and increases access to debt financing for women and youth-led Small and Medium Enterprises who would otherwise fail to raise adequate security for a loan. This was initiated as the Umurenge SACCOs (Credit and Saving Schemes at grassroots levels) take shape and grow and thus deepen financial access to the rural women and youth borrowers because of their proximity and convenience to the critical masses and geographical outreach.

Access to basic education is no longer a problem for the Rwandan girl child. The Government has deployed considerable efforts to promote the access of girls to education. The Development Policy and the Girl's Education Policy in particular, insist on the intervention and on the role of a woman in socio-economic development. It is for that reason that the girl is at the centre stage, especially as far as her education is concerned. In fact, it is the only way to empower girls and women of the country so that they are able to play their role responsibly in the development of the country. Girls' education initiatives are spearheaded by Her Excellency the First Lady through the Imbutu Foundation. The First Lady has not only promoted girls' education but also children's rights, youth and young professionals, and initiated literacy and reading campaigns, as well as assisting widows and orphans of the 1994 genocide against Tutsi and HIV/AIDS. Today, the Imbutu Foundation celebrates the hundreds of young girls now receiving an education through its scholarship program, the thousands of families who have received health care and become economically independent through its income generating activities program and the generation of young Rwandans who have been empowered to take part in building a dignified nation.

The Education for All Policy, that embraces the Nine Year Basic Education (nine years of free compulsory education for all Rwandese school children; boys and girls) aims at enforcing the principle that with no discrimination, even girls and boys from poor families can access free education which consists of six years of primary education and the first three years of secondary school.

Nevertheless, it is necessary to remind the girls and women of Rwanda that the challenge is now theirs. It is up to them to make an effort and assume their responsibility. We are no longer in the era when the woman was confined in the kitchen and at home. We are advanced and a woman should play the same role and have the same responsibility as her brother.



REPRODUCTIVE HEALTH AND RIGHTS,  
ELIMINATION OF DISCRIMINATION AND VIOLENCE  
AGAINST WOMEN

Asserting the importance of women's access to safe and legal abortion, the Rwandan Government took another critical step forward in its efforts to respect women's fundamental reproductive and human rights by expanding the grounds upon which abortion is legally permitted. Women who become pregnant as a result of rape, incest, or forced marriage or whose pregnancy endangers their health are now legally entitled to safe abortion services, thus authorizing medical abortion in that regard. (Art.165, Organic law instituting the penal code, June 2012)<sup>263</sup>

The prevention and fight against any form of violence against women and girls and discrimination is on the national agenda. The Law No 59/2008, preventing and punishing Gender Based Violence and subsequently the 2012 Organic law instituting the penal code is an important response indeed. It relates to gender based violence ranging from rape, child defilement, sexual harassment, abduction, marital rape, gender-based human trafficking, among others.

The Government's initiative to decentralize justice, and provide advice and support at the community level, has been the establishment of Maisons d'Accès à la Justice (access to justice Bureaus) which were fully established in all districts by 2011<sup>264</sup>. These teams are composed of three full-time employees of the Ministry of Justice: one in charge of gender-based violence and two more responsible for other cases. Significantly, they sensitize communities, particularly vulnerable groups, on legal frame works, their rights to accessing justice and provide advice and support without any cost.

Strengthening coordination, collaboration and building synergy to ensure a comprehensive multi-disciplinary response to gender-based violence and violence against women/girls is an effective approach towards addressing gender-based violence. The establishment of Isange One Stop Center is an important lesson to learn from Rwanda's experience and the importance of approaching GBV in a holistic manner. This centre, located in Kigali with five more countrywide, provides a comprehensive response to GBV. A plan to scale it up at decentralized levels is on-going.

As stated by Diana Ofwona, the UN Women Regional Director (at the International Conference on SGBV: Kigali, 2011):

*"It is important to acknowledge the exemplary role played by Rwandan security organs in fighting GBV, both at home and on*

*peace keeping missions, and is an inspiration for other countries. (Diana Ofwona Kigali 2011)*<sup>265</sup>

THE WAY TO GO

Rwanda has developed a comprehensive monitoring plan with gender sensitive indicators for various obligations in different gender-related international instruments. The plan includes clear mechanisms of dissemination and implementation, clear responsibilities for the institutions involved in its implementation, and a monitoring and reporting process. It is nonetheless critical that increased capacity building for implementing institutions at both central and decentralized levels be carried out in order for them to have a good understanding and increase the effectiveness in the implementation of the plan, including documentation of disaggregated data by sex. With the adoption of the second generation of the Economic Development and Poverty Reduction Strategy in 2013, the launch of the Gender Statistical Framework by the Gender Monitoring Office and the National Institute of Statistics of Rwanda, women's rights in all provisions of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa will be effectively implemented, documented and reported.

In light of the upcoming anniversary of ten years since the adoption of the Protocol on the Rights of Women in Africa, I ought to commend the leadership of Rwanda for championing women's rights. It does not mean, however, that the struggle has ended. Many women in Rwanda still live below the poverty line and make their living in seedy professions like prostitution and hawking, which sometimes put their lives at risk.

As stated, by His Excellency the President of the Republic of Rwanda (National Parliament, 2010):

*"The struggle to achieve gender equality does not cease when we experience a few victories. On the contrary, the stakes are raised even higher and we as leaders are challenged to keep on running, to run even faster, and think ahead of our times."*<sup>266</sup>

Therefore, women must make good use of the opportunity in order to build the nation and ensure the wellbeing of all women, girls and their families; that the leadership continuously promotes women's rights as embedded in all gender-related instruments and at all levels; and that the yields in the field which Rwandan women will keep enjoying and celebrating.

## THE WOMEN'S ACT 2010 OF THE GAMBIA

Janet Sallah Njie

At a time when a number of African States are grappling with the challenges of ratification and domestication of the Convention on the Elimination of all forms of Discrimination Against Women, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Protocol), The Gambia has taken the bold and progressive step of enacting the Women's Act, 2010.

The Women's Act, 2010, was enacted on the 12<sup>th</sup> April 2010. The passage of this Act is historic and commendable for The Gambia as a nation. It serves as a source of hope, peace and prosperity for both men and women in The Gambia, as it recognises and gives legal effect and force to The Gambia's international legal obligations and commitments made towards upholding the legal status of women.

This paper briefly examines the Women's Act, 2010. In addition, it highlights legal cases using the Women's Act in securing justice for women and girls while addressing the challenges and prospects. The paper finally explores the opportunities for litigating women's rights in The Gambia.

### THE WOMEN'S ACT, 2010

Prior to the passage of the Act, the original Bill had gone through a very wide and comprehensive consultative process that involved all stakeholders including the legal profession, the judiciary, parliamentarians, senior government officials and policy makers, religious and traditional leaders, grass roots women, community leaders, and civil society organizations.

The Long Title of the Act provides that, it is:

*'An Act to implement the legal provisions of National Policy for the Advancement of Gambian Women and Girls, and to incorporate and enforce the United Nations Convention on the Elimination of all forms of Discrimination Against Women and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.'*

The Act incorporates and domesticates all the provisions of CEDAW and the African Women's Protocol. It does not limit or restrict the incorporation and enforcement of any provisions of these two instruments.

The Long Title is used in interpretation to ascertain the purpose or scope of legislation.<sup>267</sup> This is to ensure that a

purposive interpretation is applied. Thus, it can be argued that, where there is a gap or lacuna in the law, there can be recourse to the original text of these two instruments to fill the gap on the basis of the Long Title as an aid to the interpretation of the Act. This is quite innovative, as it can be further interpreted to mean that, even if a particular provision of these two instruments have not been provided in the law, it can be applied and enforced, by having recourse to the original text as signed and ratified by The Gambia, without any reservations.<sup>268</sup> This has not been tested yet.



### OVERVIEW OF THE ACT

The Act is divided into twelve parts and an examination of these provisions is necessary to determine the extent to which the Act has changed the legal and legislative framework relating to the rights of women in The Gambia.

The first part merely deals with preliminary matters, whereas Parts two to ten, provide for substantive rights accorded to women. Parts eleven to twelve on the other hand, provide for administrative matters relating to the Governing Council i.e. the National Women's Council, the Executive Arm i.e. The National Women's Bureau, and other miscellaneous matters relating to administration, financial provisions and the power to formulate policies relating to the rights and welfare of women.

### WOMEN'S HUMAN RIGHTS PROTECTION

This part provides for women's human rights protection relating to the right to dignity, security of the person,

protection from violence, justice and equal protection before the law, freedom of expression and protection from discrimination and other relevant provisions.<sup>269</sup> These provisions incorporate the Constitutional provisions under Chapter VI relating to protection of Fundamental Human Rights, while making them more specifically applicable to women. The provision relating to protection from violence is innovative, as it provides for a protection not hitherto provided for in the 1997 Constitution or any other law in The Gambia. It reads:

- (1) Every woman shall be protected against any form of physical, sexual, psychological or economic harm, suffering, or violence whether occurring in public or private life.
- (2) Any form of violence against women is hereby prohibited.
- (3) All Government Departments, agencies, organs, public or private institutions shall take appropriate measures to promote and protect women's rights and their legal status from any form of abuse by any person, enterprise, organization or institution.

It is pertinent to observe that the obligation to protect women from violence is imposed on Government and public institutions, organs and agencies and also private enterprises.

#### **GOVERNMENT'S OBLIGATION TO ELIMINATE ALL FORMS OF DISCRIMINATION**

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Section 14 of the Act deals with the Governments' obligations to eliminate all forms of discrimination against women. The provision is quite comprehensive and calls on Government Departments and other public institutions to implement measures, policies and strategies to eliminate discrimination, including periodic training of personnel on gender and human rights, and mainstreaming gender perspective in planning and programming of all activities and initiatives.

#### **TEMPORARY SPECIAL MEASURES IN FAVOUR OF WOMEN**

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Section 15 deals with temporary special measures to be adopted by every organ, body, public institution, authority or private enterprise aimed at accelerating de facto equality between men and women. Under this section a distinction is made between de facto and de jure discrimination. Considering the social and cultural set up of The Gambia, there may be instances where even though the law does not

create or cause any impediment for women, the social and cultural environment may not be conducive for the achievement of equality. Here, Government and all private institutions are called upon to take positive steps to achieve genuine de facto equality. This becomes more relevant in the political arena and decision-making at all levels, where women are not legally barred from participating effectively on an equal footing with men, but may not be able to do so due to cultural bias in favour of men, and stereotypical perceptions of the role of women.

#### **PROHIBITION OF DISCRIMINATION IN THE FIELD OF EMPLOYMENT**

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This part is of fundamental importance to the contribution of women in the socio-economic development of the country. It ensures that women are accorded equal opportunity and equal rights in the field of employment. It also ensures that adequate support services and facilities are put in place for women to continue to take part in nation building during the crucial period of pregnancy, lactation, child bearing and upbringing in general. The provision recognises the contribution of women during the period of maternity, and makes mandatory adequate compensation during this period.

It covers provisions such as free choice of employment and profession, social security benefits, protection of health and safety at work, maternity leave, support services, and protection during marriage.<sup>270</sup> A fundamental and progressive innovation is found in Section 20 dealing with maternity, which provides that:

- (1) Every woman is entitled to a period of six months maternity leave with pay or with comparable social benefit without loss of employment, seniority or similar benefits.
- (2) In order to reinforce the common responsibility of men and women in the upbringing and development of their children, every father is entitled to a reasonable period of time not exceeding ten days as paternity leave, for every child delivered for him.

The Female Lawyer's Association-Gambia (FLAG) acted on behalf of Fatou Manneh (name withheld) whose contract was terminated by her employer upon a request to take up her confinement leave for six months after delivery in January 2012 in pursuance of section 20(1) of the Act. The Company only agreed to pay for 3 months maternity despite the provisions of the Women's Act. Our client was subsequently advised that the actions of the company towards ending her contract and refusing to pay for six months of her maternity

leave is in violation of the Women's Act and thus attracts some punitive measures. The company subsequently paid her maternity leave and reinstated her. This clearly shows that the application of section 20 of the Women's Act ensures that women in The Gambia are not disadvantaged in any way during this crucial period.

#### ELIMINATION OF DISCRIMINATION IN THE FIELD OF EDUCATION

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The relevance of education and awareness in the process of emancipation of women and young girls is recognised under this part. It guarantees the right to basic education in line with the constitution of The Gambia. It also imposes an obligation on Government to ensure that the right curriculum is taught in schools and that such curriculum would be geared towards the elimination of stereotyping of women and girls and ensure their total integration in nation building at all levels. Sections 27 and 28 in particular, ensure the continued education of young girls who are victims of early marriage or teenage pregnancy, and expressly prohibit the expulsion of girls on the basis of pregnancy.

#### RIGHT TO HEALTH

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This Part of the Act seeks to protect the health and reproductive rights of women. It expressly guarantees women the right to health, access to appropriate services, and to take decisions concerning their state of health. It goes further to impose an obligation on Government, in line with CEDAW and the Protocol, to put in place adequate facilities and services to ensure that the health rights guaranteed to women are respected. The effective implementation of this Part is indeed crucial, as it alleviates women's suffering from the menace of high rates of maternal mortality, which remains a problem in Africa, with The Gambia being no exception. The Gambia has a relatively high Maternal Mortality Ratio of about 556 per 100,000 live births.<sup>271</sup>

#### RURAL WOMEN

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This Part recognises the particular and specific problems faced by Rural Women. It specifically imposes an obligation on Government, to take steps to ensure that rural women take part in the formulation and implementation of policy at all levels, benefit directly from Social Security, have access to credit and appropriate technology to develop their capacity, and to benefit from training and education; both formal and informal.

#### MARRIAGE AND FAMILY

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This Part incorporates the provision of both CEDAW and the Protocol relating to marriage and the family. The incorporation of these provisions in our laws is commendable, as an early attempt to legislate for such provisions had been abortive. As far back as 1988, the Law Reform Commission sought to codify Islamic Law relating to marriage under the aegis of the Mohammedan Marriages (Formation and Dissolution) Bill. The proposals from the Commission were not accepted and, as a result, the Bill died a very unnatural death even before it saw the light of day. This Part covers matters of personal law, which are based on traditional or religious practices and on concepts of distinctive roles and rights for men and women. These are areas that had continued to pose considerable problems for women vis-à-vis their legal status and rights to marriage and family life. It covers provisions such as right to marry, consent, registration, right to retain maiden name, right to acquire property, separation, divorce and annulment of marriage, widow's rights and right to inheritance.<sup>272</sup>

Although this Part successfully incorporates the relevant provisions of CEDAW and the Protocol, sections 43 and 44 dealing with widow's rights and right to inheritance are subject to personal law. These two provisions have the effect of maintaining the status quo and reflecting the position of the law prior to the enactment of the Women's Act. This is a critical area to be addressed as it also deals with the sources of Gambian laws as provided in section 7 of the 1997 Constitution which includes customary law and Sharia law relating to marriage, divorce and inheritance.

#### ADDITIONAL RIGHTS UNDER THE ACT

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The provisions of this Part virtually mirror the relevant Articles of the Protocol such as right to peace, protection during armed conflict, food security, adequate housing, protection of elderly women, women with disability and women in distress, as well as budgetary allocations.<sup>273</sup> This constitutes a wholesale incorporation of the relevant Articles of the Protocol. These provisions seek to situate and address the specific problems of African Women, as a special group, deserving special care and attention. The Part also prescribes for necessary budgetary allocation to be put in place to ensure that all the rights guaranteed and protected under the Act can be effectively implemented.

#### DEFICIENCY OF THE WOMEN'S ACT

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A key deficiency of the Women's Act is the absence of Article 5 of the Protocol, dealing with 'Elimination of Harmful Traditional Practices. The saving grace with regard to this particular Article of the Protocol can be found in section 19

of the Children's Act 2005, which expressly prohibits and eliminates all harmful traditional practices as applicable to children under the age of eighteen. However, it fails to define or emphasise particular practices.

In the Gambia, the prevalence of FGM still remains as high as 78.3%, although a recent MICS study indicates a reduction with a new prevalence of 64 per cent.<sup>274</sup> This calls for a concerted effort to raise awareness on the relevance of prohibiting and eliminating of harmful traditional practices. There were three Bills namely the Sexual Violence Bill, the Domestic Violence Bill and the FGM Bill drafted through a study commissioned by the Women's Bureau on Gender Based Violence (GBV).<sup>275</sup> The Domestic Violence and Sexual Violence Bills have been readily accepted and lobbying is ongoing for their enactment. However, the FGM Bill was shelved. There are currently efforts ongoing for the passage of a comprehensive Bill for the Prohibition of FGM. Several civil society organisations are aggressively advocating for such a Bill, with several consultations held with Chiefs and Council of Elders, Women Leaders, Security Officers, Community Leaders, and Circumcisers, and young people who all call for a Law against FGM.<sup>276</sup>

Notwithstanding, the omissions and shortcomings in the Act, it is a commendable innovation taken by The Gambia for the domestication of CEDAW and the African Protocol. It is also pertinent to note that, compliance with the Act is mandatory and non-compliance may attract criminal penalty as prescribed in Sections 73 and 74 of the Act.

#### LITIGATING WOMEN'S RIGHTS IN THE GAMBIA

Litigation can serve as an avenue for realising the rights of women as enshrined in international and national legislation. The Female Lawyers Association-Gambia (FLAG)<sup>277</sup> employs a dynamic approach to women's rights advocacy aimed at securing gender equality in The Gambia and ensuring access to justice for women and girls whose rights are violated. Litigating women's rights cases remains FLAG's flagship evident in two recent unprecedented landmark decisions relating to the enforcement of the Women's Act. The High Court in *Matty Faye v Dawda Jawara*<sup>278</sup> and *Karla Keita v Mustapha Dampha*<sup>279</sup> declared equitable share of the joint property in accordance with Section 43 of the Women's Act, which is a replica of article 7 of the African Women's Protocol on equitable distribution of matrimonial property.

In the case of *Matty Faye*, she was married to *Dawda* for 26 years and had three children. At some point during their marriage, the couple occupied the matrimonial property. At the time they moved into the property, it was incomplete.

The husband had lost his job and was unemployed. *Matty* personally expended a considerable amount of money in developing and completing the property, which was registered in the husband's name. She was able to produce some receipts of the materials she bought and other contributions she made towards the construction, completion and maintenance of the property. All the contributions made towards the matrimonial home were made on the clear understanding that it was a joint matrimonial property with the full consent of her husband. *Matty* also took responsibility for the family while her husband was sick and out of work.

*Matty* approached FLAG for assistance in 2010 when her husband summoned her to the Kanifing Cadi Court seeking for a divorce. She was instructed by the Cadi to move out of the matrimonial bedroom until after the 'Idda'<sup>280</sup> FLAG intervened on her behalf and she stayed in the matrimonial bedroom as prescribed by Sharia.

In August 2011, she was locked out of the property on the instruction of her husband, who further filed an eviction suit in the Magistrate's Court. FLAG represented her, sought for a stay of proceedings after a suit was filed on her behalf in the High Court seeking a declaration that she was entitled to an equitable share of the matrimonial property in accordance with the Women's Act 2010.

The High Court held that the property was a joint matrimonial property because *Matty Faye* spent her monies in the development of the property and based on the conduct of both parties, there was an intention that the plaintiff had a beneficial interest in the property. Upon applying the principle that 'equity is equality,' Justice Mahoney declared that *Matty Faye* had an equitable share of D152,773 (approximately \$4000) and that she was to remain in the property until the said amount was paid. After winning her case, *Matty Faye* said: "I am so grateful to FLAG for taking up my case and ensuring that I do not get kicked out from a house I also owned."

Equitable share in a matrimonial property was also affirmed by the High Court in the *Karla Keita* case in 2012. *Karla* was married to the Respondent in 1967 and had 8 children with him. The Applicant's uncle sold them a plot of land jointly which she paid half and the Respondent the other half, but the property was put in the Respondent's name. Both parties jointly built the house. The Respondent later became blind around 1981 when the applicant became the breadwinner of the family. The Applicant through her farming and selling of vegetables was able to complete the house and fed and clothed their children through school. Then in 2003, the Respondent married a second wife and subsequently

divorced the Applicant. The Respondent then sought to have the Applicant evicted from the property. Hence, she made an application for a declaration that she was entitled to an equitable share of the property. The Court found that the Applicant's hard earned money went into the purchase of the property and towards the construction of the matrimonial home. It was therefore declared that she was entitled to one half of the compound and the buildings, which formed their joint matrimonial property.

These cases clearly illustrate that the Women's Act 2010 can be instrumental in ensuring that women enjoy their rights (e.g. property rights) in case of separation, divorce or annulment of marriage. It also ensures that divorced women will no longer be disadvantaged where they have contributed substantially on the acquisition and

development of matrimonial properties, irrespective of whether the property is registered in their names or the names of their spouses.

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#### **CONCLUSION**

The Women's Act, 2010 is the most progressive piece of legislation that has been enacted by the National Assembly. The landmark cases which utilise provisions of the Women's Act based on the domestication of the Protocol can have the positive effect of uplifting and improving the socio-economic fabric of The Gambia, for the benefit of all men, women, boys and girls. Through more active engagement with the courts and utilization of the Women's Act 2010, it will ensure that women's access to justice is assured.

PART IV - GAPS, SUCCESSES AND PROMISE: THEMATIC CASE STUDIES ON THE PROTOCOL

THE POTENTIAL OF THE PROTOCOL FOR RURAL WOMEN

Sarah Hobson

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Protocol) has the potential to benefit tens of millions of African women living in rural areas when governments not only ratify but ensure its domestication in national law with accompanying resources for its implementation. Articles 7, 13, 18, 19, 21 and 24 have particular relevance for rural women in terms of their economic activities, environment, inheritance, and productive resources.

In partnership with civil society organizations, State authorities at every level have the opportunity to inform and support rural women and their organizations to become familiar with, and use the Protocol to the benefit of their families and communities on a wide scale. Rural women's organizations, of which there are many, can take leadership to ensure their members benefit from the Protocol, but they can do so only if they are given the opportunity and are supported with resources, information and capacity building.

This article highlights three practical ways in which governments, civil society organizations and funders can advance rural women's knowledge and utilization of their rights – through paralegal services, community media, and rural women's self-organizing. It gives examples of initiatives that have improved the lives of rural women, their families and communities in significant ways.

Implementing the Protocol in rural communities is challenging and resource intensive, but the opportunities for change are significant.

SHAPING AFRICA'S FUTURE

Despite the many constraints they face, rural women and their organizations play an important role in achieving a secure future for Africa. Former UN Secretary-General and Nobel Peace laureate, Kofi Annan states that "...our focus on improving the productivity and profitability of smallholder farmers – most of whom are women – cannot waver. They are the ones who put food on our tables. They are the ones who care for our land and water resources. In the end, they will be the ones to propel the economic growth and development of Africa in the 21st century."<sup>281</sup>

UN Special Rapporteur on the Right to Food, Olivier de Schutter, also states that "sharing power with women is a shortcut to reducing hunger and malnutrition and is the single most effective step to realizing the right to food."<sup>282</sup>



Group saving meeting of a women's organisation in Casamance Senegal (photo- New Field Foundation)

RELEVANT PROTOCOL TEXT

The contribution and rights of rural women are explicitly acknowledged in the Protocol.

In particular, **Article 18: Right to a Healthy and Sustainable Environment** advocates State Parties "ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels"; as well as to "protect and enable the development of women's indigenous knowledge systems".

**Article 19: Sustainable Development** recommends that States Parties take all appropriate measures to "promote women's access to and control over productive resources such as land and guarantee their right to property"; and "promote women's access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women".<sup>283</sup>

Also noteworthy for rural women are **Article 7** (separation, divorce and annulment of marriage), **Article 13** (economic and social welfare rights, with specific references to women working in the informal sector), **Article 21** (right to inheritance) and **Article 24** (special protection of women in distress).

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#### EFFECTIVE IMPLEMENTATION

Effective implementation is essential if the Protocol is to have meaning for rural women. At a 2012 workshop on the implementation of the Protocol, keynote speaker Hon. Lady Justice Njoki Ndung'u of the Supreme Court of Kenya emphasized that ratification of the Protocol was the first step towards transformation, but that "without putting in place national laws, structures and processes that popularize, domesticate and implement the Protocol, it remains just a piece of paper".<sup>284</sup> She further referred to the challenge of connecting the rights and freedoms set out in the Protocol with women's rights in real life. "The cost of inaction will inevitably be found in mothers dying while giving birth, girls out of class, women battered by their lovers, and farmers producing food on land they have no title or security for."

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#### THE REALITIES OF RURAL WOMEN

Rural women comprise some 35% of Africa's population<sup>285</sup> but experience limited rights in their daily lives, despite significant improvements in the rights and status of women in national, regional and international policies.<sup>286</sup> Their lives are mostly bound by customary and religious law, male control, low socio-economic status, heavy manual labour, and a responsibility to feed and care for the family with very few resources.<sup>287</sup> They are further hampered by limited access to education, information, health services, and technology; many experience early marriage and domestic violence.<sup>288</sup>

Yet some 70% of Africa's food is produced and processed by women.<sup>289</sup> As smallholder farmers, they have extensive knowledge and practical experience of climate, soil, seed, plants and animals.<sup>290</sup> In many places, they are the guardians of their communities' spiritual and socio-cultural relationship with the land, forests and waters,<sup>291</sup> but increasingly their livelihoods and way of life are under threat due to large scale land acquisitions and natural resource exploitation.<sup>292</sup> Their displacement is likely to lead to greater poverty and hunger, less autonomy, and a greater vulnerability to rising prices.

Nevertheless, the efforts and focus of the last decade are bringing some benefit, particularly with education for rural

girls,<sup>293</sup> reduction in HIV AIDS rates, and an increase in rural women's savings groups.<sup>294</sup> Rural women and their organizations are contributing to, and benefitting from, the efforts to prevent violence against women, to achieve parity at all levels of the political system, and to achieve food security by producing nutritious food for their households and communities, while safeguarding soil, seed and biodiversity. Though infant and maternal mortality rates for rural areas show that there is still a long way to go,<sup>295</sup> rural women are demonstrating their leadership in multiple ways as they adapt to changing circumstances and show their determination to take advantage of openings in political, economic and social spaces.

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#### BEING INFORMED, CREATING CHANGE

Changes in national law affecting the status and rights of women are often slow to reach rural women. Even with the rapid adoption of the cell phone as a means of communication, many women remain ignorant of their rights. With rural women's high rates of illiteracy, limited freedom of movement, and heavy workloads, community radio is an effective way to engage their interest through local language broadcasting.

States that are willing to accord licenses for community radio often see the growth of a dynamic local media that serves the needs of its community with relevant information, thus enabling a greater awareness of contemporary issues. In parts of West Africa, including Burkina Faso, Chad, Mali and Senegal, women activists have established all-women community radio stations that focus on gender issues and advance listeners' knowledge about women's rights. Most of these stations have a large audience of women living in rural areas.

Programs not only provide information, but offer discussion and insight into the opportunities, challenges and dilemmas facing women in their daily lives and how such rights might help them. Coverage of the Protocol by these women's radio stations has been limited, since it has not yet been domesticated or implemented in their countries, so its relevance is still considered limited. Nevertheless, women's community radios continue to provide significant coverage of issues affecting rural women, including land reform, land rights, agricultural policy, and women's rights in a variety of ways.

In Casamance, in southern Senegal, World Education under the leadership of country director Abdou Sarr has established a network of rural radios for peace and development to address the aftermath of twenty years of



conflict. These radio stations are owned and run by community organizations, including peasant farmer associations and youth organizations. Enshrined in the by-laws and policies of the radio stations are specific requirements in relation to gender, ethnicity, and youth. Consequently, rural women play an active role on the governing bodies, in management, as technicians, program producers and presenters.

As Sarr writes in his book, "It is important to regulate the male/female dichotomy at the radio station or the issue of gender will never be properly treated. Individuals and partner organizations need to emphasize gender to overcome the challenge of having good female representation at the radio stations. Women need support to overcome the adversity of men's desire to control radio and to brave the traditions that keep women from participating ...Another challenge is to ensure that women who do come to work for community radio are not treated unequally or given second rate or unimportant jobs...It is important that women are in all of the governing bodies, the management committees, and the teams of technicians and hosts. Women must be placed in all of these positions in order to actively participate in decision making."<sup>296</sup>

Sarr also describes how community radio can address issues that are relevant to the community as a whole, but that are also of particular benefit to women, as illustrated in the following story:

*"For the environment, community radio stations have made progress in helping change the configuration of their areas. We can cite the case of Penc mi FM in Fissel Mbadane, which did remarkable work protecting the Cadd (Ferderbia Albida). This extremely useful tree in the Sahel is in the family of legumes and has a strong capacity to transfer nitrogen from the air to enrich soil. The Cadd has a tendency to lose all of its leaves during the rainy season so it does not interfere with the plants growing at its side, because there is no shading that is harmful to their growth and nitrogen supply is rather essential to their development. The other benefit of the Cadd is that it produces fruit in the form of pods that have a very high nutritional value and are eaten by sheep, cattle and goats. The pods are usually harvested by women who sell them to herders who use them to feed their animals. They are used to fatten animals producing milk. Finally the Cadd is prized for its wood, which is used for timber or fuel.*

*"For all of its benefits, the Ferderbia Albida, or Cadd, is very threatened in the area of Fiseel and its neighbours. The Water and Forest Services have made efforts to ensure its protection but could not stop the rampage. Shepherds, artisans and farmers who live on the land, as well as those from elsewhere,*

*have seriously devastated the Cadd. Faced with this damage, the communities launched a program to protect and sustain the use of this tree, with the Forest Service responsible for protecting the Cadd. The communities mainly focused on the media campaign conducted by Penc mi FM. The program to protect the Cadd has undeniably been a success. After three years of intense communication about the dangers of Cadd destruction to the area's residents and their future generations, and the benefits of this tree to the soil and crops, there was a remarkable regeneration of the Cadd in the concerned areas. Large Cadd that were annually pruned by shepherds or cut down by loggers or farmers, have seen a tremendous regeneration. Younger Cadd have spontaneously grown in the field and fallows have benefited from regular maintenance from the farmers, which has led to a rapid increase in their population. The area has changed considerably, with more Cadd that are more developed, producing pods that are never taken by the community. Women have seen an increase in their sales of pods and farmers and herders have profited from protecting the trees because they enrich the soil. These advantages were at the heart of the community radio programs throughout the campaign. The evaluations that followed showed that the community radio station significantly helped save the Cadd in the area...one woman from Keur Fallé [said] about the role of community radio in protecting the Cadd: "The Cadd have regenerated and allowed all of the women in the villages in this area to harvest large quantities of its fruit which we sell at good prices along the main routes and weekly markets. The increase in revenue has been very advantageous. We will always be the first to defend the Cadd to protect our income. We no longer need the Water and Forest Service to monitor the Cadd; we women are already doing it."<sup>297</sup>*

While this example relates to the environment rather than women's rights, it nevertheless demonstrates the agency of rural women and the benefits that accrued to them because of the focused campaign on rural radio campaign. With the implementation of the Protocol, information could be shared and discussions held on a variety of women's rights issues covered by the Protocol that are particularly relevant to rural women. These could include secure access to fertile land, management of natural resources, and recognition of indigenous knowledge. Campaigns could also be developed by rural women themselves that target specific changes within their own communities.

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#### THE COURAGE TO ACT

Being informed about their rights does not necessarily mean that women will take action, particularly rural women, given the many constraints they face and the courage it takes to

challenge the existing power structure in the family and the community. Rural women are more likely to act to change their situation when they are accompanied by people they know who are trustworthy, knowledgeable about the law, available for discussion, and able to provide guidance on what to do, where to go, and what the likely consequences will be. Navigating the justice system - whether formal or informal - can be intimidating for rural women, as well as time consuming and costly. The presence of a paralegal - often female - based in their community is a significant new resource for rural women to access their rights and improve their lives. When the Protocol is domesticated and implemented, paralegals will be a significant channel, along with community-radio, by which rural women will be able to learn about their enhanced rights and apply them in their daily lives. Living and working in the communities they serve, community-based paralegals use their knowledge of the formal justice system, alternative means of resolution such as mediation, and community education practices to help the poor and marginalized address their justice problems.

In Sierra Leone, for example—where there are only 10 judges and about 100 lawyers to meet the justice needs of over three million people—paralegals are helping to resolve land disputes, negotiate divorce settlements, educate communities about their rights, increase citizens' agency and help them demand more from their governments.<sup>298</sup>

In July 2012, more than fifty organizations from twenty African countries urged governments to embrace the potential of community paralegals. The *Kampala Declaration on Community Paralegals*<sup>299</sup> reflects a new push to seek wider government recognition of the role of paralegals in resolving conflict, supporting access to state services, and fighting corruption. The declaration calls on governments to invest in the scale-up of paralegal efforts. This seems highly relevant for the domestication and implementation of the Protocol.

In French speaking West Africa, the concept and use of community-based paralegals to inform rural women of their rights has grown significantly since the UN Fourth World Conference on Women held in Beijing in 1995. A sub-regional network of lawyers, NGOs and associations from Benin, Guinea, Mali, Niger, Senegal, and Togo met in 1998 in Bamako and expanded the concept of paralegals. As a result, the Association for the Defence of the Rights of Children and Women in Guinea (ADDEF-G) embarked on a paralegal program. With funding from Centre d'Etudes et de Cooperation Internationale (CECI), ADDEF-G launched a pilot project in five communities in the capital Conakry.

Today, ADDEF-G has produced training materials and texts in multiple local languages. It has trained 620 paralegals in 22 prefectures in all parts of the country and provided awareness raising workshops on human rights and the rights of women to 140,800 people, of whom 130,060 were women. This does not include those reached through community radio broadcasts. Results include, among others, the resolution of 230 cases of inheritance rights and 80 cases of violence against women.

There has been an increase in civil marriages, the abandonment of many practices that violate women's rights (such as forced and early marriages), a gradual reduction in the rate of violence, and a greater willingness to report abuses and give testimony. 280 paralegals have also received training in the democratic and electoral process.<sup>300</sup>

Critical to this work has been ADDEF-G's engagement with local authorities to support its activities and to provide training to officials to increase their understanding of the law and the rights of citizens. ADDEF-G works closely with the Ministry of Social Affairs for the Promotion of Women and Children, the Department of Justice, and the Ministry for Security and the Interior. It has secured additional funding to support the paralegal program and two legal clinics from the Fund for Global Human Rights, National Endowment for Democracy and New Field Foundation. It is in the process of consulting with paralegals on how they can be self-sustaining, perhaps with their own autonomous network.

The work of ADDEF-G shows how State parties, civil society organizations, funders and community members can work together for the benefit of all citizens, including rural women. Guinea ratified the Protocol in September 2012, thus laying the ground for domestication to enhance Guinea's existing laws and codes that support women's rights. With a strong paralegal system in place that is already reaching rural women across the country, Guinea has the potential to implement the Protocol in a meaningful way for even its most marginalized and isolated citizens.

The Ministry of Justice in Senegal is also taking steps to offer legal services to its citizens in poor neighbourhoods through a system of 'Maison de Justice'. Funded by the State and local authorities, the Maison de Justice provides legal information on request and helps resolve issues at the community level, through mediation and arbitration within the legal framework. This means cases can be processed more quickly, it reduces the need to take cases to court, and thus greatly limits the time and costs of reaching a resolution. Introduced in several cities in Senegal from 2000 on, the Maison de Justice was opened in 2008 in Ziguinchor, the capital of

Casamance in southern Senegal, an area that is still recovering from some twenty years of conflict.

In 2012, the Ziguinchor Maison de Justice received 513 requests for information (330 from men, 183 from women). The greatest number of inquiries from women focused on the obligations of a landlord and tenant; certificate of nationality; death certificates; and matters relating to the birth, including birth certificates and the annulment of incorrect birth certificates; procedure for the late declaration of a marriage; and the consequences of divorce.

The Maison de Justice in Ziguinchor also saw an increase in 2012 in requests for mediation, partly because of the dissemination of information about its services through community radio. 399 dossiers were presented for mediation, half of which came directly from citizens, and half of which were referred by the prosecution and the police. 57% were cases for men; 43% for women. Of the 399 cases, 67.41% (269) were satisfactorily resolved, 24.31% (97) were not resolved, 6.26% (25) are still in process, and 2% (8) were withdrawn. The greatest number of mediation cases for both women and men related to monies owing, tenant leases, assault and conflict in the workplace. There was a marked difference in certain areas of cases brought forward by men (land, fraud and breach of trust) and women (public injury, responsibility for feeding the family, and failure to maintain the family).<sup>301</sup>

An important question is how to extend the services of the Maison de Justice to people living in rural areas, particularly women who have less opportunity to travel from their villages, to receive information, and to overcome traditional and religious requirements to seek help elsewhere. One key factor is that paralegals have the opportunity to go direct to the Maison de Justice with their concerns and to participate in its management committee. This greatly increases the access of rural women to justice, and to having their problems resolved. Paralegals play a crucial intermediary role, as has been shown in Guinea and other African countries.

For many years, Réseau Africain pour le Développement Intégré (RADI) has been implementing a paralegal program in Senegal. In 2009, it expanded its area of focus to Casamance in partnership with two peasant associations and a women's network for peace. Over a three year period, it has provided training on a range of topics and legal instruments to 18 community based paralegals who in turn have presented information about citizen rights to 17,743 people living in rural areas, of whom 14,692 (82.8%) were women.<sup>302</sup>

According to the verbal report of one paralegal, who is based in a rural community in Ziguinchor District, rural women have been particularly interested in birth certificates for their children. Without this official identification, their children will not qualify for citizens' rights, will not be able to access resources, or gain school diplomas. A great effort is being made by rural women to acquire certificates that are accurate and authentic, so as to avoid difficulties in the future. This often means a time consuming process to gather evidence and present it to the authorities, particularly if the birth certificates are being sought several years after the birth of a child.

One village woman who had been abandoned by her husband was determined to get official documentation for their five children, whom she had raised on her own. She sought the advice of the paralegal in her community, who spoke with a colleague of the woman's husband and informed him of the situation and explained the rights of these children to citizenship. This man in turn discussed the matter with the husband, who eventually agreed to provide confirmation of the existence and birth dates of the five children. He also agreed to start providing some financial support for the five children in recognition of his responsibilities as their father.



**Women's cooperative organising - Sierra Leone (Photo- New Field Foundation)**

#### THE ROLE OF RURAL WOMEN'S ORGANIZATIONS

Just as rural women frequently face discrimination, prejudice and injustice in their daily lives, so groups and organizations run by rural women frequently face stigmatization and marginalization, with an unwillingness by community leaders, local authorities, NGOs, funders and government to support their agency and leadership with resources, technical services and capacity building.

In most African countries in the informal sector, there are thousands of rural women's groups and associations that have their own activities, their own governance, and their own savings. While some of these rural women's groups are strongly affiliated with a political party, many are not and instead have their own mission and purpose for benefitting women in the community, regardless of political or ethnic affiliation. This on-the-ground infrastructure has tremendous potential for mobilizing change, delivering

information, enabling marginalized communities to realize their rights, and supporting rural women to improve their situation and contribute to society.

Many grassroots organizations that are well organized, have a large membership, strong leadership among rural women, and have the capacity to bring the opportunities of the Protocol to hundreds of thousands of rural women and men in collaboration with local authorities. To name but a very few, examples include Association Munyu des Femmes de la Comoé (Burkina Faso), Coordination des Associations et ONG Féminines (Mali), Federation Kafo (Guinea Bissau), Groots (Kenya), People's Surplus Project (South Africa), and Uniao Nacional de Camponeses (Mozambique).

A bold vision, along with the allocation of resources at every level, confidence in local leadership and, above all, recognition of the strengths and rights of rural women's groups to bring about change in their own communities will enable the Protocol to reach its potential and become a genuinely useful instrument.

## THE RIGHT TO EQUAL PROTECTION OF THE LAW - WOMEN'S INHERITANCE RIGHTS IN THE CASE OF MMUSI AND OTHERS V RAMANTELE AND ANOTHER

Anneke Meerkotter, and Tshiamo Rantao, Rantao Kewagamang

This article focuses on the recent Botswana High Court case of *Mmusi and Others v Ramantele and Another*<sup>303</sup>, which sought to enhance women's right to inheritance in Botswana. The judgment in the High Court is of significant importance to women in Africa since it asserts the right of women and men to inherit in equitable shares from the parents' estate. The judgment further emphasises the need for courts, when interpreting customary law, to take cognisance of international and regional human rights law, which recognises women's rights.

### BACKGROUND

Botswana is a sparsely populated landlocked country in southern Africa. The country has increasingly given formal recognition to the rights of women, including passing the Abolition of Marital Power Act in 2004 and the Domestic Violence Act in 2008. Botswana has retained a dual legal system in which customary laws relating to marriage, divorce, custody and inheritance continue to govern most Botswana.<sup>304</sup>

With regard to women's inheritance rights' two provisions in the Botswana Constitution are important:

- Section 3(a) of the Botswana Constitution<sup>305</sup> provides that every person is entitled to the fundamental rights and freedoms of the individual, whatever his or her race, place of origin, political opinions, colour, creed or sex, including protection of the law.
- Section 15(1) of the Botswana Constitution states that no law shall be discriminatory either in itself or in its effects. The term "discriminatory" refers to different treatment afforded to different persons based on race, tribe, place of origin, political opinions, colour, creed or sex. The category "sex" was inserted in 2005, after the ground-breaking case of *Attorney-General v Dow*.<sup>306</sup> Despite this insertion, section 15(4), sometimes referred to as the claw-back provision, exempts from the prohibition against discrimination, laws relating to "adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law". The authors argue that this section should not be interpreted in a manner, which would exclude

customary law from judicial scrutiny in cases where such customary laws blatantly discriminate against women.

Botswana has ratified, but not domesticated, the Convention on the Elimination of Discrimination against Women (CEDAW). The Botswana government, in its most recent periodic report to the Committee on the Elimination of Discrimination Against Women, stated:

*"In the traditional setup women have limited inheritance rights as evidenced by the application of customary law... Daughters generally have no rights to inherit... In this regard the law tends to treat men and women differently. It is more pronounced in circumstances of unmarried women living in their parents' homestead. Upon the death of their parents unmarried women are likely to be evicted by the heir."*<sup>307</sup>

In the Concluding Observations of the Committee on the Elimination of Discrimination Against Women, the Committee urged the Botswana government to:

- Repeal section 15(4) of the Botswana Constitution;<sup>308</sup>
- "View culture as a dynamic dimension of the country's life and social fabric, subject to many influences over time and therefore subject to change"<sup>309</sup>
- "Take appropriate measures to eliminate all forms of discrimination against women with respect to ownership and inheritance of land."<sup>310</sup>

The Committee requested that the Botswana government, in its next report, specifically comment on the steps taken to domesticate CEDAW and to repeal section 15(4) of the Botswana Constitution. The next periodic report on CEDAW is due by Botswana in February 2014.

Botswana has neither signed nor ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

With section 15(4) still firmly entrenched in the Botswana Constitution, the Botswana courts have sought to promote the right to non-discrimination through section 3(a) instead. Thus, in the case of *Attorney-General v Dow*, the Court of Appeal held that section 3(a) confers a right to equal

protection of the law on the individual, which mandated that laws should treat all people equally. However, the courts have vacillated between a liberal interpretation of the Constitution, guided by international human rights law, as in the Dow case, and a more conservative approach, which argues that international law is not binding on Botswana courts and that the courts should keep in mind that Botswana is a conservative society. An example of the latter is the case of *Kanane v S*<sup>311</sup> which considered the decriminalisation of same-sex sexual conduct. The Court of Appeal held that it had to be guided in its decision by ‘public interest’.

### Mmusi and Others v Ramantele and Another

#### SUMMARY OF THE FACTS

The Applicants in the case are four elderly sisters who were born to parents who died in 1952 (father) and 1988 (mother) respectively. The Applicants’ brothers had died in the 1990s. The First Respondent, Molefi Silabo Ramantele, is the son to the Applicants’ half-brother who, they were informed, was born to their father and another woman but who never lived in the family homestead. This homestead is the subject of the Application before the High Court, and now Court of Appeal, which is the highest court in the land. An order was made by the Customary Court of Appeal evicting the First Applicant from the family homestead on the basis that the First Respondent was entitled to the homestead since he had to inherit it from his father having inherited it by virtue of being the last born male child, as per Ngwaketse customary law. It is this order that the High Court overturned.

Judgment was handed down in the High Court in Gaborone by Justice Dr Key Dingake in October 2012. Justice Dingake found in favour of the Applicants and held that the Ngwaketse customary law rule that provides that only the last born son is qualified as intestate heir to the exclusion of his female siblings, violates section 3 of the Botswana Constitution in that it violates the Applicants’ rights to equal protection of the law. The High Court judgment was in line with article 21(2) of the Protocol on the Rights of Women in Africa which states that women and men shall have the right to inherit, in equitable shares, their parents’ properties.

The judgment has since been appealed by the First Respondent to the Botswana Court of Appeal. At the time of writing, the case has not yet been argued before the Court of Appeal. Interestingly, the Attorney General has not lodged an appeal against the High Court decision, even though the Attorney General opposed the application at the High Court.



**Mmusi case before the High Court: Mr Silabo, the Applicants’ nephew, Mrs Jane Lekoko Tshiamo Rantao and Mrs Edith Mus**

#### THE JUDGMENT

The Respondents sought a conservative approach to case. They argued that it was justifiable for Ngwaketse customary law to differentiate inheritance based on gender and position of birth, on the basis that:

- The family house was still available to siblings for events
- Society was not ready for a change in customary law
- Section 15(4)(c) afforded protection to the Ngwaketse customary law rule of inheritance
- International law is not directly applicable in Botswana as a dualist state

Rejecting the Respondents’ arguments, the judgement instead followed a liberal interpretation of the Constitution. The court held that “unfair discrimination principally means treating people differently in a way which impairs their fundamental dignity as human beings” (para 71). The judge referred to a recent ruling in the Botswana High Court, in *Tidimalo Jokase v Gaelebale Mpho Seakgosing*,<sup>312</sup> where Justice Lesetedi stated that a customary rule that completely disregards the right of equality and equal protection of the law runs afoul of the protection under section 3(a) as it gives a male child favourable treatment on inheritance by virtue of his sex.

According to Justice Dingake in the Mmusi case:

*“It cannot be an acceptable justification to say it is cultural to discriminate against women; and that consequently such discrimination must be allowed to continue. Such an approach would, with respect, amount to the most glaring betrayal of the express provisions of the Constitution and the values it*

*represents. What is particularly objectionable about the law sought to be impugned is its underlying message, that implies, that women are somehow lesser beings than men, and are in fact inferior to men” (paras 201 and 202).*

Justice Dingake held that the exclusion of women from heirship amounted to degrading treatment and an offence against human dignity. The court held that culture changes over time, and that the courts should not hesitate to pronounce when culture contravenes the provisions of the Constitution. The judge cited case law from Ghana, Kenya, India, Nigeria, South Africa, Tanzania, the United States and the United Kingdom in support of his decision.

The judge further argued that, though international law was not binding on the courts, it provides a useful guide to assist in the interpretation of constitutional provisions (para 181). Domestic law has to be interpreted in a manner that does not conflict with the international obligations of Botswana (para 114). The court’s approach to regional law is described in more detail below.

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#### REGIONAL HUMAN RIGHTS LAW ON THE RIGHT TO EQUAL PROTECTION OF THE LAW

Article 3 of the African Charter on Human and People’s Rights (ACHPR) provides that every individual shall be equal before the law and entitled to equal protection of the law. Botswana has ratified the African Charter on Human and People’s Rights. The African Commission has interpreted article 3 of the ACHPR to mean that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or class of persons in like circumstances in their lives, liberty, property, and in the pursuit of happiness. It simply means that similarly situated persons must receive similar treatment under law.<sup>313</sup>

The Applicants and court referred to article 3 of the ACHPR in support of the Applicants’ right to equality and protection of the law. The Applicants and the court did not refer to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa<sup>314</sup> or the SADC Protocol on Gender and Development,<sup>315</sup> mainly because Botswana has not ratified either of these instruments. Had Botswana done so, these Protocols would no doubt have been useful in supporting the interpretation of the right to equal protection of the law.

Article 8(f) of the ACHPR Protocol on the Rights of Women provides that “women and men are equal before the law and shall have the right to equal protection and benefit of the law. State parties shall take all appropriate measures to ensure reform of existing discriminatory laws and practices

in order to promote and protect the rights of women”. Article 21(2) of the ACHPR Protocol on the Rights of Women further provides that “women and men shall have the right to inherit, in equitable shares, their parents’ properties.” Similar rights are provided for in the SADC Protocol on Gender and Development.<sup>316</sup>

It is, however, interesting that Justice Dingake referred persuasively to article 3 of the ACHPR and the above decision of the African Commission, acknowledging their specific application to women’s rights, irrespective of whether Botswana had signed onto the Protocol on the Rights of Women.

*“It is axiomatic that by ratifying the above international legal instruments, states parties commit themselves to modify the social and cultural patterns of conduct that adversely affect women through appropriate legislative, institutional and other measures, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men” (para 187).*

Whilst the ACHPR’s Protocol on the Rights of Women did not end up playing a role in the High Court case, it is hoped that the decision of Justice Dingake, which recognises women’s right to equal inheritance, and the eventual decision of the Court of Appeal, will broaden the official recognition of women’s rights under customary law, and create a climate in which Botswana sees the value in ratifying the ACHPR’s Protocol on the Rights of Women and the SADC Protocol on Gender and Development.

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#### LESSONS LEARNED

We should be slow in assuming that there is only one interpretation of customary law. In the Mmusi case, both the Ngwaketse history and modern day application of Ngwaketse customary law has shown increasing recognition of the need for women to be able to inherit. For example, in 1913 the Ngwaketse Chief asked men in his kgotla to change inheritance laws because men were dying without sons.<sup>317</sup> Morton explains that this increased acceptance of women’s right to inherit followed Khama’s law, however subsequent to this, Schapera’s Handbook of Tswana law and Custom, finalized in the 1930s, restated women’s property rights as being what it was in the era prior to Khama’s Law.<sup>318</sup>

The ability of women to inherit under Ngwaketse customary law has nevertheless been recognized in practice.<sup>319</sup> For example, in the 1970s, Roberts and Schapera cited a case

where women had been able to obtain cattle in equal shares to their brothers.<sup>320</sup> The Respondents in the High Court also cited case law in support of the argument that courts increasingly allow women to inherit. See for example, *Tokoyame v Bok*.<sup>321</sup>

Thus, the Customary Court of Appeal could have interpreted Ngwaketse customary law in a manner which allowed the Applicants an equal right to inherit, and it is its decision not to do so, which is problematic.

In the South African Constitutional Court case of *Shilubana v Nwamitwa*<sup>322</sup> Justice van der Westhuizen stated four factors that ought to be considered in determining the content of a customary norm:

- The traditions of the community concerned
- The possible distortion of records due to the colonial experience
- The need to allow communities to develop customary norms
- The fact that customary law, like any other law, regulates the lives of people

Where limitations remain in national constitutions, which exclude the scrutiny of the courts in cases of discrimination based on customary law, it is useful to rely on international and comparative law to argue for a broader interpretation of constitutional provisions. In the *Mmusi* case, the Applicants benefitted from placing before the court sufficient information about international and comparative law.

Increasingly, the monist/dualist dichotomy is becoming stale and courts are stepping beyond these boundaries and utilising outside sources to support their arguments. For

example, in the Zambia case of *Longwe v International Hotels*<sup>323</sup> Justice Musumali stated:

*“Ratification of such instruments by a national state without reservations is a clear testimony of the willingness by the state to be bound by the provisions of such (instruments). Since there is that willingness, if an issue comes before this court which would not be covered by local legislation but would be covered by such international (instrument), I would take judicial notice of that treaty convention in my resolution of the dispute.”*

The Kenya Court of Appeal case of *Rono v Rono*<sup>324</sup> is also instructive. The judgment dealt with a similar section on discrimination (section 82) as section 15 of the Botswana constitution. The case concerned the distribution of the estate of a man who was in a polygamous marriage, with sons from the one marriage and daughters from the other marriage. The court held that there would be no reasonable factual basis for drawing a distinction between the sons on the one hand and the daughters on the other. Section 82<sup>325</sup> contained the same limitation as section 15(4) in the Botswana constitution. The court in that case held that international law was relevant in consideration of the case and the interpretation of the limitation.

Customary law, which is discriminatory towards women, is increasingly being interpreted as being “repugnant to justice and good morals”.<sup>326</sup> Such an interpretation is in line with the approach of the ACHPR Protocol on the Rights of Women, an approach which we should emphasise in all judicial and legislative processes relating to the rights of women.



RIGHT TO INFORMATION AND SELF PROTECTION FOR WOMEN (ART. 14 (D)(E), MAPUTO PROTOCOL) UNDER PRENATAL OPT-OUT HIV TESTING POLICY IN BOTSWANA: A CASE STUDY

Dr. Rekha Kumar

Botswana ratified the African Charter on Human and Peoples' Rights (ACHPR) in 1986. Art.16 of the Charter recognizes the right to health in general. The *Protocol to the ACHPR on the Rights of Women in Africa* (commonly referred to as the Maputo Protocol), was adopted by the African Union in 2003, and entered into force in 2005. It complements the African Charter by expanding the substantive protection of women's rights in Africa, including their health and reproductive rights. During its 52<sup>nd</sup> Ordinary Session, the African Commission on Human and Peoples' Rights adopted its first General Comment on any of its *legal instruments*. The General Comments pertain to Article 14(1) (d) and (e) of the Protocol recognizing women's rights to protection from HIV and to information about their own health status and that of their partners.

The Comments were adopted pursuant to Article 45(1) (b) of the ACHPR, which directs the African Commission to interpret the provisions of the African Charter. As a Protocol to the African Charter, the Maputo Protocol *falls* within the interpretative mandate of the Commission. According to the General Comments, women and girls *face* a "disproportionate risk of HIV infection in Sub-Saharan Africa" with women making up 59% of people living with HIV in the region, and young women aged 15 to 24 being eight times more likely than men to be living with HIV. To keep pace with its commitments, in 2006, the Government of Botswana set up an Inter-Ministerial Committee on Treaties, Conventions and Protocols with the mandate to facilitate the implementation of the reporting obligations of Botswana under the international instruments to which it is a party. It is pertinent to mention Botswana has not yet ratified the Maputo Protocol. However, Botswana has the second highest HIV/AIDS rate not only in the African region but in the world.<sup>327</sup> The number of women aged 15 and above living with HIV are 160,000<sup>328</sup> in the country with a total population of 2 million.<sup>329</sup> A similar levelling off trend has been observed among pregnant women (15 to 49 years) whose prevalence rate was 30.4 in 2011.<sup>330</sup>

This article seeks to identify gaps and opportunities in relation to the Protocol and thereby assess what benefits and opportunities women in Botswana are missing out because Botswana has not ratified the Maputo Protocol. As stated

above in the sub-Saharan region, Botswana has the second highest HIV prevalence (23.9%) in the world (UNAIDS, 2008). Since its first appearance in 1985, the spread of the infection in Botswana has been rapid and explosive. Botswana was the first African country to introduce routine HIV testing (RHT) in public health facilities. The "opt-out" approach to testing policy in Botswana and its outstanding results in mother-to child transmission (MTCT) cases have been reduced from 20.7 % in 2003 to 4.8 % in 2007.<sup>331</sup> Despite the obvious individual and societal gains from such an approach, both in Botswana as well as in other countries where similar policies have been adopted, there remain unsettled issues surrounding HIV-testing. The situation in Botswana is controversial because few organizations have any understanding of how the rights of people living with HIV/AIDS are violated.<sup>332</sup> The success of PMTCT program has made Botswana an example for other African nations. Yet, the antiretroviral treatment alone cannot solve Botswana's devastating HIV and AIDS crisis with regard to health and reproductive rights of its women. These issues appear to be insufficiently appreciated in Botswana, even though their consideration is essential if the country is to align its practices with existing national laws as well as international/regional conventions to which it is a state party.



Young mothers watching a videotaped programme on nutrition at the social centre for women in Bamako - UN Photo

## HIV PRENATAL TESTING: RIGHTS TO INFORMATION AND SELF-PROTECTION PERSPECTIVE (ART.14 (1) (D) (E) OF THE AFRICAN WOMEN'S RIGHTS PROTOCOL

### INTERNATIONAL STANDARDS

According to UNAIDS/WHO Policy Statement (the Policy), the cornerstones of HIV-testing scale-up must include protection from stigma and discrimination as well as assured access to integrated prevention, treatment and care services. The conditions of testing must be anchored in a human rights approach which protects rights and pays due respect to ethical principles.<sup>333</sup> The policy introduced the practice of routine, provider-initiated “opt-out” testing as one of several preventive strategies in use.

### 'OPT-OUT' TESTING

In settings where provider-initiated offers of testing, whether for purposes of establishing HIV status as part of an individual's clinical care and treatment, or to offer pre-natal ART to pregnant women should they be found to be HIV-positive, patients must retain the right to refuse testing, i.e. to 'opt out' of an offer of systematic testing.<sup>334</sup> The Policy makes clear that opt-out testing can only take place in a setting where mechanisms exist for counselling and referral for medical and psychosocial support after testing.

### RIGHT TO INFORMATION, INFORMED CONSENT UNDER THE POLICY

Article 14 of the Protocol aptly articulates within its ambit the role of a state party in protecting women's rights to information and addressing concerns as raised by the WHO Policy statement with respect to opt-out testing process. The parameters under General Comment vis-a-vis the principle underlying the opt-out policy as laid down by the World Health Organisation are parallel to each other with respect to the rights of information, self-protection and informed consent issues. It would be safe to state that the Protocol is a regional extension of the broad international standards of reproductive health and Art. 14 is persuasive enough going a long way in materialising these standards once adopted locally.

### BOTSWANA: A SHINING EXAMPLE IN THE AFRICAN REGION FOR PMTCT

The Government of Botswana provides free PMTCT service. Currently, nearly all pregnant women (95%) have antenatal

care (ANC).<sup>335</sup> Prenatal testing for HIV is a major component in many national strategies to prevent vertical transmission of the disease and reduce the burden of HIV/AIDS. Among developing nations, the Government has made particularly impressive strides in combating the disease, achieving rates similar to those of developed nations where the incidence of neonatal HIV has been virtually eliminated. As a result of a pioneering program introduced in 2004 which uses an “opt-out” approach to testing in antenatal care, the rate of mother-to-child transmission (MTCT) of HIV in Botswana has been reduced from 20.7% in 2003 to 3% in 2012.<sup>336</sup> (See also UNGASS Indicator Data, 2008). Botswana Aids Impact Survey IV (BAIS IV) Report (April 2013) also confirms that up to 96% of babies born to HIV positive mothers are born HIV free through PMTCT programme.<sup>337</sup> HIV prevalence among pregnant women attending antenatal clinics increased from 13.8% in 1992 to 35.4% in 2002 and 30.4% in 2011. BAIS IV report indicates low HIV testing rates, 60.7% of the population aged 15-49 have tested for HIV and know their status.<sup>338</sup>

### IDENTIFYING GAPS AND OPPORTUNITIES IN BOTSWANA IN TERMS OF ARTICLE 14 (1) (D) (E) OF THE MAPUTO PROTOCOL

Despite the obvious individual and societal gains from such an approach, both in Botswana as well as in other countries where similar policies have been adopted, there remain unsettled issues surrounding prenatal HIV-testing. The country has an opt-out policy but without health rights in general and in particular the sexual and reproductive rights for its women. As the Constitution of Botswana do not embody economic, social and cultural rights which include right to health as well. While Botswana has made remarkable progress in social and human development, the level of poverty remains a major concern for an upper-middle-income country, with 20.7% of the population classified as extremely poor.<sup>339</sup> The studies have shown a positive relationship between female-headed households (FHHs) and poverty in urban and rural areas of Botswana. Health risk behaviours included unprotected sex, alcohol abuse, and breastfeeding among potentially HIV positive mothers.<sup>340</sup> Past poverty analysis also revealed that poverty in Botswana has distinct rural and gender dimensions with higher prevalence in rural areas and among female headed households with children and widows.<sup>341</sup> In this scenario, it is crucial to identify and approach the ways in which health risks, experiences and outcomes for women can be treated in a changed manner. Without critical interrogation of policy from women's health rights perspective as advocated by the Maputo Protocol, women remain passive receivers. Uptake of antenatal testing was low from 1999 through 2003.

In 2004, Botswana's President declared that HIV-testing should be routine but not compulsory in medical settings.<sup>342</sup>

A rights-based understanding of participation in theory and practice in line with international standards and regional developments alongside the rights of women is crucial to explore. In these contexts together with Art.14 (d) (e), what the relationship is between participation and decision-making in prenatal testing and access to information, recourse to treatment and accountability among others are issues still uncertain in Botswana. Tensions among the rights of society, would-be mothers and the unborn raise difficult ethical and legal questions regarding decision-making, respect for autonomy, confidentiality, public health and individual (women's) rights that cannot be ignored.

The vulnerability of girls and young women to HIV/AIDS has been documented in many studies and discussed at various United Nations agencies and platforms. Most states agree that young people have the right to develop their capacities, to access a range of services and opportunities, to live, learn and earn within a safe and supportive environment, and to participate in decisions and actions that affect them.<sup>343</sup>

In line with the rights under Art 14 (1) with respect to information and self-protection the WHO Policy provides that informed consent requires awareness of the following:

- the clinical and the prevention benefits of testing;
- the right to refuse;
- the follow-up services offered; and
- in the event of a positive test result, the need to inform anyone with an on-going risk who would otherwise not suspect he/she was being exposed to HIV infection.

PMTCT is one of the key strategies for halting the spread of HIV. A national PMTCT program is in place and is functioning well. Its objective was to reduce MTCT of HIV to 20 per cent by 2006 and to 10 per cent by 2009.<sup>344</sup> Routine testing, in which all patients are tested, unless they opt out, as recommended by UNAIDS and WHO, was introduced in Botswana in 2004. One key concern of testing is prenatal. It has been rightly suggested by Rennie and Behets (2006)<sup>345</sup> that in settings marked by poverty, weak health-care and civil society infrastructure, gender inequalities, and persistent stigmatization of people with HIV/AIDS, opt-out testing policies may become split from human rights ideals that first motivated calls for the universal access to AIDS treatment. Prenatal testing, a crucial segment in this process, is a substantially neglected subject in empirical

research, human rights monitoring and ethical scrutiny in underdeveloped countries including Botswana. The country's testing policy poses potential threats to women's rights to consent, confidentiality and counselling.

In settings where provider-initiated offers of testing, whether for purposes of establishing HIV status as part of an individual's clinical care and treatment, or to offer pre-natal antiretroviral treatment to pregnant women should they be found to be HIV-positive, patients must retain the right to refuse testing, i.e. to 'opt out' of an offer of systematic testing.<sup>346</sup> The Policy makes clear that opt-out testing can only take place in a setting where mechanisms exist for counselling and referral for medical and psychosocial support after testing. The pre-test counselling may be cut short (compared with VCT), but is sufficient enough to provide informed consent.

#### ENSURING A RIGHTS-BASED APPROACH

Globally, HIV-testing is a prerequisite to scaling up the response to AIDS, and access to treatment. It must be grounded in sound public health practice and also respect, protection, and fulfilment of human rights norms and standards. The voluntariness of testing must remain at the heart of all HIV policies and programs, both to comply with human rights principles and to ensure sustained public health benefits. The following key factors, which are mutually reinforcing, according to a UNAIDS report<sup>347</sup>, need to be addressed simultaneously:

- Ensure an ethical process for conducting the test, defining the purpose and benefits of testing; and assurances of linkages between the sites where the test is conducted; confidentiality of all medical information;
- Address the implications of a positive test result, such as access to sustainable treatment and care;
- Erase HIV/AIDS-related stigma and discrimination at all levels, notably within health care settings;
- Ensure a supportive legal and policy framework within which the response is scaled up, safeguarding the human rights of those seeking services;
- Ensure adequate post- diagnostic infrastructure.
- Routine testing was more accepted than voluntary testing and led to substantial increases in test participation and PMTCT interventions without detectable adverse consequences. Botswana's stable and relatively well-resourced government

has provided extensive funding to combat the HIV epidemic and started Africa's first national program for PMTCT of HIV in 1999, providing short-cours Zidovudine (AZT) for mothers and

infant formula at no cost to clients. It has the potential to reduce vertical transmission from 35% to 40% to 1% to 5%.<sup>348</sup>

**Pre-natal Testing**

Year	1992	2002*	2003	2004	2005	2006	2007	2008 ** ( October- December Quarter)
No. of pregnant women %	13.8	35.4	52	75	92	83	94	A total of 11875 new ANC clients were recorded

\*The program became available in every public ante-natal clinic

\*\* Over 11000 under PMTCT, 5 March 2009. Daily News, Gaborone Botswana

Sources: Botswana 2008 HIV Sentinel Surveillance data; Botswana FY Country Operational Plan (COP) 2011

**UNMET CHALLENGES - A COMPELLING CASE FOR BOTSWANA TO RATIFY THE PROTOCOL**

BAIS IV Report (April 2013) confirms a substantially high rate of outcome (96% babies born HIV free) through the PMTCT program.<sup>349</sup> However, questions around women's sexual and health rights surrounding opt-out policies in prenatal cases, and the impact of such policies on women in its cultural settings like Botswana, largely remain unaddressed. The subject equally spins around the conflict between women's reproductive health rights and the pursuit of public health goals, and the potential benefits and risks for unborn children and mothers-to-be. In a public meeting in Gaborone, Botswana, organized by BONELA, a local NGO discussed the ethical issues involved in HIV-testing.<sup>350</sup> The Report of the meeting states that timely diagnosis can allow access to antiretroviral treatment for opportunistic infections or longitudinal care. Horizontal HIV transmission can be prevented through knowledge of HIV status and behaviour change, and vertical transmission, through screening and subsequent interventions over HIV-positive pregnant women. Furthermore, HIV/AIDS awareness and risk reduction may result in those who test HIV-negative. Despite the potential benefits, the meeting reached the consensus that compulsory HIV-testing, even in a high-prevalence country like Botswana, is ethically unacceptable. While, weighing up the risks and benefits, the discussion group concluded that routine testing for HIV/AIDS in the context of an overwhelming public health hazards is ethically defensible on the condition that individual rights are

protected and the negative consequences of being tested (and found HIV-positive) are minimized by appropriate social and institutional support services.<sup>351</sup>

**ISSUES RELATING TO DISCLOSURE OF TEST RESULTS- PARTNER'S DISCLOSURE**

According to National Guidelines on HIV Testing,<sup>352</sup> "All patients or clients- regardless of their HIV status- should be empowered and encouraged to inform their sexual partner/s about their HIV test results. For HIV positive clients who fear to disclose their results, the service provider should offer additional, on-going counselling to help the client inform the partner. The service provider may inform the client's sexual partner/s about the HIV test results in the presence of the client and only upon the client's request." In parallel, Botswana National HIV Treatment Guidelines<sup>353</sup> states that the unique challenges facing HIV-infected women such as child-care demands, disclosure issues, stigma, domestic violence and social ostracism must be considered. However, it explains nothing further on how such delicate issues/needs can be handled.

**SOCIO - CULTURAL FACTORS**

In 1996, the Government promulgated the National Policy on Women in Development. This policy attempts to address the situation of women in Botswana in an integrated and multi-sector manner. It focuses on areas including enhancement on women's health, which will be achieved through promoting women's health including reproductive health and rights.

Also, in the same year, 1996, another milestone in the advancement of women in Botswana was reached with the Government's ratification of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In 1997 Botswana signed a Gender and Development: A Declaration by Heads of State and Government of Southern African Development Community (SADC) (1997). Botswana has made major strides in the advancement of women despite the fact that there are still gaps and constraints. Women's issues are still viewed as the exclusive responsibility of the National Women's Machinery. As such, other extension departments or divisions consider responsibilities in this regard as of secondary concern to their regular work. Therefore cooperation is thwarted; there is no agreement on respective roles and responsibilities of various government departments. So far as the statistics show that most women in Botswana has not yet benefitted from these developments. The major challenge is that women continued to be burdened by reproductive roles. The policies still need to be analysed from gender perspective, a skill and commitment many policy makers do not have.<sup>354</sup>

The subject matter, however, indicates the necessity for Botswana to ratify the Maputo Protocol in order to ensure human rights monitoring of women's health rights not yet advanced in Botswana. According to Rennie and Behets (2006), like the Botswana policy, the UNAIDS/WHO policy clearly aims at producing a win-win situation in which governments can pursue public health goals more aggressively without compromising individual's rights. But the complexities associated with a genuine consideration of human rights, particularly in resource-poor countries, are often downplayed by advocates of the new routine testing policies.<sup>355</sup> It is a well-documented fact that the epidemic has had a gender bias, more especially in African regions, clearly acknowledged by the Maputo Protocol. The prejudicial cultural and traditional practices against women directly influence their decision making in sexual and reproductive health issues as well. Increasing poverty amongst single female-headed households and rising incidence of violence including rape are other contributing factors.<sup>356</sup>

Some women may be reluctant to be tested for HIV, to follow an antiretroviral treatment regimen if found to be positive, or to adopt health behaviours, such as formula feeding for babies, which might expose their positive infection status to their partners. In a society where marriage, as a social institution, is not strong, it is not strange to find that married women do not want to risk their married state. Tribulations such as partner violence associated with HIV-testing have also been identified, for women in particular.<sup>357</sup>

Fears have been expressed with the change in emphasis to provider-initiated testing, that the autonomy (the individual human right) of the patient to freely decline or accept testing could be undermined. The need to comply with the authority of health staff, a lack of time to consider a decision in favour of testing, and the strong normative message to "get tested" may all contribute to undermining patient autonomy.<sup>358</sup> If individuals perceive they lack the freedom to decline a test at a health facility, they may either avoid the facility altogether or decline those services such as anti-natal care, post-delivery care, that are normally attached with HIV-testing.

Addressing HIV-related stigma should comprise an integral part of HIV-testing policies in Botswana, including measures to protect those affected from discrimination in healthcare, work, and other settings. Policies that target HIV-related stigma may also prevent fears of being tested. Botswana already has several innovative programs in place aimed at addressing stigma directly, such as media campaigns.<sup>359</sup> However, a deeper understanding of the dimensions of disease-related stigma and the mechanisms by which it reinforces and generates social inequalities related to gender, ethnicity, and class, is still required.<sup>360</sup>

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## CONCLUSION

There is, however, still a need to do more in this regard especially in the areas of reproductive health rights of women. According to Botswana's response to the Beijing Platform for Action,<sup>361</sup> Botswana's fourth critical area of concern is women and health. The report further explains that any health conditions that affect women and men are similar, but most of these are experienced differently. These differences are a result of the sex dimension, which is the biological and physiological make-up, but more importantly, they are a consequence of gender. Because women lack full and equal participation in private and public institutions, they experience different and additional health barriers to men.

Major challenges include the increasing rate of AIDS/HIV STDs within the population, men's lack of participation in health programmes and lack of access to reproductive health services by teenagers. The impact of inadequate participation of women in decision-making poses the challenges of improving the economic status of women.<sup>362</sup> As discussed above there is clear link between poverty, social-cultural factors, and gender-relations with its different outcomes on women's participatory role in reproductive and sexual health issues.

Given the ethical and human rights concerns that are raised by HIV-testing policies above, particularly an "opt-out" policy

such as that in force in Botswana, it is suggested that ratification of the Maputo Protocol is necessary. Looking to the current judicial developments<sup>363</sup> and generated respect for international standards, it can be estimated that if Botswana ratifies the Protocol, the prospects are good about its internalization of the General Comment Art.14 (d) (e).

The special safeguards with respect to women's right to information and self-protection once put in place will ensure

that women will have all the information necessary to make an informed and free decision about being tested, that women have adequate and readily available protection against violence related to their HIV status, and that information relating to their positive status will be kept confidential to the fullest extent possible, by virtue of its obligations under international codes and conventions

## THE WOMEN'S PROTOCOL AND SOVEREIGNTY: A LOVE HATE RELATIONSHIP

Carole Ageng'o

The adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Protocol) in July 2003 was preceded by negotiations that involved various government departments of the Member States of the African Union. Before the Protocol reached the Summit of the Heads of States and Government, the highest organ in the hierarchy of the African Union, it had to have, at the very least, passed through the Permanent Representatives Committee (PRC) and the Executive Council (EC). These two organs comprise the representatives of the member states who ensure that the interests of the state are included to the greatest extent possible in the negotiations that are ultimately scaled up to the Summit. It can therefore be assumed that the signature of all member states at the adoption of the Protocol was a signification of their agreement with the spirit of the Protocol. In any event their representatives on the PRC and EC had to have contributed to the process of building common ground among the member states on issues contained in the Protocol and which were deemed to be important but not adequately covered in the other international instruments in as far as they related to African women. These instruments include the African Charter on Human and Peoples' Rights and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Given that the Protocol was so widely accepted by no less than the top leadership of the continent, a stranger to Africa would be forgiven for assuming that the Protocol's ratification count stands at 53/54 states with more than half of these at advanced stages in the domestication and implementation process. The reality is disappointingly different. As at June 1<sup>st</sup>, 2013, close to ten years after the Protocol was adopted, the ratification count stands at 36<sup>364</sup>. The Protocol entered into force on November 25<sup>th</sup>, 2005, more than two years after the top leaders of the continent had adopted the Protocol as a sign of their agreement with the spirit of this Protocol. For whatever it is worth, it is noted that the latest accession to the Protocol was by Swaziland on October 10, 2012<sup>365</sup>. Accession to the Protocol refers to the signature or acceptance of the terms of the Protocol by a state party once it has entered into force. This has the same effect as ratification, the only difference being the timing of the action. The last deposit by Cameroon was on December 28, 2012 even though it had ratified the Protocol on September 13, 2012. Compare this to the first ratification by Comoros on March 18, 2004<sup>366</sup>.

So what would possibly reduce the heady momentum at the adoption of the Protocol in 2003 to a near halt so as to take more than two years to get the necessary 15 ratifications to enter into force? What happened between the adoption and ratification? Where did the goodwill of the states go? Before I hazard a response, let me add that as the momentum has reduced, the goodwill has turned into reservations in some cases. Even then, why have the other 18 not acceded to it, and 3 of those not even signed the Protocol?

### SOVEREIGNTY

It is suggested here that the reason for this is sovereignty. You see, at the adoption there was what could be equated to what Huntington terms as "the cultural coming together of humanity and the increasing acceptance of common values, beliefs, orientations, practices and institutions by peoples throughout the world". He goes ahead to say that this means in more specific terms that the idea may mean "some things that are profound but irrelevant, some which are relevant but not profound, and some which are irrelevant and superficial"<sup>367</sup>.

The negotiations referred to above can be analysed against this theory advanced by Huntington. The coming together at the negotiations of the Protocol was inevitable since they occurred within the ambit of the African Union structure. There is no doubt of other varying issues of interest to all the states that were represented at this negotiation. Being a process of give and take, the states considered the relevance and depth of each Article of the Protocol, but in the long run saw no harm in signing onto the Protocol. After all, they could still fall back to the Charter itself as the parent document, which at Article 18(3) provides for the protection of women from discrimination and indeed the protection of the rights of women in accordance with the other international instruments. It is suggested here that most states saw the women's Protocol as relevant but not profound. It was good diplomatic exercise to adopt this Protocol. Yes, diplomatic since most ratifications have been made on the margins of important events in the relevant countries and the governments need to look good. Take Kenya that ratified on the eve of the launch of the Women's Decade in Nairobi, Uganda ratified at the start of the African Union Summit [Heads of States and Government (CHOGM) meeting] and the ratifications continue to come ahead of the Summits of the Heads of States and Government that occur twice a year.

Going back to sovereignty--and yes, diplomacy is an action of sovereignty--it is reiterated that ratifications are happening at a slow pace because of sovereignty. So what is sovereignty? Sovereignty has been defined as the "supreme and independent power or authority in government as possessed or claimed by a state or community"<sup>368</sup>. This means that even as the governments negotiate, they reserve the right to exercise inherent supreme and independent power and authority over the decisions that they make as a result of the negotiations. Interestingly, states and governments purport to cede part of their sovereignty for greater good and thereby exercise limited sovereignty<sup>369</sup>. Did the governments cede part of their sovereignty in 2003 and with the subsequent ratifications? This paper concurs with Morgenthau, in his argument around divisible sovereignty, that sovereignty for reason of its supremacy in authority means that no two groups, powers or entities can be sovereign within the same time and space. He argues that he who is supreme can have no superior above or besides him<sup>370</sup>. It is argued here that it is this card that governments play once safely back in their jurisdictions away from the "shared space" of the African Union or other forums. That is why states signed onto the Protocol and returned home to "forget" about it for periods of up to ten years and counting. That is also why international law allows states to enter reservations to international instruments that they ratify despite the fact that they agree with the general spirit of the instrument. The Protocol is no exception.

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#### ACTION

So is all lost under the seeming tyranny of sovereignty? Should the women of Africa give up on the universal ratification and implementation of the Protocol? The answer is no and suggestions are made here on some possible actions that can enhance the efforts aimed at the full implementation of the Protocol. These actions must, however, be underpinned on creativity and innovation and the willingness to test processes that are generally more acceptable to governments.

First, the Protocol can be tested against the implementation of Article 18(3) of the African Charter on Human and Peoples' Rights as read with Articles 60 and 62 which provide for the interpretation of the Charter as inspired by principles of international law and state reporting respectively. By advocating around state reports, women's rights activists can gain traction on issues that have broad interpretation and can be included under Article 18(3). After all the Charter has attained near universal ratification with the exception of the new state of South Sudan that joined the Union in 2011.

Secondly, the non-implementation of the provisions of the Protocol can be continually challenged at the local context especially in states that have constitutional provisions which make international law automatically applicable on ratification. This has to be done through judicial activism and public interest litigation as a means of exhausting local remedies. The ultimate goal would be to take the cases up to the African Commission on Human and Peoples' Rights or directly to the African Court on Human and Peoples' Rights for those countries that have made declarations allowing their citizens access to the court.

Advocacy around key events must of necessity continue as this has proved to be very effective.

Finally, raising awareness of the Protocol must continue so that the populations in all the states in Africa can begin to use the Protocol as the basis for demanding the protection of the rights of their women who constitute more than half the population of the continent. Such awareness would create the necessary groundswell on the demand side around issues in a manner that cannot be ignored, even if the politics of sovereignty push the document known as the Protocol on the Rights of Women to the periphery. The groundswell would ultimately place the Protocol firmly at the centre where it belongs.



## PART V - BRINGING THE PROTOCOL TO LIFE: CSOS, GOVERNMENTS, AND A MULTI-SECTORAL APPROACH

### RAISING HER VOICE: MAKING RIGHTS REAL FOR WOMEN IN THE GAMBIA

#### African Centre for Democracy and Human Rights Studies (ACDHRS)

In The Gambia, the Raising Her Voice (RHV) Project was managed by the African Centre for Democracy and Human Rights Studies (ACDHRS), an independent, Pan African human rights non-governmental organisation based in Banjul. The Centre works on training, communications, networking and advocacy with a focus on gender equality, conflict transformation, governance and the right to development. It has been from the outset been involved in advocacy for the drafting, adoption and ratification of the Maputo Protocol. It is one of the founding members of the Solidarity for African Women's Rights coalition (SOAWR). The RHV project, which was funded by DFID through Oxfam GB, is a global programme aimed at promoting women's rights and their capacity to engage in governance at all levels. The project was carried out in 17 countries worldwide. In addition to the project in The Gambia, SOAWR members carried out projects in Liberia, Mozambique, Nigeria, South Africa, Tanzania, Uganda and at the continental level.

At first, the Centre campaigned, with support from other organisations such as ActionAid and Oxfam International, on the ratification of **the Protocol**. Consequently, The Gambia did ratify in 2005, with reservations on articles 5, 6, 7 and 14, which are important articles relating to marriage, divorce and harmful traditional practices such as FGM. This situation necessitated that ACDHRS, Gender Action Team others, redesign their strategy for more targeted advocacy and held focused meetings with representatives from the government, in particular the Ministry of Women's Affairs, as well as Members of Parliament and those on committees dealing with gender and women's issues. The reservations were eventually removed in 2006. The African Centre with the members of the Gender Action Team in collaboration with the Women's Bureau then consolidated its intervention by reinforcing its strategy to facilitate and strengthen advocacy activities of civil society organisations to monitor the implementation of the Protocol, studying official reports to the UN and African Commission on Women's Rights, and making comments. At the point when RHV was introduced, the Centre was ready to shift into campaigning for **domestication and implementation of the Protocol**.

This led to the institutionalisation of an advocacy group comprised of over twenty community-based and national organisations working on women's and child rights issues. Thus, a coalition named Gender Action Team (GAT), was created in 2004 for better organisation and coordination of collective efforts, to learn and share experiences as well as to jointly advocate on the domestication and implementation of the African Women's Protocol leading to the passage of the 2010 Women's Act.

This was the first such network in the country, and the members were uneasy at first, as they were more used to competing and working in isolation than collaborating. Hannah Forster, the Executive Director of ACDHRS, recounted, "We had teething problems initially, but later they realised the essence of working together. Now they realise that they need each other to make impact. This symbiotic relationship forms the foundation for the effectiveness achieved in their interventions. We all have the same objectives of promoting and protecting the rights of women, and by extension, children, so working together amplifies our collective voices and efforts to achieve our common objectives."

The GAT had regular meetings to consult, plan and implement advocacy on the domestication and implementation process. ACDHRS encouraged the establishment of smaller working groups for organisations working on similar sub-themes to ensure that there is specialisation within the GAT in order to avoid duplication and to reinforce the much needed diversity of knowledge and skills within the wider group.

Meanwhile, various materials were repackaged by the Centre, including the production of simplified, translated versions of the Protocol into two main local languages, 'Mandinka and Wolof', to support the popularisation and sensitisation process. Posters were developed to share messages in the Protocol, which were also used for focussed group discussion during training. Trained women journalists, traditional communicators and other women's groups; as well as organised radio and television panel discussions helped to disseminate the

provisions and messages contained in the instrument.

In addition The GAT advocated and lobbied key partners and individuals like the speaker of National Assembly, the Vice President and other committees in collaboration with the Women's Bureau for the domestication of the Protocol and this resulted in the adoption of The Women's Act in 2010 by the Gambian Parliament. It has since become the basis of the network's work. On the one hand, more policy advocacy was needed, as the Act itself lacked implementing mechanisms and did not stipulate the redress for rights abuses, and therefore required supporting bills. The GAT and other players, led by the Women's Bureau, have re-strategized accordingly and commenced advocacy, with the participation of partners, on the possibility of developing three bills, to enable the operationalization of the Act and strengthening it, namely on domestic violence, sexual harassment and on FGM bills. Citizens from all walks of life were consulted for better understanding of the draft bills mentioned above and the 2010 Women's Act including parliamentarians, security agents; lawyers and magistrates; teachers; religious and traditional leaders and the private sector to create awareness of the Act's provisions in relation to issues such as gender-based violence; maternity pay and leave; the treatment of women prisoners; among others. They also worked with the Female Lawyers Association Group (FLAG) to support potential prosecution of cases under the Act to demonstrate that trends have changed and women are ready to follow due process to "claim the rights provided under the new law" as indicated in the 2013 Gambia RHV Case study report.

On the other hand, the RHV project has been an opportunity to **raise awareness** on the substance of the African Women's Protocol; the Women's Act 2010 and other women's rights frameworks, such as CEDAW, so that women and their advocates "know what they are, as contained in the law of the land as well as other obligations the state has committed itself" Hannah Forster explained, "We wanted to enhance the capacity of women to understand and use existing laws; and to link up policy advocacy with development work at the grassroots." This strategy was also designed to **increase accountability for women's rights** and monitor government compliance to standards. "If women are involved in advocacy from the onset, this builds ownership and knowledge. They would know the whole process from A to Z –they will be in a position to fight for those rights. They are voters, they can monitor implementation and they can make demands on their elected representatives. Gone are the days when the National Assembly can take the electorate for a ride. They can see you on TV, listen to you on the radio – they know how far you are going to support the cause of women and girls!" The Pressure Groups and Gender Action

Team members also found out that, engagement with grassroots work has given them better data to include in official women's rights reporting.

To move beyond the project towards a sustainable social process, the Centre worked with GAT members to **build their capacity to develop programs** for the political empowerment and participation of women, including skills in planning, budgeting and reporting. Members with grassroots presence were then provided with support to **set up pressure groups** within their constituencies, commencing with women they already knew and worked with. Five Pressure groups were established in all the regions across the country, with 30 members each. The groups were trained by GAT member organisations in women's rights and responsibilities under the law; in advocacy and lobbying techniques; in public decision-making processes; in mediation, peace building and leadership skills. Babung Sidebe from the Central River pressure group had already been a member of the District Authority for many years, but still found this awareness raising very relevant: "There was a perception that women should not be in such positions", she said, "When RHV came and told us of their vision we thought: yes! Women have the worth, dignity and thinking to participate! This should have happened a long time ago!"

After initial training, each pressure group developed its own **action plan**, including their strategies for gaining influence in their various communities and dealing with specific reference to issues of local concern to women and to support women voters, candidates and leaders. For example, in North Bank they agreed to report to the council of elders, including the religious leaders and convene a meeting of the whole village to 'sensitise them on the need to establish the pressure group, with particular reference to the roles and responsibilities.' The group agreed to consult and assist each other in dealing with cases, and commit their 'time, efforts, energy and resources for a progressive implementation of their action plans. In some cases they agreed to open a bank account to which they would personally contribute, in order to cover transportation and meeting costs. In conclusion, they agreed that "The Pressure Group Members will be steadfast with their work realizing that sensitization is enough now – implementation is the urgent agenda. Women have a lot of problems so women should stand up and speak out for themselves" said one of the pressure group members.

As the pressure groups became more established, ACDHRS through GAT linked them up by holding quarterly meetings and eventually provided each community focal point with mobiles to enable them to communicate easily, for information sharing and learning and to support each other.

The scheme included community health, security and legal service providers; GAT members and officials at the Ministry of Women's Affairs thereby **creating a national, grassroots multi-stakeholder network engaged in promotion of women's human rights**.

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#### WOMEN CREATING CHANGE

In discussing how women's experience of rights has transformed their lives over the last two generations at one of the meetings held in the regions, the pressure group members recognised 'NGO awareness raising' as a significant contributor to social change and women's empowerment. They are referring more specifically to the last 10 years with the proliferation of NGO training and empowerment processes. Although the RHV Project has only been implemented for less than half of those years, at the grassroots level, it was unanimously agreed by all of the people involved in this project that it has sparked some big changes in their lives. ACDHRS therefore believes that these changes should be seen in the context of a longer, broader and multi-faceted cultural shift prompted hence better living conditions for women.

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#### WOMEN AND MEN UNITING FOR CHANGE

One major change has been the **creation of the Gender Action Team**, which has for the first time in The Gambia brought together organisations working on women's rights and empowerment. Modu Nyang, from (FAWEGAM), explained: "Networking makes our advocacy stronger and has many benefits. It provides the opportunity for us to share experiences and information, as well as to judiciously access funds for the common good. We add our voice to the call for change in policy at national level, and can create linkages at and between grassroots and national levels." Before GAT, the various organisations had to compete for space and profile, as Hannah Forster recalled: "Previously every group had their own empire, and it was a cause for concern by partners especially the Ministry of Women's Affairs". As a neutral body, the Centre has been able to bring us (GAT) together with the common objective of advocating for the ratification, domestication and implementation of the African Women's Protocol, and later the Women's Act. Members saw that the Centre was leading by example, not keeping the RHV funds for their own work but to support the common cause.

Now GAT as a network is vibrant and active, and members support each other's activities. It has strong relationships with government, members of parliament, lawyers, legal practitioners and political parties, and law enforcement

officials, including the Police Force among its members, giving it a strong advantage in pushing for implementation and use of the Women's Act. The Act has been used by courts in cases of violence against women and more duty-bearers, including the private sector, are aware of their responsibilities in the Act. Through its work with the African Commission on Human and Peoples' Rights (ACHPR), ACDHRS has also introduced members to participate in the Forum on the Participation of NGOs in the work of the ACHPR as well as in the Commission's open session. Some of them have gone further to apply for and been granted observer status.

The joint advocacy of the network successfully pushed for the drafting and passing of the Women's Act, and is now focused on the three supplementary bills. At the recent opening of the National Assembly, in April 2013, during the field research for this case study, the President made special mention of the Sexual Harassment and Domestic Violence Bills, which the GAT expect to be passed by the end of 2013.

While the process of adoption of the Female Genital Mutilation (FGM) Bill has been delayed, it is encouraging to note that after a national consultation, every single Chief in The Gambia signed and endorsed an action plan supporting the drafting of the law; a significant achievement. The GAT Members are justifiably proud, but are also realistic: *"We are starting to see results now, but it is a long term process. Before, you couldn't even talk about FGM, now you can. A first step forward!"* said one of the GAT members at a review meeting in Lower River Region.

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#### WOMEN ENGAGING IN DECISION MAKING

At the grassroots level too, the creation of pressure groups and a national network has given women more support and confidence to put themselves forward and stand up for their rights. Mai Sanyang emphasised the importance of the grassroots networking: "We are all from different communities but we work together like people from the same community. This has helped with my relationships, with family members and others all over. We have indeed forged new partnerships."

A good number of GAT Members have taken up positions in formal governance structures, including local courts, village councils and district authorities. Jalika Janneh, one of two women members of the local tribunal hearing civil cases, described how RHV had empowered her and her colleagues. "The project helped us to recognise and know our roles and responsibilities in the community and the importance of participating in local governance. When I first got involved,

our awareness of women's human rights and duties was very low, women were not engaged, not because they did not want to, not that they did not assert themselves or participate in decision making but because of the patriarchal nature of things, they did not know they could. With this project, we have witnessed improved communication and networking among women in the region."

These kinds of cases are not limited to the pressure group members; the GAT members too have been empowered and encouraged by their engagement and training. Fatou Touray received training from RHV and testified "I realised that our clan has lots of land but it is only distributed among men. I felt that women were not part of our own clan and had no

rights. We were called on to help and contribute to the community but were not given our due. Armed from my training, I wanted to raise this issue in the clan. After initial discussion with my father, I realised that he was scared. However, I reminded him that these things were in the Qur'an and quoted where it was said that land should be distributed equitably so I went ahead. The elders eventually agreed, saying 'your idea is very good, we will look into it'. I kept the pressure on, and today our clan gives land to women and men equally. I am happy now that elders are now giving land to women in other clans within our community. Many more women have land today than ever before in our community."

**WOMEN MINISTERS IN THE 2ND REPUBLIC**

<b>Ministry</b>	<b>Period</b>
<b>Vice president and Minister of Women's Affairs</b>	1997 to date
<b>Minister of Education</b>	1994/1998; 1999/2004
<b>Minister of Basic and Secondary Education</b>	2004 to date
<b>Minister of Higher Education, Research Science &amp; Technology</b>	31/12/2010 to date
<b>Minister of Health and Social Welfare</b>	1994/1995; 1995/1996; 1996-20/03/1997; 1998; 2008; 02/11/2011 to date
<b>Minister of Justice and Attorney General</b>	1994/1995; 1997/1998; 1998/2000; 2008
<b>Minister of Communications, Information and Information Technology</b>	2005-08 03/19/2008 - 02/05/2009
<b>Information and Tourism</b>	1994/1995
<b>Minister for Tourism and Culture</b>	1996/2001; 2001/2004; 2004/2006; 2006/2010 4/02/2010 to date
<b>Deputy Minister of Petroleum</b>	2008/2012;
<b>Minister of Petroleum</b>	2012
<b>Minister of Environment</b>	February 2012
<b>Minister of Fisheries and Natural Resources</b>	2004/2006
<b>Minister of Youth and Sports</b>	1994/1995
<b>Minister for Economy and Finance</b>	2005
<b>Minister for Industry and Employment</b>	2005

Sources: <http://www.statehouse.gm> <http://www.guide2womenleaders.com/Gambia.htm>

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## PROTECTING WOMEN AND GIRLS FROM FGM

The practice of female genital mutilation is prevalent in The Gambia, and has been a sticking point in the processes of

ratification and domestication of the Protocol. A serious rights abuse in itself, it links to issues of health, sexuality and relationships, and reinforces patriarchal attitudes of male domination over women's bodies and lives. Sensitisation has been going on for many years, from many actors, and change is slow but steady. Even when people know they should stop, know why and even claim they have stopped, they may still continue in secret, as GAT members reported, and there is still a lot of work to be done with chiefs and decision makers to support the change.

During a discussion on FGM at one of the meetings, Babung Sidebe, the elder of the group at the workshop, stood up and explained in no uncertain terms why she believed it should stop.

"We inherited FGM, I myself practiced it, but since this project I have ceased to practice, I know the effects it has on women. FGM leads to 3 severe pains for women:

- "The pain on the day you are circumcised. They close the vagina so that no man can penetrate. It is painful, and there is a lot of blood.
- "The pain on the day of your marriage when they have to open you. It is like a second circumcision.
- "That same day, you have to have sex with your husband. It is painful. The pain may cease when you heal but some girls have problems on the day of delivery.

*"It can cause infertility. It affects the menstrual cycle, it can cause divorce in some cases because the scars make it hard to penetrate. It is sad that some women also suffer from a fistula as a result."* Babung explained that only through receiving training could they begin to talk and share experiences, and it is only by making a commitment together they could work towards putting a stop to the practice. *"It is such a personal, shameful experience that women keep it to themselves. We were reserved until the training came along and we are now able to talk about it"*, she said. "Yes," agreed Fatou Sila, *"With all the reasons given by Babung, people should be easily convinced of the ills of FGM and the need to stop."*

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## WHERE NOW FOR RHV AND THE PRESSURE GROUPS?

Raising Her Voice has clearly made an important contribution to the promotion of women's rights and

participation in The Gambia. It has strengthened the capacity of grassroots women activists and the organisations that work with and for women, and has strengthened the voice and influence of the women's movement in the country.

There is enormous ownership of the process across the board, evident in the desire of people involved in the process at all levels to keep it going, with or without funds.

The **GAT coalition** is now well established. Its members are very much aware of the value it has for them and are committed to continue. They want to keep on with the joint advocacy for the three supporting bills, and work more with traditional and religious leaders and political parties. Amie Sillah explained: "Awareness of women's rights is now at around 80%, everyone knows what is wrong and right. Now we need to find strategies to challenge the status quo. We need dialogue and lobbying with traditional rulers, national government and civil society – everyone needs to be involved."

GAT members were full of ideas: to engage sympathetic scholars of Islam to demystify controversial parts of the Qur'an for training material, working with the UNDP on quotas for women in political parties, mentoring women to stand for election and building pressure for reform of the system, and lobbying for the teaching of rights and the constitution in the national curriculum. And for all of this, we hope to receive more training and support in the future – to come up with viable proposals, good research, continuous and effective documentation, monitoring and evaluation, and ultimately to be in a better position to guide and support women activists on the ground.

The **women's groups** too are full of energy and commitment. Inspired by their progress and successes, and enjoying more support than ever from their husbands and communities, they wish to remain engaged in the process. They want more skills to build, grow and respond to new challenges. As Mai Sanyang stressed at one of the workshops, they want to continue to learn from each other and share experiences, to keep moving forward together, and meet with the other groups at intervals, even if not frequently.

The GAT also wants to open up and bring in more people and more organisations to enrich and broaden the process. ACDHRS has even bigger ideas. With their continental mandate and through the SOAWR coalition and other networks, they can build on their experiences and successes with RHV to develop training programmes for other NGOs in the region, on ratification and domestication advocacy, popularisation of the Protocol, and implementation through grassroots engagement. Hannah Forster hopes that, in that

way, *“They can use the same strategies and approaches to make a change. With the availability of support, the next phases of the project could involve a number of countries,*

*creating the opportunity for learning, sharing, exchange visits and comparative studies.”*

## LANDMARK LEGISLATION ON GENDER BASED VIOLENCE IN NIGERIA: HOW CSOS MADE THE DIFFERENCE

### Women's Rights Advancement and Protection Alternatives (WRAPA)

About 70% of women worldwide experience some form of violence in their lifetime, but in Nigeria, that number rises to one in three for women aged between 15 and 24. In nearly half of all cases the perpetrator is the woman's partner or husband, and shockingly, nearly half of all cases are unreported. Impunity and, worse still, gender based violence within the police and security forces are part of the problem.

Over a decade ago, Nigerian organisations realized that more action was needed to address violence against women in the country. As a result, in 2001, the Legislative Advocacy Coalition on Violence Against Women (LACVAW)--a network of civil society groups, religious organizations, international human rights groups and other stakeholders working on various aspects of women's rights-- was formed. WRAPA was designated as the secretariat of the Coalition.

In May 2002, the LACVAW, with support from the International Human Rights Law Group, now LAWGROUP, articulated and submitted to the National Assembly, a Bill titled the "Violence Against Women (Prohibition) Bill, 2003". However, the Bill was not passed during that legislative session. Despite LACVAW's efforts, the Bill did not make much progress until 2008. Concerned about the consistent failure to realize a legal framework to address the increasing prevalence of violence in Nigeria, and with support from the DFID now defunct Security, Justice and Growth Programme, the Coalition coordinated by WRAPA and International Federation of Women Lawyers (FIDA) Nigeria undertook an audit of Bills submitted to the National Assembly to extract and harmonize those that bore particular relevance to the issues of violence against women into one bill that could be promoted for passage by all stakeholders.

This audit was followed by intensive advocacy and campaign activities, which were hyped during the 2009 international commemoration of 16 Days Activism on Violence Against Women. The campaign was sustained by the media support it generated and the Bill's wide endorsement by the citizens of Nigeria, most critically by key actors in the National Assembly, government, the judiciary, leaders of faith based and traditional institutions. On the 21<sup>st</sup> of June 2012, a motion to reintroduce the Bill was raised and approved in the House of Representatives and the VAPP bill was committed to the Committees Women Affairs, Rules and

Business, Human Rights and Justice for consideration. This fast-tracking was on account of the milestones achieved during the tenure of 6<sup>th</sup> Assembly 2010/2011, which included a public hearing and completion of report towards the 3<sup>rd</sup> reading which could not be taken due to the 2011 elections.

Then, in a historic move, on the 14<sup>th</sup> of March 2013, the 360 member House of Representatives of the National Assembly of the Federal Republic of Nigeria – on its third reading - passed the Violence against Persons (Prohibition) 2011 (VAPP) Bill. The key gains in the new law – subject to approval by the Senate – include a more comprehensive definition of rape, harsher sentences for convicted rapists and other sexual offences, compensation for rape victims, institutional support for protection from further abuse through protection orders and a new Agency and Trust Fund to support the rehabilitation of victims of violence. Covering a tragic spectrum of violence, including female circumcision, domestic violence, early forced marriage, rape (including marital) and harmful widowhood practices, the Legislation aims to recognise the rights of all to safety at the workplace and in the home. The Bill also expressly recognises the right to physical and psychological integrity in times of peace and in areas of conflict. Fundamentally, the law aims to eliminate, or reduce to a minimum, the cases of gender based violence.

The Bill in most parts reflects the spirit and provisions of the AU Protocol on Women's rights. It identifies and defines all forms of violence in line with the reality and experiences in Nigeria, and the country's obligations under international and regional treaties especially CEDAW, the African Union Protocol on the Rights of Women, and the Rome Statute. In line with key provisions of the Protocol (Articles 2; 4; 5 (c) and (d); as well as 13) on State Parties responsibilities, the legislation clearly allots specialized roles for line institutions such as social welfare departments, hospitals, religious institutions, the police, and other law enforcement agencies. However, one key loss for the Bill was the removal of the provision on medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the



mother or the foetus. This provision aimed to fulfil the aspiration of Article 14 (2) (c) of the Protocol.

So, who and what made the difference between the rejection of the Bill in 2003 and its approval in 2008, with only minor modifications? WRAPA contends that civil society organisations (CSOs) played a key role in this process.

WRAPA has first-hand experience of the consequences of violent crime, providing legal aid and counselling services since 1999. As a result, LACVAW members deemed the organisation as an appropriate choice for the Secretariat.

As Secretariat for LACVAW, WRAPA and its partners have tirelessly built up pressure on parliamentarians to vote in the VAPP Bill, powered by national and pan-African advocacy and policy connections and the critical mass of seventeen civil society, faith and community groups galvanising support from across Nigeria's ethnic groups and states.

*"The issues I have gone through have made me realise my rights.... I now know that this ignorance of a thing is what is killing women. I have decided to help other women and teach them about their rights because this is what is helping me get back on my feet" a tribunal testimony"*

In 2008, WRAPA joined several other members of the Solidarity for African Women's Rights coalition in a new partnership with the Oxfam Great Britain, Raising Her Voice Programme (RHV). Thanks to this partnership, beginning in 2009, LACVAW was coordinated by WRAPA under the RHV project, whose activities were implemented from 2009 to 2012. Under RHV, a total of eighteen non-governmental, community based and faith based institutions joined forces to promote and protect women's rights in Nigeria. These organisations include Women's Consortium of Nigeria (WOCON), Baobab for Women's Human Rights, Alliances for Africa (AfA), Gender Awareness Trust (GAT), League of

Democratic Women (LEADS), Women Aid Collective (WACOL), Civil Research Development and Documentation Centre (CIRDDOC), International Federation of Female Lawyers (FIDA) Nigeria, National Council of Catholic Women Organization (NCCWO), Federation of Muslim Women Associations (FOMWAN) Nigeria, COCIN Community Development Programme (CCDP), Project Agape, Project Alert, Gender and Development Action (GADA), National Council of Women Societies (NCWS), Alubu for Peoples Rights (APRI) and Women's Consortium of Nigeria (WOCON).

RHV added new momentum to the push for poor women's participation and the domestication of the African Union Women's Protocol, and breathed new life into WRAPA's

campaigning and advocacy around the VAPP bill. Working simultaneously at regional, national, state and grassroots level, skilfully drawing on the coalition members' strengths and connections, WRAPA has developed a suite of interconnected actions that inexorably and relentlessly drove the Bill forward.

There have been awareness raising and public information campaigns to increase the demand for rights, mock tribunals staged to showcase abuses of women's rights, debates and Vox Pop in schools and market places. Parliamentarians were bombarded by persuasive texts messages (SMS), a former MP hired to navigate and fast track the Bill's parliamentary passage and songs and, slogans created with simple, harmonised messaging.

Within the RHV framework promoting women's political participation, more women in decision making positions in community Development Associations means gender based violence is often on the agenda. Increased confidence means more women have been able to collaborate with religious and traditional leaders. Training of journalists around their coverage of violent crimes, and work with law enforcement agents are also contributing to the slow institutional sea change.

The VAPP Bill's approval is a powerful example of the power of collective action and the need for a toolkit of skills: legislative advocacy, public campaigning, grassroots activism, coalition building, communications and networking. A bulging address book is also essential.

"Thank you and keep it up.

Through your SMS, we know what is happening in the country. This is a good initiative and we support the (VAPP) Bill."

Member, Federal House of Representatives,  
Nigeria - Dec.2012

Pending the Bill's approval by the Senate before passing into law, this short snippet of WRAPA and the LACVAW coalition members' work can leave us in no doubt of their energy to sustain the momentum for promote women's rights that working towards the VAPP Bill has generated.

A Sample SMS sent to MPs:

*Good day Hon, The young men who freely and serially gang-raped mothers and grand-mothers who are between the ages of 60 and 80 years in Opi in Nsukka LGA of Enugu state **with impunity did it freely because our law is weak**. Please help*

*to prevent the likely recurrence of those extremely inhuman acts anywhere in Nigeria by supporting the passage of the*

*VAPP bill. LACVAW- 08035927419. Sent on 12/11/2012*

## CAMPAIGNING FOR RATIFICATION, DOMESTICATION AND IMPLEMENTATION OF THE PROTOCOL IN UGANDA - THE WOMEN FIRST COALITION

### Akina Mama wa Afrika (AMwA)

In July 2003, African Heads of State and Government adopted the **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa** during their Second Ordinary Summit which was held in Maputo, Mozambique. African civil society, under the umbrella of the Solidarity for African Women's Rights (SOAWR), the following year in 2004 began to campaign for the ratification and implementation of the provisions enshrined in the Protocol. Due to these civil society efforts, the Protocol became the fastest African instrument to enter into force and today, 36 African countries have ratified it.

At the national level since 2005, Akina Mama wa Afrika (AMwA), began working together with national women's organizations on campaigns aimed at lobbying the government of Uganda to ratify the Protocol. In 2007 a Coalition called the **National Taskforce on the African Women's Protocol**, which later came to be called the Women First Coalition, was formed which comprises of approximately 30 organizations.



### THE ROAD TO RATIFICATION

In 2009, the **Women First Coalition** under the leadership of AMwA, partnered with Oxfam GB to implement the DFID-supported Project called "**Raising Her Voice (RHV)**". The five-year program was launched in August 2008 and ran until March 2013. The Uganda Raising Her Voice Project (URHVP) promoted the rights and capacity of poor women to

engage effectively in governance at all levels. The overall aim of URHVP was to popularize and campaign for the ratification and domestication of the Maputo Protocol.

Through sustained advocacy by the Women First Coalition in partnership with the regional partner coalition, **Solidarity for African Women's Rights (SOAWR)** and the wider women's movement in Uganda, government and development partners, the Government of Uganda ratified the Maputo Protocol with reservations on **Article 14** of the Protocol - **Health & Reproductive Rights** (1a and c)<sup>371</sup> on 22<sup>nd</sup> July 2010 during the African Union Summit that was being hosted in Uganda. This caused a shift in the campaign from ratification to domestication and implementation.

### THE ROAD TO DOMESTICATION & IMPLEMENTATION

With the new change in direction of the campaign, the Coalition devised strategies that would lead to the domestication of the Protocol by the Uganda Government.

These included;

- The assessment of the capacity of the Coalition members in order to strengthen their campaigning skills for the domestication of Maputo Protocol.
- Development of an Advocacy Strategy to assist and guide the domestication campaign, taking into account that some of the Articles in the Protocol were already domesticated in other existing laws.

This required a legal audit of the current Ugandan legal frameworks and policy initiatives in relation to the Protocol. The Advocacy Strategy comprised of 3 levels of advocacy: legislative action; policy action and inter-agency action.

### HIGHLIGHTS FROM THE COALITION'S WORK

In light of the above strategies, the Women First Coalition agreed to focus on two Articles within the Maputo Protocol and cover them in depth in order to achieve meaningful impact. The two were **Article 4 - The Rights to Life,**

### **Integrity and Security of the Person and Article 14 - Health and Reproductive Rights.**

Despite the Uganda Government's efforts to bring maternal health services closer to Ugandan's through decentralized health services, the maternal mortality rate is still the leading cause of death among pregnant women at 310 deaths/100,000 live births (2010)<sup>372</sup> Many women in Uganda, especially rural women, avoid giving birth in hospitals due to the poor state of the health facilities. Women walk long distances to access health services and in some instances hospitals do not have the means to meet the demand. This, together with widespread poverty, results in many expectant mothers delivering their babies at home and at times without the supervision of a health worker. The majority rely on the "expertise" of traditional birth attendants (TBAs), putting their lives in danger, hence increasing the maternal mortality rate.

Against this backdrop, members of the Coalition unanimously agreed to focus the URHVP activities on maternal health in three districts of Uganda, namely Mityana District, Luuka District and Apac District. The Activities focused on Health Centre III at the sub county level. This involved the communities through community dialogues, in order to generate information highlighting the challenges people face whilst accessing maternal health services. The generated information informed the discussion that the implementing partners (among the Coalition members) had with health officials at the Health Centre and with the district health officers.

The work on maternal health was to strengthen the work the Coalition had already conducted during their participation of the **East African Caravan for Maternal Health**, a Caravan with the theme, "Act Now - No woman should die while giving life!" which travelled through East Africa prior to the African Union Summit hosted in Kampala in July 2010 during which African Heads of State and Government discussed issues of maternal and child health. This Caravan, which was organized by AMwA along with ABANTU for Development, UN Millennium Campaign - Africa Region, African Women's Development and Communication Network (FEMNET), and SOAWR, with support from various implementing partners at the national level, was aimed at raising awareness of the crisis of maternal mortality in Africa and advocate for governments, health care providers, adolescents, men, women and the media to each play their part to save women's and children's lives.

The Caravan departed from Nairobi on July 3, 2010, and made stops in Arusha, Mwanza, Kigali, Katuna, Kabale, Mbarara, and Masaka before arriving in Kampala on July 14,

2010. At each stop, public rallies were held, Caravan staff visited health facilities, provided medical services such as blood boosters, de-wormers, family planning counselling, HIV counselling and referrals for testing, provision of mosquito nets and mama kits, and shared information on the right to sexual and reproductive health. Caravan staff also collected signatures on two large petitions, urging Heads of State and Government attending the 15th AU Summit in Kampala to Act Now to prioritize women's health and save women's lives. Hundreds of thousands of signatures were collected. The Caravan also disseminated information widely to the media and to a larger constituency through the use of new media such as social networking sites and blogs. On arrival in Kampala on July 14<sup>th</sup>, a press conference was held, attended by over 40 members of the media and adolescent students from Mengo Primary School. ABANTU, FEMNET, and AMwA staff provided information on the Caravan and the importance of the Summit theme and provided information packets to the media on maternal, sexual and reproductive health. They also urged Uganda to deposit its instrument of ratification of the Protocol. As a result of its timeliness and its impact, the Caravan has been lauded by many organizations as a best practice in civil society awareness-raising and advocacy.



The Women First Coalition also chose to focus on Violence against Women (VAW), primarily Sexual Violence, as another area of focus mainly because various Coalition members and other organizations had existing networks already conducting work on this issue.

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### **KEY CHALLENGES**

There have been some key challenges with the domestication and implementation of the Protocol, which include:

- The Maternal Mortality rate in Uganda is still very high, at approximately 310 to 100,000 live births - an indicator of the grave issue of the still existing poor maternal health situation in Uganda.
- At the sub-county level, access to maternal health facilities is still difficult, due to the great distances expectant mothers are obliged to travel to reach the available health clinics and hospitals. Most times, these health facilities are understaffed and ill equipped, which diminishes the quality of the health service provision.
- Limited funding for the URHV Project activities/implementation and domestication of the Protocol.
- Resistance from religious bodies with regards to issues of abortion and birth control.

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#### ACHIEVEMENTS

Despite the challenges experienced, there have been some achievements that are worth celebrating:

- More and more women in Uganda are becoming aware of the Maputo Protocol and its significance in their everyday lives.
- The success of the **East African Caravan on Maternal Health**. The aim of the East African Caravan on Maternal Health was to create awareness on maternal health issues throughout the East African Region. It highlighted the urgent need to improve maternal health, advocated for the achievement of MDG 5 (maternal health) and MDG 3 (gender equality) and the relevance the Maputo Protocol plays in preventing maternal mortality and other maternal related problems.
- Due to the advocacy work on popularizing the Maputo Protocol, there is now increased awareness of the issue of unsafe abortions, and its effects on young girls and women. There has also been increased media coverage on maternal health in Uganda, in the print media and on local television. For instance, Dr. Olive Sentumbwe -Mugisa, a World Health Organization (WHO) Family & Population Advisor, participated in the East African Caravan and has written about maternal health issues in the Ugandan media <sup>373</sup> .
- Numerous activities of the URHVP involved the utilization of **Advocacy Health Officers** to assist with the generation of information on the status of maternal health services at health centres III's as the sub-county level. These Advocacy Health Teams are now knowledgeable of the Maputo Protocol after undergoing some training. This form of advocacy at the grassroots level has been shown to be effective.
- A number of the Women First Coalition members managed to fundraise and implement activities of the URHV Project.

## IMPLEMENTATION AND MONITORING OF THE AU PROTOCOL ON WOMEN'S RIGHTS - A MULTI-SECTORAL APPROACH

Florence Butegwa

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (hereinafter referred to simply as "the Protocol") was adopted in July 2003. The Protocol embodies legally binding standards on the rights of women applicable to all, irrespective of their marital, socio-economic and political status. It recognises and builds on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Both instruments prohibit discrimination against women, in all its forms. The Protocol obligates all countries, on ratification, to take all measures necessary to ensure that women enjoy and are able to exercise all human rights and fundamental freedoms in the political, economic, civil, social, and cultural spheres on the basis of equality with men. This means there must be both de jure and de facto equality of rights and opportunities for women by, among other things,

- including the principle of equality in the Constitution and other laws,
- enacting legislation that prohibits discrimination,
- integrating a gender perspective in all decisions and
- ensure harmful traditional practices are eliminated.

The Protocol prohibits all forms of exploitation, cruel, inhuman or degrading punishment and treatment. State parties are therefore obligated to enact and enforce laws to prohibit all forms of violence against women; identify the causes and consequences of violence against women and take measures to prevent and eliminate such violence, and actively promote peace education in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise violence against women. State parties must also take effective measures to prosecute and punish perpetrators and implement programmes for the rehabilitation of women victims.

### EXTENT OF IMPLEMENTATION

There has not been a scientific survey on the extent of implementation of the Protocol on Women's Rights in Africa. There is some evidence of progress and that is to be commended. For instance, some countries can boast of:

- Increased numbers of women in national parliaments and in local governments
- Increase in the number of countries with gender policies, and implementing principles of gender budgeting
- Increase in the numbers of countries reporting having a police unit dedicated to responding to violence against women and girls.
- A number of countries have integrated elements of gender equality in national development frameworks

Some countries like Uganda, Tanzania, South Africa, Rwanda, and Mozambique have implemented temporary measures (affirmative action measures), as provided for under CEDAW and the Protocol, to enable the increased participation of women and the girl child in governance and education. A few countries have legislation explicitly prohibiting specific forms of violence against women, particularly domestic violence, rape and defilement.<sup>374</sup> In Tanzania, the Ministry for Women's Affairs developed credit guidelines to assist in improving women's access to credit. This was done after an assessment of the strengths and weaknesses of previous projects aimed at increasing women's access to credit facilities. The government of Tanzania also developed gender-related statistics to augment the government's efforts in the planning process for improving the lives of women and men.<sup>375</sup> In Egypt, the electronic media has been used to create public awareness about practices that are harmful to women in order to lower the school dropout rates of girls from the formal education system.<sup>376</sup>

However, the number of countries registering such achievements remains low, and the rate of progress is slow, and significant challenges remain. They include:

- 1) In the area of governance, while the African Union and the Regional Economic Communities have developed normative frameworks for achieving gender equality in the governance field, this success has not been matched with actual policy practice on the ground. Few African countries have made remarkable progress in achieving gender equality in decision-making positions especially in the three arms of government namely Executive, Legislature and the Judiciary. There is need for gender

sensitive electoral reforms and introduction of affirmative action measures including gender quotas in order to achieve gender equality in governance in Africa.

- 2) Women's access to, and within, decision-making structures is relevant in the context of governance and human rights. Available data shows that millions of adolescent girls across Africa today do not enjoy access to quality education, sexual and reproductive health care, support for mental health issues and disability, protection from violence and other forms of abuse and discrimination. Gender inequality reduces the ability of young women to negotiate condom use and to access services in the community for HIV testing, treatment and care (Youth & UA, 2010, UNFPA, WAC). As a result young African women make up 78%, or 2.5 million, of the young people aged 15-24 living with HIV in Sub-Saharan Africa (GYCA, UNFPA 2011). Young girls are still being targeted for recruitment by military groups, whether to carry weapons and participate in combat or for sexual purposes or other types of servitude.
- 3) Violence against women is endemic. Although there is more information in the public domain, and public debate on the issue of violence against women, this awareness has not translated into a reduction in incidents of violence targeting women, or to better access to services including justice for survivors, or to systematic appropriate responses targeting perpetrators of the violence.

Africa's economies are reputed to have fared reasonably well in spite of the global economic crisis.

*"Since 2000 the continent has seen a prolonged commodity boom and sustained growth trend. And although growth slowed from an average of 5.6 per cent in 2002–2008 to 2.2 per cent in 2009—hit by the global financial crisis and steep food and fuel price rises—Africa quickly recovered with growth of 4.6 per cent in 2010. The continent's growth slipped again in 2011 owing to political transition in North Africa, but rebounded strongly once more to 5.0 per cent in 2012, despite the global slowdown and uncertainty."<sup>377</sup>*

Africa's medium term growth prospects remain strong too at, for example, 4.8 per cent in 2013 and 5.1 per cent in 2014.<sup>378</sup> Unfortunately, most women continue to live in extreme poverty, and are likely to miss the benefits of the projected economic growth and so-called African Renaissance unless concerted actions are taken to ensure economic, social and political rights for women.

#### MONITORING OF THE IMPLEMENTATION OF THE PROTOCOL

The implementation and monitoring of the Protocol is the responsibility of the state parties. The Protocol provides for periodic reporting, in the context of the African Charter on Human and Peoples' Rights<sup>379</sup> by states parties as the formal mechanism for monitoring its implementation. The reporting mechanism ensures that countries undertake comprehensive review of the national legislation, judicial, administrative and other measures taken to implement the Protocol, and report on each aspect of their obligations under the Protocol. The reporting guidelines, issued by the African Commission on Human and Peoples' Rights have been widely disseminated. Reports support the state parties, and the Commission to assess the level of government's fulfilment of its commitments and to hold it accountable. Unfortunately, countries that have submitted to the African Commission have not included in those reports details of actions, if any, taken to implement the Protocol, or the challenges preventing implementation. Similarly, countries reporting under the Solemn Declaration on Gender Equality in Africa, only confirm ratification of the Protocol!

#### A MULTI-SECTORAL AND INTEGRATED APPROACH FOR THE IMPLEMENTATION AND MONITORING OF CEDAW

The critical question is what needs to be done to accelerate implementation, monitoring of, and reporting on the Protocol across all state parties. There are many women's rights groups which are dedicated to advocating for the domestication and implementation of the Protocol. They include the Solidarity for African Women's Rights Coalition (SOAWR), and Gender is my Agenda (GIMAC), which between them boast of a membership of more than 60 organisations and networks from different parts of Africa. There are many more organisations and groups working at national and community levels, and development partners ready to work with and support countries/governments to take significant incremental actions to fulfil their respective obligations under the Protocol.

The Protocol addresses different aspects of the lives of women. Article 2 obligates states parties to take all appropriate measures- judicial, legislative, administrative, and any other measures - to address all forms of discrimination - direct and indirect- in all spheres of life. It is therefore important for us to address ourselves to this question: who is responsible within the state to fulfil the obligations under the Protocol? The most rational response

to this question is that since women's rights under the Protocol cover all areas every sector ministry, department and agency of government has to take responsibility. Discrimination against women is a social problem that is multifaceted. Discrimination in the economic sphere has clear implications for women's ability to participate in politics on an equal basis with men and vice versa. Discriminatory laws have ramifications for women's personal security, access to justice, and to personal empowerment. The elimination of discrimination in all its forms therefore, requires a multi-disciplinary, multi-sectoral and integrated approach. Effective implementation of the Protocol and facilitation of a multi-sectoral and integrated approach requires acknowledgement of this central responsibility from the different sectors and divisions of government, including the ministries of justice, economic planning, finance, agriculture, trade, and natural resources. All sectors have to take on specific responsibilities and work together to promote gender equality in all spheres of life.

The competencies of different departments in making interventions within the Protocol framework, if harnessed in a concerted, sustained and coordinated manner, can significantly reduce discrimination against women, and support the enjoyment of human rights by women on a basis of equality. Institutionalizing a multi-sector approach will also have a positive impact on monitoring and reporting. Within each sector annual plans and audits, collection of sex disaggregated data and impacts of programs on women will become routine, making monitoring, compilation and preparation of periodic progress reports substantive, more meaningful in monitoring progress, and a lot cheaper for the national machinery for women to implement, as it will be tapping into the resources of other government departments and ministries.

The adoption of a multi-sectoral and integrated approach to eliminate discrimination against women requires the government, its agencies, and the general public to recognize discrimination against women as a problem for the entire society, with social and economic costs to the country. This is a fundamental shift in conceptualizing discrimination against women – currently viewed as a problem affecting women only. Secondly, there is a need for policy commitments, at the highest level of government, to a multi-sectoral and integrated approach to eliminate discrimination against women. This requires the adoption of a framework, with guiding principles and targets, and clear indicators, identifying the key actors in the process, backed by resources from different government departments, and a coordination mechanism. The national machinery for women in a country should play a catalytic role to ensure

consistency in the understanding of the meaning and scope of the Protocol among the different sectors and to facilitate capacity building for effective participation of sector ministries and agencies. The national machinery should also play a critical advocacy role to mobilize the political commitment required for the state party to meet its legal Protocol obligations.

#### CLEAR ROLES FOR DIFFERENT GOVERNMENT DEPARTMENTS AND AGENCIES

A multi-sectoral approach requires that different ministries or departments of government play lead roles in planning, budgeting for, and implementing actions under specific articles of the Protocol to address discrimination occurring within their respective mandates. The ministries of labour should for instance take the lead in ensuring that women can enjoy the right to work in all its perspectives. The Ministry of Health is the obvious lead in ensuring the right to health for women. The Ministry of Justice and other key players in the law and order sector should be accountable for the women's right to justice, equality before the law, and security of person, including freedom from violence targeting them as women. Where discrimination transcends any one functional area of government, and its elimination ought not to be the responsibility of one ministry, collaboration and coordination is essential. For example, rights of rural women should be addressed by a number of ministries including that of justice, agriculture, environment, finance, commerce and industry, water, health, roads/communication, and energy.

The multi-sectoral approach can work within existing government structures and processes. Each sector ministry would need to strengthen its planning, implementation and monitoring mechanisms to ensure that they have the capacity to analyse issues from a gender perspective and can identify areas that promote or hinder achievement of de facto equality within their respective mandates. The approach can be cascaded to the local government and to individual departmental level.

#### THE ROLE OF PARLIAMENT

National and lower level assemblies have a crucial role to play in the implementation and monitoring of the Protocol on women's rights. First of all, they need to ensure that all legislation is Protocol compliant. The approach envisages representatives in parliament or local councils reviewing Bills that are placed before them to ensure that the provisions promote gender equality and equity and that none of the provisions is likely to bring about any form of



discrimination against men and women in law and in practice. Parliament has the overall responsibility to support and enact legislation that promotes equality and condemns discrimination against women. Legislation should promote positive action on the part of government to minimize acts that are discriminatory or whose effects are discriminatory. Members of parliament should check to ensure that the budget proposals from all sector ministries adequately budget for actions that implement the Protocol.

#### THE ROLE OF CIVIL SOCIETY ORGANIZATIONS

Civil society organizations (CSOs) are important partners in development. In countries the world over, CSOs, particularly women and human rights organizations are in the forefront of advocating for equality for all. They are involved in offering direct services like legal aid, advocacy for law and policy reform, legal and human rights awareness and education, training and mobilizing resources to increase access to credit facilities for women and men in order to empower individuals and communities to use the law to defend and protect their rights. CSOs work at all levels- international, regional, national and at the local levels- by transposing global issues into action at the local level and vice versa. They have therefore, developed significant technical expertise in the implementation and monitoring of human rights instruments, including the Protocol on Women's Rights. Civil society organizations can complement the government-led multi-sectoral approach by:

- Mobilizing and sensitizing communities on the rights of women, and raising awareness about the Protocol
- Participating in building capacities at different levels and in relevant institutions, including ministries and local governments involved in the implementation of the Protocol
- Participating in and supporting the collection of data and documentation of best practices and impact of the various programs and activities on the lives of women and society as a whole
- Advocating for additional resources to implement the Protocol

#### THE ROLE OF DONOR AGENCIES AND THE UNITED NATIONS

United Nations agencies and the donor community also have important roles to play in the use of a multi-sectoral and integrated approach as a means of accelerating the enjoyment of rights by women. They can encourage government partners, as well as provide resources, to adopt a coordinated multi-sectoral approach to women's rights.

They can support the development of capacities for data collection, and for managing the monitoring and reporting on progress in the implementation of the Protocol.

They can assist countries to prepare their delegates for the review meetings by the African Commission on Human and Peoples' Rights. The donor community and the UN agencies can facilitate linkages and learning between different countries. This would promote experience sharing and tapping into other resources that would support the implementation of the Protocol.

#### EXAMPLES OF MULTI-SECTORAL AND INTEGRATED APPROACHES

The proposed approach for the elimination of discrimination against women builds on comparable efforts over the last several decades. Multi-sectoral and integrated approaches have been used in addressing diverse and complex issues including violence against women, and the HIV/AIDS scourge.

The proposed model can make use of and benefit from these approaches which have been tried and tested. In 2001, the United Nations General Assembly adopted the Declaration on HIV/AIDS and called on governments to adopt a multi-sectoral, integrated approach to HIV/AIDS.

This involves the collaboration of the public and private sector in addressing the problem. HIV/AIDS is recognized, not just as a health issue but the concern of every sector. In that respect, each sector must establish its own contribution to combating the HIV/AIDS scourge and coping with its effects. For most countries, a national policy and strategic framework, and a commission or committee are set up to streamline and coordinate the efforts. The United Nations has established UNAIDS as the UN secretariat for support and technical backstopping of countries as they develop strategic plans and establish commissions to organize and coordinate a multi-sectoral approach.<sup>380</sup> As a result of such an approach, some countries like Uganda have registered a decline in HIV/AIDS prevalence.<sup>381</sup>

A comparable approach was developed by the Commonwealth Secretariat with the aim of supporting and facilitating a multi-sectoral and integrated approach for the elimination of gender-based violence against women. The Commonwealth model, developed in the early 1990s has been adopted and is currently being implemented by over 15 Commonwealth countries, including Uganda, Kenya, Malawi, Zambia, and Mauritius. The model proceeds on the basis of government's commitment to address violence against women as a social evil whose root causes and effects are

multifaceted. It envisages different arms of government playing specific roles that are coordinated through an agreed-upon mechanism by the different actors. Time-bound targets are negotiated through the mechanism, just as is the overall monitoring of progress.

The different stakeholders institutionalize the plan according to their critical areas of intervention. Under the model, for instance, the Ministry of Justice (including any law reform commissions) could take the primary responsibility for effecting legal reforms to facilitate the elimination of violence against women, while the Ministry of Education will contribute towards change of attitudes by incorporating appropriate learning materials in the syllabi and teacher training.

Liberia has formulated a national response for the prevention and case management of GBV to be implemented using multi-cultural and multi-dimensional approaches. The plan aims to:

- strengthen the health sector for effective and efficient response to GBV case management, documentation and reporting on clinical evidence
- reform the legal system to deal more efficiently and expeditiously with violence, particularly with the security of women and girls
- put in place systems and outreach services for psychosocial support and 'safe homes' for survivors of GBV
- provide appropriate skills to social and health professionals
- support for women and girls' economic and social empowerment

The plan of action is designed to be implemented by sectoral ministers, development partners, UN agencies, civil society organisations, community leaders and the media. The government of Liberia was convinced that the implementation of this multi-sectoral Plan of Action would move the country closer towards being a country where women and girls can live free from fear and violence and enjoy mutual respect and confidence. "We are determined to combat violence against women and girls and to protect the human rights of all peoples in our society. We will furthermore enforce the Rape Law – which came into effect the day after my inauguration – without fear or favour," said H.E. President Ellen Johnson-Sirleaf.<sup>382</sup>

Several lessons can be drawn from these experiences. These include increased level of commitment on the part of governments, improved analyses and data collection practices in the respective area, and a focus on capacity

building to enable all actors to participate in addressing the problem. There has also been a noticeable increase in resources allocated for activities, especially with regard to the fight against HIV/AIDS and increased sharing of information. Coordination and consultation among government departments and divisions has also significantly improved. The change to a multi-sectoral and integrated approach has also promoted the involvement of the people affected by the problem. They participate in formulating the policies and designing the intervention and identifying practical solutions to their problems.

The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), in collaboration with partners like the SOAWR Coalition, OXFAM, and the Women, Gender and Development Directorate of the AU Commission, is promoting the use of a multi-sectoral approach to the implementation of both CEDAW and the Protocol. UN Women has developed and published a handbook<sup>383</sup> to serve as a tool for use by governments and their partners. Over 30 AU member states have received training on how to use and adapt the guidelines in the handbook to the national/local context. Several countries are in the process of applying the approach in their respective countries. The challenge remains how to support those countries, share the good practices widely, and encourage others to adopt a multi-sectoral approach for accelerated implementation of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

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## CONCLUSION

Discrimination against women is pervasive and cuts across all facets of life. Despite inadequate statistical frameworks to measure the impact of discrimination on social, economic and political development of individual women and men, its negative effects are widely known. The AU Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women provides a framework that each ratifying country can use to make and track progress towards the elimination of discrimination against women. By enlisting the involvement of all public and private institutions, to address gender-based discrimination within their respective mandates, UN Women and partners that advocate for the adoption of a multi-sectoral approach revolutionises the conceptual and structural premise prevailing in most countries. The approach brings anti-discrimination work within the core development planning process of government, subject to the annual review and budget allocations like other evils targeted by government programming.

## RECOMMENDATIONS

### TO STATES PARTIES TO THE AFRICAN WOMEN'S RIGHTS PROTOCOL

(Angola, Benin, Burkina Faso, Cameroon, Cape Verde, Côte d'Ivoire, Comoros, Congo, Djibouti, Democratic Republic of Congo, Equatorial Guinea, Gabon, The Gambia, Ghana, Guinea-Bissau, Guinea, Kenya, Lesotho, Liberia, Libya, Mali, Malawi, Mozambique, Mauritania, Namibia, Nigeria, Rwanda, South Africa, Senegal, Seychelles, Swaziland, Tanzania, Togo, Uganda, Zambia and Zimbabwe)

- Ensure girls enjoy a safe educational environment; and effectively prosecute violators who commit sexual violence against girls
- Adopt and apply a multi-sectoral approach to deliver on obligations under the Protocol
- Follow the example of The Gambia and Rwanda by removing reservations entered against certain provisions of the Protocol. For example Article 14 (2) (c) on Reproductive Health Rights
- Ensure women and girls are legally protected from female genital mutilation and take serious action against perpetrators
- End legal and de facto discrimination against women
- Ensure the presence of female paralegals within communities to support rural women resolve land disputes, negotiate divorce settlements, educate communities about their rights, increase citizens' agency and help them demand more from their governments
- Start reporting on progress being made in honouring obligations under the Protocol using the Reporting Guidelines provided by the African Commission on Human and Peoples' Rights
- Raise awareness of the provisions of the Protocol among the general public, the Judiciary, and officials in all government sectors.

### TO NON-STATE PARTIES TO THE AFRICAN WOMEN'S RIGHTS PROTOCOL

(Algeria, Botswana, Burundi, Central Africa Republic, Chad, Egypt, Ethiopia, Eritrea, Madagascar, Mauritius, Niger, Sahrawi Arab Democratic Republic, Sao Tome & Principe, Sierra Leone, Somalia, South Sudan, The Sudan and Tunisia)

- As a matter of urgency **RATIFY** the Protocol on the Rights of Women in Africa without any reservations.
- After ratification implement the recommendations made above to state parties.

### TO THE AFRICAN UNION COMMISSION

- Open the Summit spaces for civil society organizations to effectively engage with Member States on implementation of the Protocol
- Work with civil society organizations to realize the goals of the African Women's Decade.
- Ensure that in the development of the new AUC strategy and the AU Agenda 2063 that women and women's land rights are not displaced in the push for the economic growth of the continent.

### TO DEVELOPMENT PARTNERS

- Through bilateral and multi-lateral collaboration support Member States in the application of a multi-sectoral framework to fast-track implementation of the Protocol's various provisions.
- Support civil society organizations' complementary initiatives' that support implementation of various provisions of the Protocol so that African women can reap its benefits.

#### **TO CIVIL SOCIETY ORGANIZATIONS**

- Double efforts at supporting and holding Member States accountable to honour their commitments to women.
- Implement projects that bring real change to the lives of women and especially rural women; and which empower them to exercise their various human rights provided for in the Protocol.

## REFERENCES

<sup>1</sup> Equality Now supported the case through its Adolescent Girls Legal Defence Fund and has since partnered with Zambian organizations [Campaign for Female Education (CAMFED), Forum for African Women Educationalists of Zambia (FAWEZA), Planned Parenthood Association of Zambia (PPAZ), Women and Law in Southern Africa (WLSA) –Zambia, Young Women’s Christian Association (YWCA) Council of Zambia, Zambia Association for Research and Development (ZARD), Zambia Media Women’s Association (ZAMWA), Zambia National Women’s Lobby (ZNWL) - Men’s Network] in forming a national coalition, The Tisunge Ana Athu Akazi Coalition (“TAAAC”), that seeks to end violence in schools.

<sup>2</sup> The Protocol on the Rights of Women in Africa is available at: <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf>

<sup>3</sup> These SOAWR members include the Inter-African Committee on Harmful Traditional Practices Affecting the Health of Women and Children, African Women’s Development and Communication Network, Equality Now, African Centre for Democracy and Human Rights Studies, Oxfam, Akina Mama wa Afrika, and Women’s Rights Advancement and Protection Alternatives.

<sup>4</sup> The African Charter was adopted in 1981 and entered into force in 1986.

<sup>5</sup> However, a publication by the Centre for Human Rights at the University of Pretoria (*The Impact of the African Charter and Women’s Protocol in selected African States*, Pretoria: Pretoria University Law Press, 2012) comes closest by evaluating the influence of the Protocol (and parent Charter) in 19 countries (Benin, Burkina Faso, Cameroon, Chad, Congo, Côte d’Ivoire, Eritrea, Gambia, Kenya, Lesotho, Mauritius, Mozambique, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa and Zimbabwe). The publication is available at: [http://www.pulp.up.ac.za/cat\\_2012\\_07.html](http://www.pulp.up.ac.za/cat_2012_07.html).

<sup>6</sup>Comprising of members of the ACHPR, representatives of African NGOs and international observers

<sup>8</sup>Represented at the meeting were ACDHRS, Akina Mama wa Africa, the Association of Malian Women Lawyers (AJM), the Association of Senegalese lawyers (AJS), Equality Now, Ethiopian women’s Lawyers Association (EWLA), Femmes Afrique Solidarite (FAS), FEMNET, WILDAF, and WRAPA.

<sup>9</sup>African Women’s Development and Communications Network (FEMNET), Oxfam GB, FAHAMU and Equality Now Africa Regional Office

<sup>10</sup> African Centre for Democracy and Human Rights Studies (ACDHRS), Akina Mama wa Afrika, Association des Juristes Maliennes, Cellule de Coordination sur les Pratiques Traditionnelle Affectant la Sante des Femmes et des Enfants, CREDO for Freedom of Expression and Associated Rights Coalition on Violence Against Women (COVAW), Equality Now-Africa Regional Office, FAHAMU, FAMEDEV-Inter-African Network For Women, Media, Gender and Development, African Women’s Development and Communication Network (FEMNET), Foundation for Community Development (FDC), Oxfam GB, Sister Namibia, Union Nationale des Femmes de Djibouti, University of Pretoria Center for Human Rights, Women’s Rights Advancement and Protection Alternatives (WRAPA), Women in Law and Development in Africa (WiLDAF)

<sup>11</sup>Manji, Firoze FAHAMU (2007) *Mobile Phones, Human Rights and Social Justice in Africa*, FAHAMU : London

<sup>12</sup> The African Union Protocol on the Rights of Women in Africa: Not yet a force for freedom; The Protocol to the African Charter on Human and Peoples’ Rights on Women’s Rights in Africa: From ratification to the Realization of African women’s human rights (September 2005); Second anniversary of the Protocol on the Rights of Women in Africa: Challenges Ahead (November 2007); Breathing Life into the African Union Protocol on Women’s Rights in Africa; A publication commemorating the 5th anniversary of the Protocol’s entry into force (<http://www.pambazuka.org/en/issue/507>) (November 2010).

<sup>13</sup> UN Women (2010) *Multisectoral Approach to Women’s Rights in Africa: Manual*

<sup>14</sup>Article 2 of the African Charter on Human and Peoples’ Rights adopted by the OAU on 27 June 1981 and entered into force on 21 October 1986

<sup>15</sup>*Id.*, Article 18 (3)

<sup>16</sup>*See*, Article 18 (1) and (2) of the Charter

<sup>17</sup> *See*, Constitution of the Republic of Kenya, (as amended in 2008) article 82 (4) (b) and Constitution of the Republic of Zambia of 1991 (as amended in 1996) article 23 (4) (c)

<sup>18</sup> Ndulo, Muna, "African Customary Law, Customs, and Women’s Rights" (2011). *Cornell Law Faculty Publications*. Paper 187.<http://scholarship.law.cornell.edu/facpub/187>

<sup>19</sup> Article 2 (2) of the Protocol on the Rights of Women in Africa

<sup>20</sup> *See* above Article 6

<sup>21</sup> Article 6 (c) of the Protocol was referenced in the South African case of *Hassam v Jacobs*[N.O. Master of the High Court & Others Case No. 5704/2004 [2008] South Africa, High Court] which *inter alia* noted the that the deceased wife even though in a polygamous union was entitled to inherit a portion of the deceased estate.

<sup>22</sup> Article 20 of the Protocol on the Rights of Women

<sup>23</sup> *Id.*, Article 21

<sup>24</sup>*Id.*, Article 4 (2) (a)

<sup>25</sup> Bond, Johanna, *Constitutional Exclusions and Gender in Commonwealth Africa*, Fordham International Law Journal, volume 31, Issue 2, (2008) p. 316

<sup>26</sup> Article 4 of the Protocol on the Rights of Women

- <sup>27</sup> Rosaria Mashita Katakwe versus Edward Hakasenke And Others, High Court of Zambia 2006/HP/0327 available at <http://ww3.lawschool.cornell.edu/AvonResources/RM-Zambia.pdf>
- <sup>28</sup> Equality Now supported R.M to take up a civil case against her teacher due to the fact that the Criminal system had failed to provide redress and prosecute the rapist. Her lawyer therefore chose to institute a civil suit against the government as this was a government school. After the decision, Equality Now facilitated and supported a coalition of Zambian organization to follow up with the recommendations of the Judge and formulate a project to address violence against girls in school. For more information see <http://www.equalitynow.org/node/448/>
- <sup>29</sup> Article 5 of the Protocol on the Rights of women provides state obligations in addressing FGM, it must be noted that the Committee on the Elimination of Discrimination against Women (CEDAW Committee) in 1992 made General Recommendation No. 19 which outlined female circumcision as a form of violence however the language in the recommendation was not explicit and did not outline what governments could do to ensure FGM was eliminated. For the full document visit at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>
- <sup>30</sup> <http://www.southernafricallitigationcentre.org/cases/ongoing-cases/womens-rights/>
- <sup>31</sup> Article 13 of the Protocol on the Rights of Women
- <sup>32</sup> Article 24 of the Protocol on the Rights of Women
- <sup>33</sup> *Id.*, Article 6 (h)
- <sup>34</sup> Attorney-General v. Dow, Appeal Court, 1994 (6) BCLR 1
- <sup>35</sup> LM and Others v Government of the Republic of Namibia (I 1603/2008, I 3518/2008, I 3007/2008) [2012] NAHC 211 (30 July 2012) available at <http://www.saflii.org/na/cases/NAHC/2012/211.html>
- <sup>36</sup> Centre for Reproductive Rights, “*Gaining ground: A tool for Advancing Reproductive Rights Law Reform*” (2006) p.67
- <sup>37</sup> Section 20 of the Constitution of Swaziland and section 18 and 26 of the Constitution of Lesotho.
- <sup>38</sup> Article 27.
- <sup>39</sup> Rwanda state report 2005-2006 tithe African Commission on Human and Peoples’ Rights.
- <sup>40</sup> ‘National evaluation report on implementation of the Beijing declaration and platform for action (1995) and the outcome of the twenty-third special session of the General assembly (2000)’ Kigali 2009 [http://www.migeprof.gov.rw/IMG/doc/BEIJING\\_15\\_UN-3.doc](http://www.migeprof.gov.rw/IMG/doc/BEIJING_15_UN-3.doc)(accessed 05 May 2013)
- <sup>41</sup> Article 23.
- <sup>42</sup> Section 1 (d) of the Official Gazette No. 15.
- <sup>43</sup> Mali new family law: women’s rights denied, discrimination upheld <http://www.fidh.org/Mali-s-new-Family-Law-women-s>(accessed 5 May 2013)
- <sup>44</sup> See social institutions and gender index report
- <sup>45</sup> Committee on African Affairs of the New York City Bar 2007, “Gender-Based Violence Laws in Sub-Saharan Africa”, pp. 79-80. Available at: <http://www.nycbar.org/pdf/report/GBVReportFinal2.pdf>(accessed 12 April 2013)
- <sup>46</sup> See <http://www.gmo.gov.rw>(accessed 12 April 2013)
- <sup>47</sup> Agency for Co-operation and Research in Development (ACORD) DRC, “Protection and Reparation Under Congolese Law for Survivors of Sexual and Gender-Based Violence: Situational Analysis and Prospects for Reform”, June 2010. Available at: <http://www.acordinternational.org/silo/files/drc--protection-and-reparation-for-survivors-of-sexual-and-genderbased-violence.pdf>(accessed 12 April 2013)
- <sup>48</sup> CEDAW Committee Concluding Observations 2010, cedaw/c/bfa/co/6
- <sup>49</sup> Cedaw report 2010, cedaw/c/bfa/co/6
- <sup>50</sup> 2002 Family Code
- <sup>51</sup> Equatorial Guinea [www.uneca.org](http://www.uneca.org)(accessed 12 April 2013)
- <sup>52</sup> Bhe and others v. Magistrate Khayelitsha 2005 1 BCLR (CC)
- <sup>53</sup> See Women’s rights in Comoros available at <http://www.wikigender.org> (accessed 12 April 2013)
- <sup>54</sup> United Nations Children’s Fund Beijing +15:Bringing girls into focus 2010
- <sup>55</sup> Gender Equality in Swaziland <http://www.genderindex.org>(accessed 12 April 2013)
- <sup>56</sup> UN Entity for Gender Equality and the empowerment of Women ‘Progress of the world’s Women: In pursuit of justice’ (2011-2012) 3
- <sup>57</sup> UN Entity for Gender Equality and the empowerment of Women ‘Progress of the world’s Women: in pursuit of justice’ (2011-2012) 52
- <sup>58</sup> UN Entity for Gender Equality and the empowerment of Women ‘Progress of the world’s Women: in pursuit of justice’ (2011-2012) 53
- <sup>59</sup> See Action Aid report on ‘Strategies for success: access to justice for women.
- <sup>60</sup> African women’s decade (2010-2020) 2012 annual review 27
- <sup>61</sup> Human Rights Watch 2012, <http://www.hrw.org/world-report-2012/world-report-2012-south-africa> (accessed on 21 February 2013)
- <sup>62</sup> Gender equality in Mozambique, social institutions and gender index 2012 available on <http://genderindex.org/country/Mozambique> (Accessed 21 February 2013)

<sup>63</sup> As above, figures from 2010.

<sup>64</sup> UNAIDS Factsheet: Women, Girls and HIV (2012).

<sup>65</sup> African Women's decade (2010-2020) 2012 annual review 7

<sup>66</sup> ANGOP. "People Urged to Join Women's Health Programme." May 25 2012. [http://www.portalangop.co.ao/motix/en\\_us/noticias/saude/2012/5/25/People-urged-join-women-health-programme.673fbb68-a83b-4a0b-8d20-385d347977ed.html](http://www.portalangop.co.ao/motix/en_us/noticias/saude/2012/5/25/People-urged-join-women-health-programme.673fbb68-a83b-4a0b-8d20-385d347977ed.html) (accessed on 7 March 2013)

<sup>67</sup> See 'Maternal mortality: Africa's burden' Available at <http://www4.worldbank.org/afr/ssatp/Resources/HTML/Gender-RG/Source%20%20documents/Tool%20Kits%20&%20Guides/Maternal%20Health/TLMH1%20Toolkit%20G&T%20Maternal%20Mortality.pdf> (accessed on 20 April 2013).

<sup>68</sup> Deceased Estates Act no 14 of 2011

<sup>69</sup> Gender Equality In Mauritius, Social Institutions and Gender Index 2012 Accessed from <http://genderindex.org/country/mauritius> (accessed on 21 February 2013)

<sup>70</sup> African Women's decade (2010-2020) 2012 annual review 31

<sup>71</sup> IRIN 2010, <http://www.irinnews.org/Report/89510/SWAZILAND-Women-s-rights-take-one-step-forward-two-steps-back> (accessed on 21 February 2013)

<sup>72</sup> African Women's decade (2010-2020) 2012 annual review 69

<sup>73</sup> Un Entity for Gender Equality and the empowerment of Women 'Progress of the world's Women: in pursuit of justice' (2011-2012) 42

<sup>74</sup> The International Development Law Organization (IDLO) 'accessing justice: models, strategies and best practices on women's empowerment' (2013) 26

<sup>75</sup> WHO, UNICEF, UNFPA (1997), "Female genital mutilation, A joint WHO/UNICEF/UNFPA" Statement, Geneva, World Health Organisation.

<sup>76</sup> WHO (2000), *Female genital mutilation*, Fact Sheet No 241, June 2000. Geneva, World Health Organisation At: <http://www.who.int/mediacentre/factsheets/fs241/en/>

<sup>77</sup> WHO (2008), "Eliminating Female Genital Mutilation, An Interagency statement, [http://whqlibdoc.who.int/publications/2008/9789241596442\\_eng.pdf](http://whqlibdoc.who.int/publications/2008/9789241596442_eng.pdf),

<sup>78</sup> Yoder PS, Khan S (2007), *Numbers of women circumcised in Africa: The production of a total*. Calverton, Macro International Inc.

<sup>79</sup> WHO(2013), "Female Genital Mutilation" Fact Sheet No. 241, <http://www.who.int/mediacentre/factsheets/fs241/en/>

<sup>80</sup> WHO, (2006), "Female genital mutilation and obstetric outcomes: WHO collaborative prospective study in six African countries, WHO study group on female genital mutilation and obstetric outcomes, *The Lancet* Vol 367, P. 1836

<sup>81</sup> The Convention on Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child, the UN Resolution and the Protocol on the Rights of Women in Africa

<sup>82</sup> United Nations Children's Fund, (2005) "Female Genital Mutilation/Cutting: A statistical exploration", [http://www.unicef.org/publications/files/FGM-C\\_final\\_10\\_October.pdf](http://www.unicef.org/publications/files/FGM-C_final_10_October.pdf)

<sup>83</sup> WHO, 2011, "An update on WHO's work on female genital mutilation (FGM)", [http://apps.who.int/iris/bitstream/10665/70638/1/WHO\\_RHR\\_11.18\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/70638/1/WHO_RHR_11.18_eng.pdf)

<sup>84</sup> Ibid

<sup>85</sup> The Huffington Post, "FGM Is Not 'Cultural': It Is Violence against Women and Girls"

'[http://www.huffingtonpost.co.uk/efua-dorkenoo/fgm-is-not-cultural\\_b\\_2970553.html?utm\\_hp\\_ref=fb&src=sp&comm\\_ref=false#sb=3022387,b=facebook](http://www.huffingtonpost.co.uk/efua-dorkenoo/fgm-is-not-cultural_b_2970553.html?utm_hp_ref=fb&src=sp&comm_ref=false#sb=3022387,b=facebook)

<sup>86</sup> Kenya Demographic and Health Survey 2008/9, <http://www.measuredhs.com/pubs/pdf/SR178/SR178.pdf>, p.264

<sup>87</sup> Equality Now, (2011), *Protecting girls from undergoing Female Genital Mutilation: The experience of working with the Maasai communities in Kenya and Tanzania*, Colourprint, P.16

<sup>88</sup> UNFPA/UNICEF, (2011), "UNFPA/UNICEF Joint programme on Female Genital Mutilation/Cutting: accelerating change", Annual report 2011, p. 2

<sup>89</sup> FIGO, "1,116 girls and women treated for FGM in Mali last year", <http://www.figo.org/news/1116-girls-and-women-treated-fgm-mali-last-year-0011136>

<sup>90</sup> United Nation General Assembly, (2012), Resolution: Intensifying Global Efforts for the Elimination of Female Genital Mutilation, <http://www.awdf.org/wp-content/uploads/2013/01/Resolution-UNGA-English.pdf>

<sup>91</sup> <http://www.achpr.org/instruments/women-protocol/ratification/>

<sup>92</sup> <http://www.womankind.org/uk/2012/07/celebrating-pan-africa-womens-day/>

<sup>93</sup> <http://www.ipu.org/PDF/publications/WIP2012E.pdf>

<sup>94</sup> <http://www.un-instraw.org/Maghreb/general/women-s-political-participation-in-algeria-tunisia-and-morocco.html>

<sup>95</sup> <http://www.expressiondz.com/actualite/149195-louisa-hanoune-candidate-a-alger.html>

- <sup>96</sup> <http://www.un.org/apps/news/story/.asp?NewsID=42021scr=#.UveBzBeTgf0>
- <sup>97</sup> [http://www.ipu.org/parline-e/reports/arc/2003\\_07.htm](http://www.ipu.org/parline-e/reports/arc/2003_07.htm)
- <sup>98</sup> [http://www.ipu.org/parline-e/reports/2003\\_A.htm](http://www.ipu.org/parline-e/reports/2003_A.htm)
- <sup>99</sup> <http://www.ipu.org/wmn-e/arc/classif310507.htm>
- <sup>100</sup> [http://www.ipu.org/parline-e/reports/2003\\_E.htm](http://www.ipu.org/parline-e/reports/2003_E.htm)
- <sup>101</sup> [http://www.ipu.org/parline-e/reports/2003\\_E.htm](http://www.ipu.org/parline-e/reports/2003_E.htm)
- <sup>102</sup> <http://www.africa4womenrights.org/public/Dossier of claims/senegal/ENG.pdf>
- <sup>103</sup> [http://www.ipu.org/parline-e/reports/2277\\_E.htm](http://www.ipu.org/parline-e/reports/2277_E.htm)
- <sup>104</sup> <http://www.makeeverywomancount.org>
- <sup>105</sup> [http://www.ipu.org/parline-e/reports/2277\\_E.htm](http://www.ipu.org/parline-e/reports/2277_E.htm)
- <sup>106</sup> <http://www.ipu.org/wmn-e/classif.htm>
- <sup>107</sup> [http://www.ipu.org/parline-e/reports/2329\\_E.htm](http://www.ipu.org/parline-e/reports/2329_E.htm)
- <sup>108</sup> [http://www.ipu.org/parline-e/reports/arc/2167\\_07.htm](http://www.ipu.org/parline-e/reports/arc/2167_07.htm)
- <sup>109</sup> <http://www.ipu.org/press-e/gen176.htm>
- <sup>110</sup> [http://www.cjcr.gov.rw/eng/constn\\_eng.doc](http://www.cjcr.gov.rw/eng/constn_eng.doc)
- <sup>111</sup> <http://www.idea.int/publications/wip2/upload/rwanda.pdf>
- <sup>112</sup> [http://www.makeeverywomancount.org/index.php?option=com\\_content&view=article&id=2008;rwanda-parliamentary-election-2011&catid=73:2011-elections-monitoring&Itemid=196](http://www.makeeverywomancount.org/index.php?option=com_content&view=article&id=2008;rwanda-parliamentary-election-2011&catid=73:2011-elections-monitoring&Itemid=196)
- <sup>113</sup> <http://www.allafrica.com/stories/201106240213>
- <sup>114</sup> [http://www.ipu.org/parline-e/reports/2291\\_A.htm](http://www.ipu.org/parline-e/reports/2291_A.htm)
- <sup>115</sup> [http://www.ipu.org/parline-e/reports/2291\\_A.htm](http://www.ipu.org/parline-e/reports/2291_A.htm)
- <sup>116</sup> [http://www.genderlinks.org.za/attachment.php?aa\\_id=11848](http://www.genderlinks.org.za/attachment.php?aa_id=11848)
- <sup>117</sup> <http://www.bbc.co.uk/news/world-africa-1766916>
- <sup>118</sup> [http://www.ipu.org/parline-e/reports/2195\\_A.htm](http://www.ipu.org/parline-e/reports/2195_A.htm)
- <sup>119</sup> <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf>
- <sup>120</sup> <http://muse.jhu.edu/journals/hrq/summary/v023/23.1adejumobi.html>
- <sup>121</sup> <http://www.pambazuka.org/aumonitor/comments/363>
- <sup>122</sup> <http://www.international-alert.org/sites/default/files/publications/201012WomenElectionsViolenceWestAfrica.pdf>
- <sup>123</sup> <http://www.pambazuka.org/en/category/comment/77423/print>
- <sup>124</sup> <http://www.pambazuka.org/en/category/comment/77423/print>
- <sup>125</sup> [http://blogs.cfr.org/coleman/2012/01/10/quotas-for-womens-political-participation/?cid=oth\\_partner\\_site-atlantic%22](http://blogs.cfr.org/coleman/2012/01/10/quotas-for-womens-political-participation/?cid=oth_partner_site-atlantic%22)
- <sup>126</sup> [http://blogs.cfr.org/coleman/2012/01/10/quotas-for-womens-political-participation/?cid=oth\\_partner\\_site-atlantic%22](http://blogs.cfr.org/coleman/2012/01/10/quotas-for-womens-political-participation/?cid=oth_partner_site-atlantic%22)
- <sup>127</sup> <http://www.ipu.org/pdf/publications/wmnpersp10-e.pdf>
- <sup>128</sup> <http://www.ipu.org/pdf/publications/wmnpersp10-e.pdf>
- <sup>129</sup> [http://www.un.org/millenniumgoals/11\\_MDG%20Report\\_EN.pdf](http://www.un.org/millenniumgoals/11_MDG%20Report_EN.pdf)
- <sup>130</sup> For instance, i) the Liberia National Gender Policy (2008) calls for the full and active participation of women in all processes and structures for conflict prevention, resolution and management. In 2010, Liberia also undertook an analysis of its national laws to determine laws and policies that are biased or discriminatory against women. 2) The Rwanda National Gender Policy provides a framework for the promotion of gender equality and the empowerment of women and demonstrates the commitment of the Government of Rwanda to addressing all forms of gender inequality in the country. The Rwandan National Girls Education Policy (2008) aims to achieve gender equality in education at all levels, including with respect to peace education.
- <sup>131</sup> African Union (2003) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, p. 12
- <sup>132</sup> Catalina Perdoma, "Methodology for International Comparison of Government Priorities." SIPRI Military Expenditures and Arms Production Project. Available at: [http://web.sipri.org/contents/milap/milex/bgpapers/mex\\_priorities\\_methods.pdf](http://web.sipri.org/contents/milap/milex/bgpapers/mex_priorities_methods.pdf)
- <sup>133</sup> Democratic Republic of the Congo (2005) Constitution: Article 14. <http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>
- <sup>134</sup> Ibid, Democratic Republic of the Congo (2005) Constitution: Article 14
- <sup>135</sup> Federal Democratic Republic of Ethiopia (1995) Constitution: Article 35 on the "Rights of Women" (sub-article 1). [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=193667](http://www.wipo.int/wipolex/en/text.jsp?file_id=193667)



- <sup>136</sup> Ibid, Federal Democratic Republic of Ethiopia (1995) Constitution: Article 35:4
- <sup>137</sup> Enikő Horváth *et al* (2007) Gender-Based Violence Laws in Sub-Saharan Africa. Published by the Committee on African Affairs of the New York City Bar
- <sup>138</sup> The Republic of South Africa (2007) Government Gazette, Vol. 510, 14 December 2007, No. 30599 <http://www.info.gov.za/view/DownloadFileAction?id=77866>
- <sup>139</sup> Namibia (2000) The Combating of Rape Act, No. 8 of 2000 <http://www.lac.org.na/laws/pdf/comrape.pdf>
- <sup>140</sup> PeaceWomen <http://www.peacewomen.org/naps/list-of-naps>
- <sup>141</sup> African Women's Development and Communication Network (FEMNET) (2005) FEMNET Training Manual on Gender-Based Violence. [http://www.preventgbv africa.org/sites/default/files/resources/Femnet\\_GBVTrainingManual.pdf](http://www.preventgbv africa.org/sites/default/files/resources/Femnet_GBVTrainingManual.pdf)
- <sup>142</sup> Jessica Nkuuhe, Femmes Africa Solidarite (FAS) <http://unwomenwestafrica.blog.com/programs-3/the-women's-situation-room-peace-is-in-our-hands/>
- <sup>143</sup> Ibid, Jessica Nkuuhe, FAS
- <sup>144</sup> Report of the Panel Discussion on "Women's Civil Society Organisations in Early Warning and Preventing Conflict: the Women's Situation Room in Senegal". Hosted by the Permanent Mission of Ireland, the Permanent Mission of Finland, and Femmes Africa Solidarité; November 2012. <http://www.dfa.ie/uploads/documents/New%20York%20PM/121101%20pmun%20ny%20femmes%20africa%20solidarite%20event%20on%20women's%20situation%20room%20in%20senegal.pdf>
- <sup>145</sup> Ibid, Bineta Diop in the Report of the Panel Discussion on the Women's Situation Room, November 2012
- <sup>146</sup> Ibid, Bineta Diop, in the Report of the Panel Discussion on the Women's Situation Room, November 2012
- <sup>147</sup> Ibid, Bineta Diop in the Report of the Panel Discussion on the Women's Situation Room, November 2012
- <sup>148</sup> Ibid, Letty Chiwara, in the Report of the Panel Discussion on the Women's Situation Room, November 2012
- <sup>149</sup> Liberia is an interesting contrast because although they have a woman president, women's representation in the legislature remains very low (around 14%).
- <sup>150</sup> Bart de Bruijn (2009) 'The Living Conditions and Well-being of Refugees'. UNDP Human Development Research Paper 2009/25. [http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP\\_2009\\_25.pdf](http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP_2009_25.pdf)
- <sup>151</sup> 'Because I am Girl' Plan Progress report on progress and obstacles to girls' education in Africa, 2012.
- <sup>152</sup> For a statistics of enrolment rate in Africa see <http://huebler.blogspot.com/2006/09/primary-school-enrollment-in-2004.html> (accessed March 26, 2013).
- <sup>153</sup> <http://www.unicef.org/mdg/gender.html> (accessed March 26, 2013).
- <sup>154</sup> K Tomasevski, The State of the Right to Education Worldwide Free or Fee: 2006 Global Report, Copenhagen, 10.
- <sup>155</sup> AB Fafunwa 'History of Education in Nigeria' (1974) London. George Allen and Unwin Ltd. 29.
- <sup>156</sup> CI Onyeike and AI Ogujawa, An analytical evaluation of the trend of primary school Enrolment in Ebonyi state: The case of the challenges facing female children African Journal of Education and Technology, Volume 1 Number 3 (2011), pp. 45-52.
- <sup>157</sup> AA Amankwah, Quality Education Crucial to End Girl-Child Labour, available <http://allafrica.com/stories/200906151025.html> (accessed April 1, 2013).
- <sup>158</sup> GC Offorma, Girl-Child education in Africa 4. <http://www.ifuw.org/fuwa/docs/Girl-Child-Education-Africa-part2.pdf> (accessed April 1, 2013).
- <sup>159</sup> Article 26 UDHR.
- <sup>160</sup> Article 18 (2).
- <sup>161</sup> Article 13 (1).
- <sup>162</sup> ACHPR article 27. ; ACRWC article 11.
- <sup>163</sup> Protocol on the Rights of Women Article 12 (1) a.
- <sup>164</sup> Protocol on the Rights of Women Article 12 (1) c.
- <sup>165</sup> CI Onyeike and AI Ogujawa, An analytical evaluation of the trend of primary school Enrolment in Ebonyi state: The case of the challenges facing female children African Journal of Education and Technology, Volume 1 Number 3 (2011), pp. 45-52.
- <sup>166</sup> Gender and education, available at [http://www.unicef.org/esaro/7310\\_Gender\\_and\\_education.html](http://www.unicef.org/esaro/7310_Gender_and_education.html) (accessed March 26, 2013).
- <sup>167</sup> E Stamatopoulou 'What are cultural rights? the normative content of the right to participate in cultural life' in *Cultural rights in international law article 27 of the Universal Declaration of Human Rights and beyond* 110.
- <sup>168</sup> Report on the State of education in Africa: Education Strategies in the 1990s Orientation and Achievements' [http://www.unesco.org/education/pdf/15\\_58.pdf](http://www.unesco.org/education/pdf/15_58.pdf)
- <sup>169</sup> <http://www.unicef.org/mdg/gender.html> (accessed March 26, 2013).
- <sup>170</sup> <http://www.un.org/womenwatch/daw/followup/session/presskit/fs12.htm> (accessed March 3, 2013).

- <sup>171</sup> Onuora-Oguno A.C (2004), Unpublished LLB Thesis, University of Ilorin, Ilorin Nigeria. p20
- <sup>172</sup> F Jjuuko & C Kabonesa Universal Primary Education (UPE) in contemporary Uganda right or privilege? HURIPPEC working paper No 8, 10.
- <sup>173</sup> [http://www.unicef.org/esaro/7310\\_Gender\\_and\\_education.html](http://www.unicef.org/esaro/7310_Gender_and_education.html) (accessed March 26, 2013).
- <sup>174</sup> <http://www.unicef.org/mdg/gender.html> (accessed March 26, 2013).
- <sup>175</sup> Authors filed trip of the Anambra West Local Government of Nigeria showed that virtually all community based schools in the area lacked sanitary facilities and that the girls stayed out of school for reasons mentioned above.
- <sup>176</sup> [http://www.unicef.org/esaro/7310\\_Gender\\_and\\_education.html](http://www.unicef.org/esaro/7310_Gender_and_education.html) (accessed March 26, 2013).
- <sup>177</sup> [http://www.unicef.org/esaro/7310\\_Gender\\_and\\_education.html](http://www.unicef.org/esaro/7310_Gender_and_education.html) (accessed March 26, 2013).
- <sup>178</sup> Report on the State of education in Africa: Education Strategies in the 1990s Orientation and Achievements' [http://www.unesco.org/education/pdf/15\\_58.pdf](http://www.unesco.org/education/pdf/15_58.pdf).
- <sup>179</sup> 'Because I am Girl' Plan Progress report on progress and obstacles to girls' education in Africa, 2012 p22.
- <sup>180</sup> [http://www.photius.com/rankings/human\\_development\\_index\\_1975-2005.html](http://www.photius.com/rankings/human_development_index_1975-2005.html) (accessed March 30, 2013).
- <sup>181</sup> <http://www.protectingeducation.org/news/nigeria-school-attendance-down-after-boko-haram-attacks> (accessed March 30, 2013).
- <sup>182</sup> Why aren't girls in going to school, available at <http://www.right-to-education.org/node/192> (accessed march 30, 2013)
- <sup>183</sup> See <http://www.achpr.org/sessions/52nd/intersession-activity-reports/rights-of-women/> (accessed March 30, 2013) for list of States that have not ratified the Protocol. Or See <http://xa.yimg.com/kq/groups/20674633/1346487913/name/FEMNET+Poster+for+the+AU+Protocol+on+Women+-+En.pdf> (accessed April 1, 2013)
- <sup>184</sup> See <http://www.achpr.org/sessions/52nd/intersession-activity-reports/rights-of-women/> (accessed March 30, 2013) for list of States that have not ratified the Protocol. Para 51.
- <sup>185</sup> <http://www.iwraw-ap.org/resources/pdf/Sierra%20Leone.pdf> (accessed March 30, 2013).
- <sup>186</sup> Evaluation of the Contribution of Italian Funded Projects to Ending Violence against Women and Promoting Gender Equality in ECOWAS Member States p 30.
- <sup>187</sup> *Women and Economic Transformation Post 2015*. <http://www.femnet.co/index.php/en/other-publications/item/167-women-economic-transformation-post-2015>
- <sup>188</sup> *In Pursuit of Justice*, 2011-2012 Progress of the World's Women Report. UN Women. 2011. Pg35.
- <sup>189</sup> *The Informal Economy in Africa: Promoting Transition to Formality: Challenges and Strategies*. International Labour Office, Employment Sector and Social Protection Sector. - Geneva: ILO, 2009
- <sup>190</sup> *Engendering Social Welfare Rights*. Shanelle van der Berg. <http://ohrh.law.ox.ac.uk/?p=1248>
- <sup>191</sup> *Pillay welcomes major breakthrough enabling individual complaints on economic, social and cultural rights*. Geneva, 6 February 2013. <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12968&LangID=E>
- <sup>192</sup> *UN Treaty Collection*. [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-3-a&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-3-a&chapter=4&lang=en)
- <sup>193</sup> <http://www.achpr.org/about/>
- <sup>194</sup> WHO(2011) "Unsafe abortion Global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008," 6<sup>th</sup>edn. WHO: Geneva
- <sup>195</sup> WHO(2006) "Reproductive health indicators : Guidelines for their generation, interpretation and analysis for global monitoring," WHO: Geneva
- <sup>196</sup> WHO (2012) "Trends in Maternal Mortality: 1990 to 2010. WHO, UNICEF, UNFPA and World Bank Estimates," WHO Geneva
- <sup>197</sup> WHO "Safe abortion: technical and policy guidance for health systems," 2nd ed. WHO: Geneva
- <sup>198</sup> WHO(2011) "Unsafe abortion Global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008," 6<sup>th</sup>edn. WHO: Geneva
- <sup>199</sup> WHO(2011) "Unsafe abortion Global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008," 6<sup>th</sup>edn. WHO: Geneva
- <sup>200</sup> Hord C, Benson J, Potts J & Billings D (2000), "Background Paper Prepared for: Meeting on Priorities and Needs in the Area of Unsafe Abortion," Geneva
- <sup>201</sup> Ngwena CG (2010), "Protocol to the African Charter on the Rights of Women: Implications for access to abortion at the regional level," International Journal of Gynecology and Obstetrics 110 : 163-166
- <sup>202</sup> Ibid
- <sup>203</sup> Ngwena CG (2010), " Protocol to the African Charter on the Rights of Women: Implications for access to abortion at the regional level," International Journal of Gynecology and Obstetrics 110 : 163-166
- <sup>204</sup> WHO, "Unsafe abortion: the preventable pandemic," Sexual and Reproductive Health Journal Paper 4. WHO: Geneva

- <sup>205</sup> GOK(2010), "*Instrument of Ratification of Protocol to The African Charter on Human and Peoples' Rights on the Rights of Women in Africa*"
- <sup>206</sup> GOK (2010), "*The Constitution of Kenya*"
- <sup>207</sup> GOK (2009), "*Guidelines on Medical Management of Rape and Sexual Violence*," p. 13
- <sup>208</sup> Tucker P.(2012), "MPOA Scorecard: An assessment of Southern African Development Community Responses and Reporting on Sexual and Reproductive Health and Rights," AIDS Accountability
- <sup>209</sup> Guttmacher Institute and Ipas (2010) "*Facts on unintended pregnancy and abortion in Ethiopia*"
- <sup>210</sup> Criminal Code (Amendment) Law, PNDC Law 102 of 1985 sec 58(2).
- <sup>211</sup> Ghana Health Service & Ministry of Health (2006) "*Standards and Protocols for the prevention and management of unsafe abortion*".
- <sup>212</sup> Guttmacher Institute (2012) "*Facts on abortion in Africa*"
- <sup>213</sup> AU(2012), "*Progress report of The Commission on Maternal New Born and Child Health*," AU: Addis Ababa
- <sup>215</sup> ACHPR (2011), "*Concluding Observations and Recommendations on the Fourth Periodic Report of the Federal Republic of Nigeria*"
- <sup>216</sup> <http://www.fao.org/docrep/003/Y1860E/y1860e04.htm>
- <sup>217</sup> <http://www.fao.org/docrep/X0250E/x0250e03.htm>
- <sup>218</sup> Doss Cheryl and SOFA Team (2011), The Role of Women in Agriculture, Food and Agricultural Organisation of the United Nations (FAO) <http://www.fao.org/docrep/013/am307e/am307e00.pdf>
- <sup>219</sup> The FAO Gender and Land Rights Database, launched in 2010, attempts to provide more comprehensive information per country: <http://www.fao.org/gender/landrights>
- <sup>220</sup> [http://www.oxfam.org.uk/resources/learning/landrights/downloads/land\\_grabbing\\_in\\_africa\\_impacts\\_&\\_policy\\_responses.pdf](http://www.oxfam.org.uk/resources/learning/landrights/downloads/land_grabbing_in_africa_impacts_&_policy_responses.pdf)
- <sup>221</sup> ICRW, "To Have and to Hold: Women's property and inheritance rights in the context of HIV/AIDS in sub-Saharan Africa", 2004, p.49
- <sup>222</sup> <http://www.oxfamblogs.org/eastafrica/?p=6115>
- <sup>223</sup> Tanzanian women talk about land <http://www.oxfamblogs.org/eastafrica/?p=5939>
- <sup>224</sup> Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods, 2011
- <sup>225</sup> SADC Protocol on Gender and Development [http://www.sadc.int/files/8713/5292/8364/Protocol\\_on\\_Gender\\_and\\_Development\\_2008.pdf](http://www.sadc.int/files/8713/5292/8364/Protocol_on_Gender_and_Development_2008.pdf)
- <sup>226</sup> Gender Strategy, ECOWAS Parliament 2010-2020 [http://www.parlcent.org/en/wp-content/uploads/2011/04/other\\_publications/Gender\\_Strategy\\_ECOWAS\\_PARL\\_EN.pdf](http://www.parlcent.org/en/wp-content/uploads/2011/04/other_publications/Gender_Strategy_ECOWAS_PARL_EN.pdf)
- <sup>227</sup> Botswana, South Africa, Namibia, Rwanda, Mozambique
- <sup>228</sup> Article 24 (1) "Every person is entitled to own property, and has a right to the protection of his property held in accordance with the law."
- <sup>229</sup> Article 12 (1) "All humans are both free and equal," and; 13 (1) All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law
- <sup>230</sup> Section 20 (2) of the Village Land Act 1999, Laws of Tanzania
- <sup>231</sup> 33(5) "women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom"
- <sup>232</sup> in 33 (1), "women shall be accorded full and equal dignity of the person with men" 33(4), "women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities"
- <sup>233</sup> Musa R, and Edeme B., *Advocating for Women's Rights: Experiences from Solidarity for African Women's Rights Coalition*, SOAWR, FEMNET, AWDF
- <sup>234</sup> <http://winafrica.org/2010/03/victory-for-swaziland-women/>
- <sup>235</sup> <http://jurist.org/paperchase/2012/10/botswana-high-court-strikes-down-male-dominated-inheritance-law-system.php>
- <sup>236</sup> The Constitution enshrining the birth of the fourth republic adopted by the people on June 02, 1991
- <sup>237</sup> The Constitution adopted through the referendum of June 2, 1991 and revised through Laws Number:  
002/97/ADP of 27th January 1997  
003 -2000/AN of 11th April 2000  
001 -2002/AN of 22nd January 2002
- <sup>238</sup> Mujuzi J. A (2007). The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: South Africa's reservations and interpretative Declarations. Doctoral Researcher, Civil Society Prison Reform Initiative, Community Law Centre, University of the Western Cape
- <sup>239</sup> Ibid.
- <sup>240</sup> Article 31 of the African Women's Protocol provides the Protocol can in no way violate national laws which are more advantageous to women.
- <sup>241</sup> Constitution of the Republic of South Africa, Act 1 (1) of Act 5 of 2005

- <sup>242</sup>Manjoo R. (2007). 'Human rights program at Harvard Law School working paper: the recognition of muslim personal laws in South Africa: Implications for Women's Rights') 13.
- <sup>243</sup>Implementation of the African Charter on Human and Peoples' Rights and the Protocol thereto on the Rights of Women in Africa in selected African States Benin, Burkina Faso, Cameroon, Chad, Congo, Cote d'Ivoire, Eritrea, Gambia, Kenya, Lesotho, Mauritius, Mozambique, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa & Zimbabwe: Country Reports (October 2011) Centre for Human Rights, University of Pretoria
- <sup>244</sup>Ibid.
- <sup>245</sup>Constitution of the Republic of South Africa, Act 1 (1) of Act 5 of 2005
- <sup>246</sup>South Africa's Combined 2<sup>nd</sup> to 6<sup>th</sup> Periodic Report to the United Nations Committee on the Elimination of Racial Discrimination Covering the Period 2002 to 2011: Department of Justice and Constitutional Development
- <sup>247</sup>Ibid.
- <sup>248</sup>Ibid.
- <sup>249</sup>Mukasa RS et al. (2008). The African Women's Protocol: Harnessing a Potential for Positive Change; Fanele, 112
- <sup>250</sup>Ibid.
- <sup>251</sup>Ageng'o, C. (2007). International Women's Day - Can we dare celebrate? In P. Burnett, S. Karmali & F. Manji (Eds.), *Grace, Tenacity and Eloquence*. Nairobi: Fahamu-Networks for Social Justice.
- <sup>252</sup>Ibid.
- <sup>253</sup>Gender –Based Violence and the Criminal Justice System, CSVr
- <sup>254</sup>Rape statistics sourced from [http://www.saps.gov.za/statistics/reports/crimestats/2008/march\\_april\\_2001\\_2008/category/rape.pdf](http://www.saps.gov.za/statistics/reports/crimestats/2008/march_april_2001_2008/category/rape.pdf) in *Criminal Injustice: Violence Against Women in South Africa: Shadow Report on Beijing +15 (March 2010)*, POWA, AIDS Legal Network, Solidarity with ♀ who speak out, CAL: page 6
- <sup>255</sup>South Africa CEDAW Shadow Report (2011) to CEDAW Committee, 48<sup>th</sup> Session (POWA – Unpublished draft)
- <sup>256</sup>Ibid.
- <sup>257</sup>Ibid.
- <sup>258</sup>Please visit their website at [www.imuzambia.org](http://www.imuzambia.org)
- <sup>259</sup>President of the Republic of Rwanda at the 63<sup>rd</sup> United Nations General Assembly New York, 23 September 2008/ 4
- <sup>260</sup>GMO; gender Indicators and baseline July 2012
- <sup>261</sup>Rwanda Demographic Health Survey 2010
- <sup>262</sup>Woman in Cyanika Sector, Burera District, , October 2012 in (Aimee .M. (2013), *Land registration and conflict in Rwanda: a gender perspective: pg 67*
- <sup>263</sup>Official Gazette n<sup>o</sup> Special of 14 June 2012
- <sup>264</sup>Government of Rwanda annual report July 2010-June 2011
- <sup>265</sup>Diana Ofwona at the international conference on GBV, December 2001
- <sup>266</sup>President of the Republic of Rwanda at the gender and leadership conference, Kigali/2010 commitment and action will double
- <sup>267</sup>See R Sullivan Driedger on the construction of statutes (1994) 254-256.
- <sup>268</sup>The reservations made by The Gambia on with regard to the African Women's Protocol was uplifted in 2006.
- <sup>269</sup>See secs 4-13 of the Women's Act, 2010.
- <sup>270</sup>See secs 16-25 of the Women's Act, 2010.
- <sup>271</sup>See The Gambia National Gender Policy 2010-2020
- <sup>272</sup>See secs 34-44 of the Women's Act, 2010.
- <sup>273</sup>See secs 45-55 of the Women's Act, 2010.
- <sup>274</sup>The Gambia Multiple Indicator Cluster Survey (MICS 4) 2010.
- <sup>275</sup>See JR Sallah 'Desk review of the national laws, international conventions, treaties and best practices, relating to Gender based violence (GBV)' 2011 commissioned by the Women's Bureau.
- <sup>276</sup>The Gambia Committee on Traditional Practices (GAMCOTRAP) is leading the process. See [www.gamcotrap.gm](http://www.gamcotrap.gm).
- <sup>277</sup>For information regarding the work of FLAG, see [www.flag.gm](http://www.flag.gm)
- <sup>278</sup>HC 427/11/MF/059/F1; Matty Faye was represented by FLAG (Mrs Janet Sallh-Njie, former President and Ms. Neneh Cham, current President).
- <sup>279</sup>Karla Kieta was represented by a male lawyer, Mr. Edirissa Mansajang Sisohor who worked closely with FLAG.
- <sup>280</sup>'idda' is the waiting period for a woman to observe following dissolution of her marriage or after the demise of her husband.
- <sup>281</sup>Opening Remarks at the Africa Green Revolution Forum, September 2012, Arusha, Tanzania (<http://kofiannanfoundation.org/newsroom/speeches/2012>)

- <sup>282</sup> Gender and the Right to Food, December 2012, Olivier de Schutter ([http://www.srfood.org/images/stories/pdf/officialreports/20130304\\_gender\\_en.pdf](http://www.srfood.org/images/stories/pdf/officialreports/20130304_gender_en.pdf))
- <sup>283</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Adopted July 2003 by the 2<sup>nd</sup> Ordinary Session of the Assembly of the Union, Maputo (<http://www.soawr.org/en/auprotocol/article/text/>)
- <sup>284</sup> Report of the Training on the Application of the Multi-Sectoral Framework to Implement the African Protocol on the Rights of Women, published by Equality Now on behalf of Solidarity for African Women's Rights (SOAWR), UN Women, Oxfam & African Union Commission Women, Gender and Development Directorate, April 2012
- <sup>285</sup> World Urbanization Prospects, United Nations, Department of Economic and Social Affairs, Population Division, Population Estimates and Projections Sections, 2011 (<http://esa.un.org/unpd/wup/CD-ROM/Urban-Rural-Population.htm>)
- <sup>286</sup> Compendium of Key Human Rights Documents for African Women, Ed. Oury Traore, African Women's Development Fund, 2009 ([www.awdf.org/resources](http://www.awdf.org/resources))
- <sup>287</sup> Investing in Women Smallholders, ActionAid, 2011 (<http://www.actionaid.org/publications/investing-women-smallholders>);
- <sup>288</sup> Rural Poverty Report 2011, International Fund for Agricultural Development (IFAD), 2011 (<http://www.ifad.org/rpr2011/>)
- <sup>289</sup> Gender in Agriculture Sourcebook, The World Bank with FAO and IFAD, 2009 (<ftp://ftp.fao.org/docrep/fao/011/aj288e/aj288e.pdf>)
- <sup>290</sup> International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) Report, United Nations Environment Programme, 2008 ([http://www.unep.org/dewa/Assessments/Ecosystems/IAASTD/tabid/105853/Default.aspx/docs/10505\\_FoodSecurity.pdf](http://www.unep.org/dewa/Assessments/Ecosystems/IAASTD/tabid/105853/Default.aspx/docs/10505_FoodSecurity.pdf))
- <sup>291</sup> Promises, Power and Poverty: Corporate Land Deals and Rural Women in Africa, Oxfam GROW, 2013 (<http://www.oxfam.org/en/grow/policy/promises-power-and-poverty>)
- <sup>292</sup> Women's Rights to Natural Resources: A Discussion Paper by New Field Foundation, New Field Foundation, 2013 ([http://www.newfieldfound.org/pdfs/Womens\\_Rights\\_to\\_Natural\\_Resources\\_Standard.pdf](http://www.newfieldfound.org/pdfs/Womens_Rights_to_Natural_Resources_Standard.pdf))
- <sup>293</sup> Girls Grow: A Vital Force in Rural Economies, The Chicago Council on Global Affairs, 2011 ([http://www.thechicagocouncil.org/UserFiles/File/GlobalAgDevelopment/Report/GirlsGrowReportFinal\\_v9.pdf](http://www.thechicagocouncil.org/UserFiles/File/GlobalAgDevelopment/Report/GirlsGrowReportFinal_v9.pdf)); and A Power-Sharing Model for Systemic Change, Impact Report, Campaign for Female Education (CAMFED), 2010 ([https://camfed.org/media/uploads/files/Camfed\\_Impact\\_Report.pdf](https://camfed.org/media/uploads/files/Camfed_Impact_Report.pdf))
- <sup>294</sup> Solutions for Financial Inclusion: Serving Rural Women, Women's World Banking, 2011 (<http://www.swwb.org/publications/solutions-financial-inclusion-serving-rural-women>)
- <sup>295</sup> The World's Women reports: Maternal mortality and infant mortality, United Nations Statistics Division, 2005 (<http://unstats.un.org/unsd/demographic/products/indwm/ww2005/tab3b.htm>)
- <sup>296</sup> *Les Radios Communautaires: Outils de promotion pour la paix, la culture, la démocratie et le développement en Afrique/Community Radios: Tools to promote peace, culture, democracy and development in Africa*, Abdou Sarr, World Education, 2011, Ch. 7, Section 4, Community Radio Stations that Integrate Gender and Defends Women's Rights (<http://senegal.worlded.org/Features/features.htm>)
- <sup>297</sup> *ibid.* Chapter 7, Section 3: Community Radio in the Fight Against HIV/AIDS and Environmental Threats
- <sup>298</sup> The Open Society Justice Initiative, Community-based Paralegals: A Practitioners' Guide, Open Society Foundations, 2010 (<http://www.opensocietyfoundations.org/publications/community-based-paralegals-practitioners-guide>)
- <sup>299</sup> <http://www.namati.org/news/newsfeed/kampala-declaration>
- <sup>300</sup> Atelier d'Echanges sur Deploiement de Parajuristes en Milieu Rural comme Outil de Promotion des Droits des Femmes, Ziguinchor, Senegal 16-17 May 2013: Presentation du Projet Parajuriste, ADDEF-G (unpublished)
- <sup>301</sup> Rapport des Activites 2012, Mamadou Lamine Sagna, Maison de Justice de Ziguinchor, Minstere de la Justice, Senegal, May 2013
- <sup>302</sup> Presentation du Programme des Parajuristes, Réseau Africain pour le Développement Intégré, May 2013 (unpublished)
- <sup>303</sup> Botswana High Court, MAHLB 836/10
- <sup>304</sup> Rekha Kumar (2009) Customary Law and Human Rights in Botswana, Working paper no 51, available at <http://www.du.edu/korbel/hrhw/working/2009/52-kumar-2009.pdf>
- <sup>305</sup> Botswana's Constitution, date 1966, is similar to that of other former British colonies which modelled their constitution on the Westminster Constitutional model. The provisions in the Constitution do not read easily and the rights in the Constitution contain many limitations.
- <sup>306</sup> 1992 BLR 119 CA. The word "sex" was inserted in section 15 per Constitutional (Amendment) Bill, published December 2004.
- <sup>307</sup> Consideration of Reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, Combined Initial, Second and Third Periodic Reports of States Parties (Botswana), CEDAW/C/BOT/3 (20 October 2008).
- <sup>308</sup> Committee on the Elimination of Discrimination Against Women, 45<sup>th</sup> session, 18 January – 5 February 2010, CEDAW/C/BOT/CO/3, paras 12 and 42.
- <sup>309</sup> CEDAW/C/BOT/CO/3, para 24.
- <sup>310</sup> Para 40.
- <sup>311</sup> 2003 (2) BLR 67 (CA)

<sup>312</sup>MAHLB 661/10, para 10

<sup>313</sup>*Zimbabwe Lawyers for Human Rights and Institute for Human Rights and Development in Africa*, Comm.294/04, para 99. The African Commission quoted *Brown v Board of Education of Topeka* 347 US 483 (54).

<sup>314</sup> The Protocol entered into force in November 2005. Botswana has not ratified the Protocol. <http://www.africa-union.org/root/au/Documents/Treaties/List/Protocol%20on%20the%20Rights%20of%20Women.pdf>

<sup>315</sup> Ten SADC countries have ratified the SADC Protocol on Gender and Development - Angola, Lesotho, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe. The Protocol entered into force in March 2013.

<sup>316</sup>Article 7(b) provides under the right to equality in accessing justice – “equal legal status and capacity in civil and customary law, including, amongst other things, full contractual rights, the right to acquire and hold rights in property, the right to equal inheritance and the right to secure credit.”

<sup>317</sup>Barry Morton (1998) The evolution of women’s property rights in colonial Botswana 1890-1966, *Botswana Journal of African Studies*, Vol 12 Nos 1 and 2, 5-21, page 10.

<sup>318</sup>Barry Morton (1998) The evolution of women’s property rights in colonial Botswana 1890-1966, *Botswana Journal of African Studies*, Vol 12 Nos 1 and 2, 5-21, page 17

<sup>319</sup>Anne Griffiths (2011) Gendered dynamics of land tenure in Botswana, *Journal of Legal Pluralism and unofficial law*, No 63, 2011.

<sup>320</sup>Simon Roberts and Isaac Schapera (1980) “Ngwaketse inheritance: the devolution of cattle on women in a Tswana chiefdom, *African Law Studies* 18, 63.

<sup>321</sup>2008 (1) BLR 384 (CA), per Tebbutt JP, Zietsman and Twum JJA. The case concerned the right of a widow to inherit. In this case, the court confirmed the need to take consideration of the interpretation of customary law in the area in which it is practiced, by having regard to the views of the customary elders who are the repositories of customs in their communities.

<sup>322</sup> 2009(2) SA 66 (CC)

<sup>323</sup> 1993 (4 LRC 221)

<sup>324</sup> (2005) AHRLR 107 (Kenya Court of Appeal)

<sup>325</sup>Kenya adopted a new Constitution in 2010.

<sup>326</sup>*In re the Estate of Andrew ManunqyuMusyoka* (2005) eKLR 303/1998, Kenya High Court.

<sup>327</sup> UNDP. Evaluation of UNDP’s role and contributions in the HIV/AIDS response in southern Africa and Ethiopia, 2006; UNAIDS REPORT ON THE GLOBAL AIDS EPIDEMIC, 2010; <HTTP://WWW.CDC.GOV/GLOBALAIDS/GLOBAL-HIV-AIDS-AT-CDC/COUNTRIES/BOTSWANA/>

<sup>328</sup> BAIS Report IV, National AIDS Coordinating Agency ( NACA), Daily News, 18th April 2013 p.12

<sup>329</sup> [http://www.cso.gov.bw/index.php?option=com\\_content&id=2&site=census](http://www.cso.gov.bw/index.php?option=com_content&id=2&site=census)

<sup>330</sup> BAIS Report IV, National AIDS Coordinating Agency ( NACA), Daily News, 18th April 2013 p.13

<sup>331</sup> UNGASS, Indicator Data, 2007.

<sup>332</sup> Mary Robinson, former President of Ireland, in an opening session of the International AIDS Conference, 2008 stated that “We’ve not done better for women and girls [in the fight against HIV/AIDS] because we have not respected their human rights from the beginning.” Sedio, G. When You Think of Botswana and HIV/AIDS, Think of the Women, *RH Reality Check* , 6 August 2008 accessed at <http://www.rhrealitycheck.org/blog/2008/08/06/when-you-think-botswana-and-hiv-aids-think-women>

<sup>333</sup> Policy Statement, UNAIDS, 2004 Appendix 1

<sup>334</sup> UNAIDS/WHO Policy Statement 2004. HIV-testing without consent may be justified in the rare circumstance in which a patient is unconscious, his or her parent or guardian is absent, and knowledge of HIV status is necessary for purposes of optimal treatment.

<sup>335</sup> Botswana FY 2008 Country Operational Plan (COP) Available at <http://www.pepfar.gov/about/opplan08/102036.htm>; see also <http://www.ipsnews.net/news/ast>

<sup>336</sup> Ms. Chipo Petlo, Botswana PMTCT Programme, a Public Lecture, Ministry of Health, Department of HIV and AIDS and the Botswana Harvard Partnership, Centre for HIV and AIDS Research The University of Botswana, 22 April 2013

<sup>337</sup> *Supra* n.1

<sup>338</sup> *Ibid*

<sup>339</sup> African Economic Outlook, Country notes- *Botswana*, 2013, <http://www.africaneconomicoutlook.org/en/countries/southern-africa/botswana/>

<sup>340</sup> Akinsola HA, Popovich JM, The quality of life of families of female-headed households in Botswana: a secondary analysis of case studies, *Health Care Women Int.* 2002 Sep-Nov; 23(6-7):761-72

<sup>341</sup> The United Nations Children’s Fund (UNICEF) Botswana Country Office 2012, [http://www.unicef.org/botswana/BCO\\_Annual\\_Report\\_2011.pdf](http://www.unicef.org/botswana/BCO_Annual_Report_2011.pdf)

<sup>342</sup> Creek, Tracy ,Ntuny, Seipone, Khumo S., Mogodi M., Legwaila, Tebele, Goitebetswe; Mazhani, Shaffer L., Nathan P., Successful Introduction of Routine Opt-Out HIV-testing in Antenatal Care in Botswana, *Journal of Acquired Immune Deficiency Syndromes*: Volume 45(1)1 May 2007pp 102-107

- <sup>343</sup> Tlou S.D., Women, The Girl Child And HIV/AIDS , accessed at <http://www.un.org/womenwatch/daw/csw/tlou2001.htm>
- <sup>344</sup> Botswana Millennium Development Goals, , Achievements, Future Challenges and Choices, *Status Report 2004*, Republic of Botswana and United Nations p.56
- <sup>345</sup> Staurt R., Behets F., Desperately Seeking Targets: The Ethics of Routine HIV-Testing in Low-Income Countries, *Bulletin of the World Health Organization* 2006 (84) pp. 52-57
- <sup>346</sup> HIV-testing without consent may be justified in the rare circumstance in which a patient is unconscious, his or her parent or guardian is absent, and knowledge of HIV status is necessary for purposes of optimal treatment.
- <sup>347</sup> UNAIDS *Global Reference Group on HIV/AIDS and Human Rights*, 2006
- <sup>348</sup> Nolan M.L., Greenberg A.D., Fowler M.G., A review of clinical trials to prevent mother-to-child HIV-1 transmission in Africa and inform rational intervention strategies. *AIDS*, 2002 ref. from *op.cit* n.3
- <sup>349</sup> *Supra* n.1
- <sup>350</sup> Botswana Network on Ethics, Law and HIV/AIDS (Bonela). *Event report: routine versus compulsory test 2003* . Available at <http://www.bonela.botsnet.co.bw/Reports/SeminarReport.htm>
- <sup>351</sup> *Ibid*
- <sup>352</sup> National Guidelines on HIV Testing and Counselling ( 2009), Part 2.7.2 Issued by Ministry of Health, Botswana
- <sup>353</sup> Botswana National HIV/AIDS Treatment Guidelines : 2008 Version, chapter 7.1 General Clinical care of HIV – Infected Women, Issued by Ministry of Health, Botswana
- <sup>354</sup> Botswana's response to the questionnaire to governments on implementation of the Beijing platform for action (1995) and the outcome of the twenty- third special session of the general assembly (2000). <http://www.un.org/womenwatch/daw/Review/responses/BOTSWANA-English.pdf>
- <sup>355</sup> *Supra* n.13
- <sup>356</sup> Nair P. S., Rakgoasi S.D., Role of Men in Antenatal Care and Prevention of Mother to Child Transmission Program in Botswana, Results of a qualitative study, *A Research Project Funded by the Faculty of Social Sciences Research and Publication Committee* 2005, University of Botswana, Gaborone, Botswana
- <sup>357</sup> Maman S, Mbwapo JK, Hogan NM, et al. HIV-positive women report more lifetime partner violence: findings from a voluntary counseling and testing clinic in Dar es Salaam, Tanzania. *Am J Public Health* 2002;92:1331–1337; Gaillard P, Melis R, Mwanyumba F, et al. Vulnerability of women in an African setting: lessons for mother-to-child HIV transmission prevention programmes. *AIDS* 2002;16:937–939. ref. from Paul Collini\_ Opt-out HIV-testing strategies Executive summary BMJ Publishing Group Limited 2006.
- <sup>358</sup> *Supra* n.13
- <sup>359</sup> Botswana's strategy to combat HIV/AIDS: Lessons for Africa and President Bush's emergency plan for AIDS relief Washington: The Center for Strategic and International Studies. 2004; **Botswana refocuses on de-stigmatizing and positive living**, Sunday Standard 10 March 2008.
- <sup>360</sup> Parker R, Aggleton P., HIV and AIDS-related stigma and discrimination: A conceptual framework and implications for action. *Soc Sci Med* 2003(57)pp 13–24
- <sup>361</sup> *Supra* n.28
- <sup>362</sup> *Ibid*
- <sup>363</sup> <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/botswana/9605346/Women-can-inherit-the-earth-rules-Botswana-judge.html>
- <sup>364</sup> Dates have been derived from <http://au.int/en/sites/default/files/Rights%20of%20Women.pdf>
- <sup>365</sup> *Ibid*
- <sup>366</sup> *Ibid*
- <sup>367</sup> Huntington S.P: “ The Clash of Civilizations and the Making of World Order”, 1996, Simon and Shuster London, p 56
- <sup>368</sup> [dictionary.reference.com](http://dictionary.reference.com)
- <sup>369</sup> Morgenthau H.J “ Politics Among Nations: The Struggle for Power and Peace,” 6<sup>th</sup> Ed, 2007 Kalyani Publishers, p 341
- <sup>370</sup> *Ibid*
- <sup>371</sup> Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa – The Maputo Protocol. Article 14 Health And Reproductive Rights – States Parties shall ensure that the right to health of women, including sexual reproductive health is respected and promoted. This includes : a) the right to control fertility; c) the right to choose any method of contraception; <http://www.achpr.org/instruments/women-protocol/#14>
- <sup>372</sup> Index Mundi, “Uganda Maternal Mortality Rate” [http://www.indexmundi.com/uganda/maternal\\_mortality\\_rate.html](http://www.indexmundi.com/uganda/maternal_mortality_rate.html)
- <sup>373</sup> The Observer Newspaper, “Caravan to Fight Maternal Mortality” [http://www.observer.ug/index.php?option=com\\_content&view=article&id=8632:caravan-to-fight-maternal-mortality&catid=58:health-living&Itemid=89](http://www.observer.ug/index.php?option=com_content&view=article&id=8632:caravan-to-fight-maternal-mortality&catid=58:health-living&Itemid=89)
- <sup>374</sup> Examples include S. Africa, Tanzania, and some Federal states in Nigeria.
- <sup>375</sup> Tanzania CEDAW/C/TZA/2-3 periodic reports, September 1996
- <sup>376</sup> CEDAW/C/EGY/3 25 July 1996, pg 19.

<sup>377</sup> UN Economic commission for Africa (2013), Economic Report on Africa 2013 at page 8.

<sup>378</sup> *ibid*

<sup>379</sup> Article 62 of the African Charter on Human and Peoples' Rights; Article 26 of the Protocol.

<sup>380</sup> [http: www.unaids.org](http://www.unaids.org). October 2003

<sup>381</sup> Ministry of Health Report, June 2001 for HIV/AIDS [www.health.go.ug](http://www.health.go.ug)

<sup>382</sup> This article is based on President Johnson Sirleaf's video presentation to the Brussels symposium  
[www.unfpa.org/emergencies/symposium06/docs/dayoneopeningsessionjohnsonsirleaf.doc](http://www.unfpa.org/emergencies/symposium06/docs/dayoneopeningsessionjohnsonsirleaf.doc)

<sup>383</sup> An electronic version of the handbook is available at: <http://www.unwomen.org/wp-content/uploads/2011/06/2010-multi-sectoral-approach-womens-rights-africa.pdf>