



BREATHING LIFE INTO
THE AFRICAN UNION PROTOCOL
ON WOMEN'S RIGHTS
IN AFRICA

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African Union Commission, Directorate of Women, Gender and Development

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PREFACE

In hindsight, the birth of the African Union (AU) in 2001 has contributed to the possibility of a new Africa – an Africa where women can take decisions about the quality of the lives they will lead and with whom, and in full control of their resources, assets and capabilities; an Africa where men and women, boys and girls across the hills, valleys, plains, deserts and coastlines of our continent can live together with mutual respect, trust and integrity; an Africa protected and promoted by an increasingly common set of rights and entitlements. It is within this vision that the AU Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa finds its primary relevance.

I personally believe that the Protocol serves as a great champion for the rights of women and girls in Africa. It comprehensively embodies the rights and freedoms that women in this continent ought to be enjoying but which, sadly, continue to be ignored. The Protocol is arguably one of the most progressive and visionary rights instruments for gender equality not just in Africa but internationally.

The speed with which the Protocol came into force on 25 November 2005 set a new record for the ratification of pan-African rights standards for the continent. It is a remarkable success for all of us that have campaigned at pan-African, national and local levels to make this a reality. There are many lessons for us all. A key one is that the challenges of working with countries across the continent can be overcome by collaboration between governments, the AU Commission and national and regional women's associations. In doing so we give life to the vision of the AU as people-driven and inclusive.

This book is an important guide to the action we must all take to ensure the universal ratification and implementation of the Protocol within all 53 countries in Africa. In it, women leaders have looked at a number of strategies for working with our mass media, legal courts and gender machineries to ensure that the rights contained in the Protocol are exercised by all men, women, girls and boys.

The papers are drawn from the jointly convened AU Commission and Solidarity for African Women's Rights Conference on the Protocol that was held in Addis Ababa, Ethiopia on 27–30 September 2005. The conference brought together women and government representatives from all over the continent to find ways of ensuring that the Protocol lives after ratification.

I commend this book to you not as an academic reader, though some of you may enjoy reading it from this perspective, but as a clarion call to action. Breathe life into the African Union Protocol on Women's Rights in Africa by promoting and protecting the rights it contains for us all.



Professor Alpha Oumar Konaré
Chairperson of the African Union Commission
African Union Headquarters, Addis Ababa, Ethiopia
December 2005

ABBREVIATIONS

ACDHRS	African Centre for Democracy and Human Rights Studies
ACHPR	African Charter on Human and Peoples' Rights
ADR	alternative dispute resolution
AJM	Association des Juristes Maliennes
AMwA	Akina Mama wa Africa
APRM	African Peer Review Mechanism
AU	African Union
AUC	African Union Commission
BPA	Beijing Platform for Action
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
COVAW	Coalition on Violence Against Women
CPTAFE	Cellule de Coordination sur les Pratiques Traditionelle Affectant la Sante des Femmes et des Enfants
CRC	Convention on the Rights of the Child
CSO	civil society organisation
DRC	Democratic Republic of Congo
FAMEDEV	Inter-African Network for Women, Media, Gender and Development
FDC	Foundation for Community Development
FemAct	Feminists Activism Coalition
FEMNET	African Women's Development and Communication Network
FGM	female genital mutilation
FIDA	Federation of Women Lawyers
GBI	gender budget initiative
GEMSA	Gender and Media Southern Africa
IAC	Inter-Africa Committee on Traditional Practices Affecting the Fundamental Rights of Women and Girls
ICJ	International Commission of Jurists
IGNs	intermediary gender networks
MISA	Media Institute of Southern Africa
MTEF	Medium term expenditure framework
NEPAD	New Partnership for Africa's Development
NGO	non-governmental organisation
OAU	Organisation of African Unity

PER	public expenditure review
PRC	Permanent Representatives Committee
PRSP	poverty reduction strategy paper
REC	regional economic community
SADC	Southern African Development Community
SAP	structural adjustment programme
SOAWR	Solidarity for African Women's Rights
TGNP	Tanzania Gender Networking Programme
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNGASS	United Nations General Assembly Special Session on HIV/AIDS
UNFD	Union Nationale des Femmes Djiboutiennes
UNIFEM	United Nations Development Fund for Women
WiLDAF	Women in Law and Development in Africa
WRAPA	Women's Rights Advancement and Protection Alternative

PART ONE

CONTEXT FOR
THE RATIFICATION OF
THE PROTOCOL



INTRODUCTION

The idea of this book came from the African Union (AU) and Solidarity for African Women's Rights (SOAWR) conference on the Protocol to the African Charter on Human and Peoples' Rights held in Addis Ababa, Ethiopia, 27–30 September 2005. The conference was convened to chart the next steps for the Protocol and to shift the focus from campaigning for ratification to developing strategies for the domestication and implementation of rights for African women and girls. The conference was well attended by participants from all over the continent. Resource people who have been actively involved in the campaign made presentations on their experiences and on possible strategies for garnering more ratifications as well as implementing the provisions of the Protocol. The sharing of experiences was done with a view to learning from one another and coming up with innovative, yet practical, ways of engaging decision-makers as well as the very people who will benefit from the implementation of the Protocol – the women and girls of Africa.

The purpose of this book is to document the experiences and strategies that could be used to ensure universal ratification and implementation of the AU Protocol on the Rights of Women in Africa. It is hoped that these strategies and experiences will play a part in popularising the Protocol as well as encouraging more women's rights activists and organisations to come on board and push for the domestication of the Protocol in all African countries.



GENERAL SITUATION OF WOMEN IN AFRICA

KAROLINE KEMP

This chapter attempts to provide a basic introduction to some of the issues addressed in the Protocol on the Rights of Women in Africa, and offers some background statistics to suggest why these issues are so pertinent. The Protocol is groundbreaking for a number of reasons, but especially so because it acknowledges the challenges faced by African women in their daily lives. It is obviously not possible to cover these topics in a way that represents the experiences of all African women. The following summarises the situation of women in relation to war, peacekeeping, refugee status, political representation, education, literacy, employment, maternal health, sexual and reproductive rights, HIV/AIDS and trafficking.

Conflict situations, peacekeeping and refugee status

Many African women have been affected by war and while they often face the most hardship, rarely are their voices heard in the decision-making spheres of peace and conflict resolution. Statistics on the number of women involved in peace processes are difficult to find, but it is generally safe to say that this is

*The number of women who suffer
some kind of violence during times of conflict
is extraordinarily high*

an area dominated by men. Women's voices go unheard during formal peace negotiations, disarmament, demobilisation and reintegration, the creation of new constitutions, elections, reconstruction, rehabilitation and the establishment of judicial systems. At the same time, of the 1.9 million victims of conflict in sub-Saharan Africa in the 1990s, 63 per cent were women and children. Further, the number of women who suffer some kind of violence during times of conflict is extraordinarily high. For example, in the Democratic Republic

of Congo (DRC), according to the World Health Organisation, at least 40,000 women have experienced some type of sexual violence since the war began in 1998. However, organisations working in the area claim that for every case reported, 30 go unreported. While women are prominent in grassroots organisations, they are left out of the vitally important decision-making at policy level and so their specific concerns and needs are ignored. This occurs even though the violence perpetuated against women is exacerbated during times of conflict and they make up the majority of all victims. The Protocol defends the right of women to a peaceful existence and the participation of women in the promotion and maintenance of peace.

War is the primary cause of the displacement of populations – both within a country and across borders. According to the UN High Commission on Refugees, over half of Africa's six million refugees and 17 million internally displaced peoples are women. These are probably conservative estimates, as people within their countries' borders – internally displaced peoples – are often not counted, nor provided for. Civil war and ethnic strife have led to the high numbers of refugees on the continent. Women and girls experience particularly difficult situations and must often provide for their families alone, in unsafe and unhealthy conditions. They have specific needs for shelter, supplies, healthcare and protection from violence, both physical and sexual. The Protocol makes special provisions for female refugees and also calls for the promotion and maintenance of peace, as well as protection in times of armed conflict.

Political representation

The involvement of women in parliament is a measurable statistic of gender equality and women's empowerment. Caution is needed, however, as the participation of women in government does not necessarily translate into pro-woman policies. The meaningfulness of this aspect of the Protocol is therefore predicated not only on taking part in government, but in doing so in a way that is consistent with the specific needs of women. According to the United Nations Development Programme (UNDP), the number of women in parliament has increased in Africa between the years 1990 and 2005. In sub-Saharan Africa, the percentage of women in parliamentary seats in the single or lower house only increased from 7.2 per cent in 1990 to 9.0 per cent in 1997 and finally reached 14.2 per cent. In Northern Africa, these figures are 2.6 per cent, 1.8 per cent and 8.5 per cent respectively. Some African countries have made provisions to enforce quotas for the number of women in parliament, so have

high numbers of women in government (Rwanda, for example). This decision-making involvement is imperative to the Protocol, which states that women must be able to participate in the processes of government and politics.

Education and literacy

The education of women and girls is a marker for many things – development, human rights, health and the ability to provide financially for oneself and one’s family. Africa’s history of educating girls and women has not been completely satisfactory but this is changing. UNDP statistics show that there has been a decline in the gap between girls’ and boys’ enrolment ratios for primary schools in the 1990s and by 2000 the proportion of girls to boys in primary schools was over 9: 10 in more than half of the African countries. Although in some areas the enrolment of girls is greater than that of boys, in others numbers are much lower (one-third or below). In sub-Saharan Africa, literacy rates are 77 per cent for young males and 68 per cent for women. The Protocol makes clear provisions for the education of women and girls.

Economic activity and employment

Official statistics for economic activity indicate that men, in all parts of Africa, are more involved than women in formal wage-earning employment, which includes only non-agricultural work. The numbers have increased for women but are still low. The reasons for this are linked directly to a number of factors, including limited access to education and the disproportionate representation of women in the agricultural and informal sectors. Indeed, because women

*Of the estimated 1.3 billion poor people
in the world, 70 per cent are said to be women*

are generally solely in charge of caring for the home, children and members of the extended family, which is unpaid labour, women are not often included in employment statistics. These dynamics are all part of the larger socio-cultural and political attitudes towards women. In sub-Saharan Africa, the number of women in wage-earning employment has risen from 31.5 per cent to 35.8 per cent in the years between 1990 and 2003, and in Northern Africa, from 18.9

per cent to 21.5 per cent. Of the estimated 1.3 billion poor people in the world, 70 per cent are said to be women. The Protocol promotes the right to access to labour, as well as the creation of conditions that promote and support the economic empowerment of women.

Sexual and reproductive health

Maternal health is another measurable statistic that determines the place of women in society, and UNDP reports show that in sub-Saharan Africa, problems in pregnancy and childbirth cause the deaths of at least 250,000 women each year, which is the highest in the world. Maternal mortality rates per 1,000 births in 2000 were 450 in Northern Africa and 130 in sub-Saharan Africa. High fertility rates and the low rate of care by skilled health providers during pregnancy and birth remain impediments to the goals of decreasing maternal

In sub-Saharan Africa, problems in pregnancy and childbirth cause the deaths of at least 250,000 women each year, which is the highest in the world.

deaths. The Protocol states that women's sexual and reproductive health is to be both respected and promoted, which is predicated on women's right to control their fertility and by the obligation of states to provide adequate, affordable and accessible health services. The Protocol also demands that governments establish and strengthen existing pre-natal, delivery and post-natal services for all African women. One of the biggest threats to the Protocol in terms of maternal health, as well as sexual and reproductive rights, is the stance of the American administration on these matters. President Bush's conservative positions are detrimental to women's health worldwide, and the effect that these have on policies, educational curriculum and funding challenge the ability of the Protocol to be realised.

The Protocol is groundbreaking for a number of reasons, but especially for its provisions on women's sexual and reproductive rights. Female genital mutilation (FGM) is practised more in Africa than in any part of the world and more than 90 million African women and girls are survivors of some form of the practice. The Protocol demands an end to FGM as well as the provision of necessary support services for survivors. The Protocol also calls for the author-

isation of medical abortions, specifically in cases of sexual assault/rape, incest or unsafe pregnancies. Abortion in most African nations is illegal, although millions of unsafe abortions are carried out by those not properly trained.

HIV/AIDS

The HIV/AIDS pandemic has many effects on women and their families. The Protocol enforces the right to self-protection, and to be informed of one's health status and that of one's partner. It also provides for health services to cope with the effects of HIV/AIDS. Of the over 40 million people living with HIV, more than half are in Africa, and at least three-quarters of AIDS-related deaths occur in sub-Saharan Africa. Statistics from UNAIDS show that in 2003 there were 23 million adults with HIV/AIDS in sub-Saharan Africa and that 57 per cent, or 13.1 million of those affected, were women. Further, young women (between the ages of 15 and 24) were more than three times as likely to be infected. In many parts of Africa, teenage girls are at a proportionately higher level of risk. Women who are poor, or have little or no education – those without much power in society – are most vulnerable. While some African countries are combating the pandemic with education, a crucial part of its elimination, others face a wall of silence. Even if new infection rates drop, as many as half of the young people in the most seriously affected areas of Africa face the risk of AIDS-related deaths. Indeed, the pandemic has not only become the leading cause of death in Africa, it has reversed the development of many of its countries.

Trafficking

Trafficking of women and children is an increasing problem across the globe. The Protocol calls for the protection of women and prevention of trafficking, as well as the prosecution of those responsible. Trafficking of women in Africa is said to take place in at least half of the continent's nations and occurs in a number of different forms. Women are sold and kidnapped for the purposes of sexual slavery and prostitution, domestic or commercial labour and forced soldiering. Women from around Africa are being sold not only to other African countries, but are also being sent as far away as Europe, the Middle East and North America. Once enslaved in these situations some girls and women are forced to pay off a debt, for example the cost of their acquisition, their accommodation, meals or medicine. Conditions are often unsanitary, the girls and women face violence, have no access to healthcare or adequate nutrition and

have no options to leave. The number of women and children who have been trafficked is hard to define – this is an underground industry and also a very transient one. The UN estimates that at least 4 million women and children are trafficked annually worldwide, although the accuracy of this number is difficult to qualify because nobody knows how many women and children are sold each year. Statistics for Africa are even more unreliable, but estimates from the UN propose that 200,000 children alone are trafficked between borders in Western and Central Africa.

While this is in no way meant to serve as a conclusive overview of the abuses of women’s rights in Africa, it does provide a glimpse of some of the key areas where concrete actions can be taken. Women lead challenging and

The pandemic has not only become the leading cause of death in Africa, it has reversed the development of many of its countries.

complex lives, and there are no easy solutions, no quick fixes. All African people must play a role in advocating the rights of women and recognise that the solutions are as diverse as the communities and cultures in which they live. The Protocol provides the framework to address these and other issues that are integral to realising African women’s rights.

Karoline Kemp is a Commonwealth of Learning young professional intern with Fahamu.



INSTRUMENTS ON WOMEN'S RIGHTS

RITA ANYUMBA

At the international level, these are:

- UN Charter (1946)
- Universal Declaration on Human Rights (1948)
- Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (1979)
- Optional protocol to CEDAW.

Regionally these are:

- Instrument establishing OAU (1963)
- African Charter on Human and Peoples' Rights (ACHPR) (1981)
- African Charter on the Rights and Welfare of the Child (1990)
- Protocol to the ACHPR establishing the African Court on Human and Peoples' Rights (1998)
- Constitutive Act of the African Union (2000)
- Protocol to the ACHPR on the Rights of Women in Africa (2003).

The sub-regional instruments are:

- Instrument establishing the Southern African Development Community (SADC)
- SADC Declaration on Gender and Development (1997)
- Addendum to the Declaration on the Eradication of Violence Against Women (1998).

The national instruments are:

- National constitution/laws
- Traditions and customs.

The instruments are complementary and need to be ratified and domesticated by individual states. While not in competition with other instruments, the Protocol provides that where national laws provide a higher standard, they take precedence over the Protocol.

Regional instruments

The concept of human rights is fundamental to all aspects of human development. The numerous resolutions and instruments in favour of equal rights for women and girls are all guidelines for improving the legal and human rights status of women. The African Charter on Human and Peoples' Rights is a regional instrument and specifically gives an African aspect to issues of human rights by addressing matters critical to Africa. It came into force on 21 October 1986.

It ensures that the rights of women are promoted, realised and protected in order to enable them to enjoy fully all their human rights as well as promoting and protecting the rights of African people in general. These include the right to self-determination and full sovereignty over natural resources, the right to peace and the right to a favourable environment for development.

The African Commission on Human and Peoples' Rights is responsible for enforcing the rights enshrined in the charter. Though the African charter recognises the importance of women's rights, it covers only a small fraction of the areas in which women need protection, leaving the greater part of women's human rights unattended to.

The charter recognises the importance of women's rights through:

- Article 2, the non-discrimination clause, which provides that the rights and freedoms enshrined in the charter will be enjoyed by all irrespective of their sex
- Article 3, which states that every individual will be equal before the law and be entitled to the equal protection of the law
- Article 18(3), which is specifically about the protection of the family and promises to ensure the elimination of discrimination against women and protect their rights
- Article 60, which states that the African Commission on Human and Peoples' Rights will draw inspiration from international human rights instruments such as CEDAW.

Though these seem major concessions, the reality is that women need much more than these provisions if their rights are to be fully promoted and pro-

tected. Women are critical to the survival of their families, communities and nations. They constitute more than 50 per cent of the African population, and perform the bulk of agricultural and informal sector labour. Women tend to bear a disproportionate burden in crises and they are at a great disadvantage in participating effectively in development ventures because of some of the contradictory practices that come from traditional, cultural and religious attitudes and constraints. Other critical areas of concern are: women's poverty, food insecurity and lack of economic empowerment, inadequate access to education, training, science and technology, women's subjugation in culture,

*The failure to promote respect for
the rule of law has serious implications for
the domestication of the Protocol.*

family and socialisation, the deplorable condition of women's health and reproductive rights, women's relationship and links to environment and natural resource management, conflicts and the absence of women in the peace process, the mainstreaming of gender-disaggregated data and the adverse effects of media on women's rights.

Other regional milestones that have had an impact on the political, socio-economic and cultural status of women in Africa include, but are not limited to, the four regional conferences on the Integration of Women in Development, in Nouakchott, Mauritania in 1977, in Lusaka, Zambia 1979, in Arusha, Tanzania 1984, and in Abuja, Nigeria 1989.

National instruments

National instruments vary from country to country. It is up to individual governments to provide for the promotion and protection of women's rights in their constitutions. Most African countries have measures in their constitutions to provide fundamental rights and freedoms to both men and women. Generally speaking, progressive changes have been made to national laws across the region in specific areas affecting women, but the changes have been made in a piecemeal and uncoordinated manner. There is also the problem of constitutional rights being abrogated by contradictory and conflicting customary and/or religious laws and practices. For example, in some African countries, despite

provisions on the right to work and earn a living being stipulated in labour laws, married women may not work if their husbands refuse to allow it.

In addition to these challenges, the failure to promote respect for the rule of law has serious implications for the domestication of the Protocol. As governments subvert constitutions and compromise the rule of law in order to entrench their power bases, increased cases of arbitrary detentions, the curtailing of media freedoms, the harassment of political opponents and so on impinge on the domestication process. When state machinery is used to clamp down on rights and to silence the voices of dissent, priority will not be given to implementing laws and regulations that promote rights, particularly those of women. Strategies to counter such actions are therefore critical in ensuring that the Protocol is domesticated.

Rita Anyumba is an intern at the African Women's Development and Communication Network (FEMNET).

PART TWO

THE PROTOCOL
COMES INTO FORCE



AFRICAN UNION PROTOCOL ON THE RIGHTS OF WOMEN IN AFRICA: THE SOAWR CAMPAIGN

FAIZA JAMA MOHAMED

The Protocol on the Rights of Women in Africa is a protocol to the African Charter on Human and Peoples' Rights (ACHPR), which addresses a broad range of human rights concerns and advances the human rights of African women through creative, substantive and detailed language. The Protocol, for the first time in international law, explicitly sets forth the reproductive right of women to medical abortion when pregnancy results from rape or incest or when the continuation of pregnancy endangers the health or life of the mother. In another first, the Protocol explicitly calls for the legal prohibition of female genital mutilation. It also contains other equality advances, such as calling for an end to all forms of violence against women. This includes unwanted or forced sex, whether it takes place in private or in public. The Protocol recognises that protection from sexual and verbal violence is inherent in women's right to dignity. The Protocol also endorses affirmative action to promote the equal participation of women, including equal representation of women in elected office, and calls for the equal representation of women in the judiciary and law enforcement agencies. Articulating a right to peace, the Protocol recognises the right of women to participate in the promotion and maintenance of peace. The broad range of economic and social welfare rights for women set forth in the Protocol includes the right to equal pay for equal work and the right to adequate and paid maternity leave in both private and public sectors. It also calls on states to take effective measures to prevent the exploitation and abuse of women in the pornographic industry and in advertising. Furthermore, it specifically recognises the rights of vulnerable groups of women, including widows, elderly women, disabled women and 'women in distress', which includes poor women, women from marginalised population groups and pregnant or nursing women in detention. Finally, as a safeguard, it has a provision (Article 31) ensuring that where higher standards of rights exist – in national, regional or international laws – those would then prevail over provisions in this Protocol.

On 11 July 2003, during their second ordinary summit held in Maputo, African heads of state and government adopted this important Protocol. This was a long-awaited realisation, as it had taken eight years for the draft text of this critical new human rights instrument for African women to be endorsed. The text was presented to the Executive Council of the African Union (AU) and later on adopted by the heads of state and government following the recommendation of the Executive Council.

Article 26 of the Protocol cites obligations of the state parties. They are expected to implement and monitor the actualisation of the rights provided in the Protocol and, in particular, provide budgetary and other resources for the full and effective implementation of the rights recognised in the Protocol. They are also expected to report on progress in their periodic reports to the African Commission on Human and Peoples' Rights.

While eight years is quite a long period for drafting, negotiating and adopting the Protocol, there was a concern that its ratification and domestication would take the same time or even longer. Similar instruments have taken a long time to be ratified and enter into force. The ACHPR was adopted in 1981, but only came into force in 1986 – five years later. The Protocol establishing the African Court on Human and Peoples' Rights came into force in 2004, six years after its adoption in 1998. And the African Charter on the Rights and Welfare of the Child, which was adopted in 1990, came into force nine years later.

Women's and human rights organisations who had been following the debate around the drafting of the provisions contained in the Protocol, and who had successfully advocated for the inclusion of much of the language finally adopted, were therefore concerned that its ratification and domestication might take a very long time, unless governments were consistently held accountable to honour their commitments. In April 2004, these organisations took stock of the progress of ratification and were concerned that one year after adoption only one country, namely The Comoros, had ratified the Protocol. For a full list of the countries who have ratified the Protocol and when, see Appendix 3. This confirmed the fear that if countries were left to go at their own pace it would take a long time for African women to enjoy the rights articulated in the Protocol. Therefore, these organisations (including Equality Now, FEMNET, ACDHRS, Akina Mama wa Afrika, WiLDAF, Fahamu and Oxfam GB among others) decided to form a coalition to encourage governments to bring the Protocol into force swiftly and ensure its subsequent domestication. Since then, there has been a steady increase in the number of organisations, within the pan-African coalition Solidarity for

African Women's Rights (SOAWR), campaigning for the speedy ratification of the Protocol. As of March 2006, 20 organisations¹ are active at national, regional and international levels.

The coalition began its campaign with a petition to the heads of state. This was posted on the Pambazuka News website, a weekly electronic newsletter produced by Fahamu, and attracted lots of support from across Africa. A 'Text Now 4 Women's Rights' campaign also mobilised hundreds of mobile users from all over Africa to lend support to the petition. It was the first time that this technology had been used for a pan-African campaign and in support of the human rights of African women.

SOAWR members used various other strategies at national and regional levels to popularise the Protocol across the continent and to encourage AU member states to hasten their ratification processes. These various strategies included:

- Producing advocacy materials (special issues of Pambazuka, a book entitled *Not Yet a Force for Freedom*, and other publications), which were widely distributed and became especially useful during AU summits
- Holding press conferences, TV/radio interviews and issuing press releases as a way of consistently holding governments accountable while also popularising the Protocol
- Handing out colour cards to member states (green for countries that have ratified the protocol, yellow for those that have signed but not ratified it and red for those that have not even signed the Protocol) to encourage them in their commitment – or remind them of their lack of real commitment – to the human rights of women
- Direct advocacy, whereby SOAWR engaged in dialogue with member states about the progress of ratification at national level and during AU summits and learned what obstacles, if any, were inhibiting progress
- Direct communication with heads of state on a regular basis
- Organising public events, thereby reaching out to the wider African public.

In addition, SOAWR took advantage of the opportunities that presented themselves to pursue the early ratification of the Protocol. These included the AU session on Gender, which was held during the opening of the third ordinary summit of the heads of state in July 2004. One outcome was the adoption of a Solemn Declaration on Gender Equality in Africa, whereby heads of state and government declared that they would ratify the Protocol by the end of

2004. SOAWR members used this as an advocacy tool to urge member states to honour their commitment. The UN review at the Commission on the Status of Women in March 2005, regarding progress made ten years after the Fourth World Conference on Women, held in Beijing in 1995, was another opportunity for advocacy as countries wanted to report on positive developments.

The campaign was not free of challenges. The pace of ratification by some countries was slowed down for a number of reasons. In conflict countries, such as Burundi, Democratic Republic of Congo (DRC), Somalia and Sudan, peace building was the priority and focus of the governments. Burundi and DRC have signed the Protocol but could not take the next step, due to longer processes of negotiation. In the case of the DRC, the government was eager to secure ratification by consensus from government and opposition parties. In countries preparing for national elections, such as Ethiopia, Mozambique, Tanzania and Uganda, political campaigning for elections seemed to be the governments' priority. Mozambique has since ratified the Protocol while the rest of these countries have signed it. In July 2005, the host country (Libya) for the AU's fifth ordinary summit limited the access of African civil society to

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the summit, thus SOAWR suffered a setback in pushing for more visibility of the campaign and holding member states accountable. This was particularly unfortunate since it was a year after the solemn declaration had been adopted and the summit was to review the progress countries had made.

However, the collective effort of SOAWR members was not wasted. The pace of ratification accelerated with amazing success, with the Protocol breaking AU (and its predecessor, the Organisation for African Unity) records for the ratification of new instruments. Women in Africa celebrated the coming into force of the Protocol on 25 November 2005, 30 days after the 15th ratification. This date was significant as it also coincided with the start date of the international 16 days of activism to end violence against women. The news of its coming into force was therefore received by African women as a good omen.

Despite being proud of this achievement, SOAWR members have noted that the task is not complete until the Protocol attains universal ratification and the rights contained therein are domesticated into national laws for the benefit of the women of Africa. The campaign continues, therefore, with a greater emphasis on the domestication and implementation to make these rights a reality.

Endnote

¹ African Centre for Democracy and Human Rights Studies (ACDHRS), African Women's Development and Communication Network (FEMNET), Akina Mama Wa Afrika, Association des Juristes Maliennes (AJM), Cellule de Coordination sur les Pratiques Traditionnelles Affectant la Sante des Femmes et des Enfants (CPTAFE), Coalition on Violence Against Women (COVAW), Equality Now, FAHAMU, Federation of Women Lawyers (FIDA-Kenya), Foundation for Community Development (FDC), Human Rights Law Service (HURILAWS), Inter-African Network for Women, Media, Gender and Development (FAMEDEV), Inter African Committee on Traditional Practices Affecting the Health of Women and Children (IAC), OXFAM GB, Sister Namibia, Union Nationale des Femmes de Djibouti (UNFD), University of Pretoria Centre for Human Rights, Voix des Femmes, Women's Rights Advancement and Protection Alternatives (WRAPA), Women in Law and Development in Africa (WiLDAF).

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PROVISIONS OF THE PROTOCOL

ROSELYNN MUSA

The Protocol addresses specific problems and issues that have significantly hindered African women's rights and well-being in the past. However, although the Protocol covers a broad range of women's human rights issues and can serve as a good model in advancing the human rights of African women, it is not flawless. Some of the provisions of the Protocol and the corresponding issues they raise are described below.

Article 2 Elimination of discrimination against women

In most African societies, culture and tradition have been used by men to justify discrimination against women. Culture constitutes the totality of people's way of life, their values, moral principles, and religious and social practices. A culture can thus be a force for liberation or oppression. Male dominated ideologies in Africa have tended to use culture to justify oppressive gender relations. African governments could use the standards of the Protocol to remove all negative stereotyped cultures that discriminate against women and hinder their full advancement.

Article 3 Right to dignity

The family as an agent of socialisation assigns different statuses, values and roles to boys and girls. In many countries in Africa discrimination against women starts before birth with parental and social attitudes that promote a preference for sons over daughters. Children of both sexes should be accorded equal opportunities to grow and develop to their full potential as equal partners for sustainable development and peace.

In many African countries women's disadvantaged position, low self-esteem, lack of confidence (resulting from how they are treated by society) and low motivation limit their capacity to take advantage of the opportunities available to them.

This article therefore seeks to reform social and cultural traditions and practices and create a common civil code that upholds the dignity of women as equal partners with men in society.

Article 4 Violence against women

Women are subject to violence and to threats of violence in their daily lives, physically and psychologically. Violence deprives women of their ability to achieve full equality. It threatens their freedom, safety and autonomy. Many cases of violence against women go unreported, particularly when they take place in the home, because of fear or shame. The psychological, emotional and economic conditions of women often alter their perception of reality such that they see themselves as completely helpless and unable to make choices. In some cases the abused women do not even see themselves as victims.

Although governments across Africa are now more concerned with the issue than in the past, few have taken legal, constitutional steps to stop the practice. The Protocol enjoins state parties to 'enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public'.

Article 5 Elimination of harmful practices

Some cultures perpetuate traditional practices that are harmful to the health of women and constitute a direct violation of their fundamental human rights. In this connection, the Protocol has provisions that aim to improve the image and role of African women by improving public awareness through formal and informal education and outreach programmes. This article also offers legal protection against the practice.

Articles 6 and 7 Marriage, separation, divorce and annulment of marriage

The Protocol provides that women and men should enjoy equal rights and be regarded as equal partners in marriage. Marriage will take place only with the full consent of both parties. Cases of forced and early marriage persist in Africa and the situation of the girl child remains a matter of concern. The Protocol also requires that marriages are registered in accordance with national laws in order to be legally recognised. In cases of separation, divorce or annulment, women and men should have the right to an equitable share of the joint property deriving from the marriage.

Male dominated ideologies in Africa have tended to use culture to justify oppressive gender relations.

Article 9 Right to participation in the political and decision-making processes

Women's equal right to participate in decision-making is beyond a question of democracy and good governance; it is also a necessary condition for the effective recognition of women's interests, without which the objectives of sustainable equality and development will never be achieved. The value of this aspect of the Protocol is predicated not only on taking part in government, but in doing so in a way that is consistent with the specific needs of women.

Article 10 Right to peace

Women are rarely included in decision-making on conflict prevention, resolution and management, or even in peace-building initiatives. Before conflicts occur, women can be agents of change for building a new society from the ashes of the old; they ought, therefore, to be involved in the peace process.

Article 11 Protection of women in armed conflict

Several African countries have been, and some still are, embroiled in war, civil strife and conflict caused by a combination of factors including massive violations of human rights and ethnic violence. These situations usually impact heavily on women and children, resulting in violence, involuntary displacement and flight from their country of origin. Violations of the fundamental rights of women and girls are widespread during times of armed conflict. These include torture, rape and murder and should not be condoned. In many cases, the countries they flee to as refugees are unable to absorb the extra burden and may not be able to provide essential services for them. The absence of a special support system to deal with internally displaced people render this group, especially women and children, particularly vulnerable and makes it less likely they will receive attention from the international community. It is therefore vital that this group is recognised and prioritised.

Article 13 Economic and social welfare rights

Poverty in Africa manifests itself in various forms and has its origin in a lack of income, the unequal distribution of wealth and income, economic recession, drought, heavy debt burdens and the unfavourable conditionalities tied to borrowing from international financial institutions, armed conflict, civil strife,

and so on. More than a third of the people of Africa are unable to meet their most basic needs.

The heavy burden of poverty falls disproportionately on women, especially female-headed households. The feminisation of poverty is an ugly reality.

*The feminisation of poverty
is an ugly reality*

Although generally speaking women constitute more than half of the population, they have limited access to and ownership of land and housing yet they provide the greater percentage of the food supply.

Women are the backbone of the agricultural sector and produce cash crops as well as engage in subsistence farming, yet their non-marketed productive and reproductive labour is neither marketable nor recognised as an economic output. They are therefore confronted by considerable discrimination that is a major obstacle to increasing their productivity. Women in Africa need to be empowered to participate in economic structures and policy formulation in the production process itself. Women's empowerment will enhance their capacity to alter realistically the direction of change for their own well-being and that of society as a whole.

In this regard, the Protocol recommends promotion of equality of access to employment and equal remuneration for women and men, and ensures transparency in the recruitment, promotion and dismissal of women. It also combats and punishes sexual harassment in the workplace.

Article 14 Health and reproductive rights

Women's health and reproductive rights are central to the realisation of their potential. Their ability to exercise control over their fertility is a crucial step in enabling them to make the necessary choices in other areas. Women's, and particularly adolescent girls', sexuality and fertility pose a high health risk. They contribute significantly to girls' inability to attain high levels of education and unsafe abortions lead to maternal mortality and HIV/AIDS.

The subordinate position of women and adolescent girls, with younger women being the least empowered, and their lack of access to information, education and communication, health facilities, training, an independent income, property and legal rights, make them particularly vulnerable to HIV/

AIDS infection. They lack adequate knowledge about the disease and the measures that have been taken to prevent them from infection.

Consequently, education and information campaigns that target the sexual and reproductive health of women must be increased and strengthened and made more accessible and culturally appropriate. In this regard the Protocol provides women with the right to control their fertility, choose any method of contraception and to have family planning education, while state parties have, among other things, to protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape and incest and where continued pregnancy endangers the mental and physical health of the mother or foetus.

Article 15 Right to food security

The struggle against poverty, the economic empowerment of women and the promotion of sustainable livelihoods for women is a moral, political and economic obligation and the responsibility of national governments and the international community. Women and other people living in poverty represent an under-utilisation of productive potential. Women's deprived rights to development should be recognised. This requires policies that are gender sensitive including gender-based anti-poverty policies. Besides income poverty, other areas of deprivation for women include social discrimination, exclusion, desertion, physical disability, vulnerability and deprivation. There is also poverty associated with wars, famine, displacement and refugees, unbalanced trade relations and structural adjustment programmes (SAPs).

Some of the measures recommended by the Protocol to combat this are to provide women with access to clean drinking water, sources of domestic fuel, land and the means of producing nutritious food and also adequate systems of supply and storage to ensure food security.

Article 16 Right to adequate housing

Despite the active role of African women in the management and creation of urban and rural environments, they are discriminated against in their access to and control of land and property. In some countries, legislation, tradition and harmful religious practices prevent women from inheriting and having control over property and so deprive them of their rights to adequate housing.

The Protocol provides that women will have the right to equal access to housing and to acceptable living conditions in a healthy environment.

Article 17 Right to a positive cultural context

African societies are products of historical evolution, enriched by diverse cultures. Individuals within those societies have their collective identities as members of families, communities, religious groups, and so on. The delicate balance between the rights of the individual and society and the groups within society should be respected. Women, being among the most vulnerable and marginalised, need to be integrated in order to reconnect them with the community by making all the institutions of society more accessible to them.

In this regard, the Protocol provides that women will have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.

Article 18 Right to a healthy and sustainable environment

Poverty is a major cause and consequence of environmental degradation and is compounded by scarcity, depletion and the mismanagement of resources. Environmental degradation has had, and continues to have, an adverse impact on the population as a whole. Women experience this impact particularly in the traditional divisions of labour. This has resulted in an increase in their workload of domestic chores.

Often, women have no choice other than to exploit natural resources in order to survive, even when they know about the importance of protecting the environment and its sustainability.

Natural resources are central to the livelihood of poor rural households and it is women who are responsible for growing and processing agricultural products. Women are key environmental managers with profound knowledge of plants and ecological processes. Such knowledge should not be lost to future generations of women, so the Protocol has made room for, among other things, the protection and development of women's indigenous knowledge systems.

Article 19 Right to sustainable development

Recently, African governments have slowly begun to see the political and socio-economic participation of women as a key factor and catalyst for the accelerated advancement of women. In this respect, African governments have established national machineries to be responsible for coordinating the gender perspective in overall national development activities. However, governments still have a lot to do to see that women fully enjoy their right to sustainable development.

Governments need to take tangible steps to ensure the participation of women at all levels of decision-making, implementation and evaluation of development policies and programmes, to promote their access to credit, training and skills development and also to ensure that the negative effects of globalisation are reduced to the minimum for women.

Articles 20 and 21 Widows' rights and the right to inheritance

The need to address the plight of widows cannot be overemphasised. In many African cultures, widows have suffered from a regressive heritage in being ostracised from their communities at worst or being discriminated against at best. It is not uncommon for a widow to be labelled 'a witch' who is responsible for the death of her husband. She is consequently dispossessed of all her family's assets and left to grapple alone with her liabilities.

The Protocol states that widows should not to be subjected to inhuman, humiliating or degrading treatment, that they should automatically become the custodian of their children, unless this is contrary to the children's interests and welfare, and that they should have the right to marry the person of their choice.

Overall, therefore, despite regional and individual efforts made by the international community and local and international NGOs to improve the status of African women, only modest progress has been made and the Protocol still leaves critical gaps. Some women's human rights violations have been inadequately addressed, for example the bride price and arbitrary dismissal from the workplace, particularly because of pregnancy. However, in spite of this, the Protocol is an extremely useful framework for advancing the rights of women in Africa.

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PART THREE

BREATHING LIFE
INTO THE PROTOCOL:
CHALLENGES FOR
IMPLEMENTATION



DOMESTICATING THE PROTOCOL

SARAH MUKASA

At the time of writing, only 13 member states of the African Union (AU) have ratified the Protocol on the Rights of Women in Africa (for a full list of which countries have ratified the Protocol and when, see Appendix 3). This is in spite of the undertaking made by the heads of state in the Solemn Declaration on Gender Equality in Africa in July 2004, when a commitment was made to sign and ratify the Protocol by the end of 2004. This is indicative of the amount of political will there is to substantively address the rights of women on the continent. The disconnection between the pronouncements made at regional level, and the action taken nationally and locally, demonstrates that the road to domestication and implementation is riddled with challenges that will have to be overcome if the Protocol is to benefit the women it seeks to protect. Activists must be at the forefront of efforts to domesticate this Protocol. This chapter attempts to contribute to this by assessing a number of possible challenges that will come with the campaign for domestication. It will do this by presenting a synoptic view of the response to women's empowerment initiatives in the past, at government and community levels.

The main challenge is at the level of the patriarchal state. Engaging the state in women's rights has been an extremely difficult struggle with varying degrees of success. Historically, the state has been at worst hostile and at best extremely slow to respond to advancing the rights of women. It has entrenched this practice through a regime of discriminatory laws and policies. Even in those countries that have managed to enshrine the principles of equality and non-discrimination in their supreme law, the constitution, the process of domestication, that is, aligning and framing national laws to reflect these principles, has been wanting. For example, in Uganda, in spite of an extremely progressive constitution, efforts to effect a law that protects the rights of women in marriage, separation and divorce, has for over 40 years yielded no results. Similarly, given our governments' past record for on the whole failing to honour internationally agreed standards, there is little reason to believe that the Protocol will be treated any differently.

The Protocol, which seeks to commit states to protecting the political, social,

cultural and economic rights of women in Africa, is the only regionally generated standard to address the specificity of women's oppression. It is thus critical that African governments apply this standard nationally and locally. In addition, given that it addresses many context-specific violations, its application throughout the continent would go a long way to ensuring that women are able to exercise their rights. However, it is because the Protocol seeks to redress the power equation in gender relations, and to significantly alter the status quo, that resistance to it on all levels is to be expected.

There is no doubt that advancements have been made on the continent for African women, the most significant of which has been the increased access by women and girls to the public sphere, especially in local and national politics, education and the business sector. Similarly, there have been many policy

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initiatives to take into account the interests of women and other marginalised groups. However, this investment has not translated into a fundamental change for the better for the vast majority of African women. Moreover, these gains come against a backdrop of other developments that stand to put these gains and all future work to domesticate the Protocol in jeopardy. These are discussed below.

Weak institutional mechanisms for implementation

This is particularly true of governments' gender machinery. Most governments have established machinery, either in the form of ministries or departments, to oversee government initiatives for the empowerment of women. However, at the review in Addis Ababa in October 2004 of the Beijing Declaration and Platform for Action, 10 years after it was agreed, considerable concerns were raised about the machinery's performance. In particular, it was noted that their capacity to spearhead the women's rights agenda is extremely limited due to severe (and in many cases disproportionate) cuts in

budget allocation and human resources. Given that it is this machinery that will be largely responsible for monitoring the process of domestication and also the implementation of the Protocol, it is a major concern that it will not be in a position to do so effectively.

The slow process of change

This is particularly true of legislation and policy. Different countries have different legal regimes. As a general rule, those countries that have inherited the French legal system have some advantage. Under these systems, ratification of the Protocol automatically qualifies it as national law. However, those with the British system have to undergo a process by which national parliaments effect a law that meets the agreed standard. If the past example of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is anything to go by, many of the countries that have ratified CEDAW have so far failed to incorporate these standards into national law. This is further complicated by the existence of dual legal systems in much of Africa. In most African countries, the existence of customary and religious law on the one hand and statutory law on the other often means that women's rights are compromised. When drawing up laws on matters relating to women's rights, customary and religious law is often given precedence. The Protocol, which seeks to challenge discriminatory cultural practice, is therefore likely to meet with highly organised resistance, and actually be undermined as a result of this duality of legal systems.

Failure to respect the rule of law

The failure to promote the culture of constitutionalism and respect for the rule of law has serious implications for the domestication of the Protocol. Recent developments in a number of countries, such as Uganda, Ethiopia, Togo, Zimbabwe and Chad, indicate a direct correlation between the failure of governments to respect the rule of law and to protect the human rights of citizens. As governments subvert their constitutions and compromise the rule of law in order to entrench their power bases, so do cases of increased arbitrary detentions, curtailing media freedoms, and harassment of political opponents increase. The state apparatus is used to clamp down on rights and also to silence the voices of dissent. In these circumstances, the priority will not be to implement laws and regulations that promote rights, particularly those of women.

Ratifying with reservations

As with CEDAW, the political agency of the Protocol is likely to be undermined through the practice of ratifying it with reservations. Where a government enters reservations on a particular provision, it is in effect absolving itself of the responsibility to implement the provision. A number of the countries that have hitherto ratified the Protocol (see Appendix 3) have done so with reservations. It is feared that in particular those articles dealing with reproductive and sexual rights will be compromised in this way.

Other environmental factors that will have an impact on this campaign are discussed below.

Increased insecurity and conflict

Whilst the Protocol seeks to protect women in conflict, the citizenry's ability to effect change of this kind is severely weakened in the context of conflict and insecurity. The collapse of law and order systems, the breakdown and dispersal of communities and support networks, and the struggle just to survive makes it virtually impossible to implement these or any other kinds of measures.

Globalisation and market-led growth strategies

Africa's share of the global market is shrinking. The inequitable competition for market share (since government subsidies in Northern economies are still firmly intact) means that Africa will continue its downward slide in gaining access to Western markets. Together with the reduction of the role of the state in welfare provision, the plight of poor women in particular will continue to be a major challenge. Weak state structures, with reduced revenues, especially for law and order (police and other law enforcement agencies), are less able to address these needs. Given that considerable financial investments are required for the effective application of the Protocol, this development should be a cause for major concern.

Current global policy

The terrorist attacks of 11 September 2001 in New York marked a paradigmatic shift in global policy from safeguarding and promoting human rights to fighting terrorism. Global politics have become highly militarised, and the subtext to this shift is that respect for basic human rights principles can and will be compromised in the interest of fighting terrorism. This has had a knock-on

effect, with the growing intolerance of progressive thinking, ideas and development programmes. Women's empowerment initiatives, particularly those aimed at strategic levels, such as the campaign for the domestication of the Protocol, are especially endangered. Resources and support allocated to these kinds of programmes have been on the decline.

At community level, there are number of challenges that are to be expected. These are discussed below.

Lack of awareness

There is a lack of awareness, especially at local levels, of the Protocol and what it seeks to address. This suggests a general apathy and ambivalence by much of society towards initiatives of this kind. Since one of the most effective ways to effect change is to have a critical mass of public support, this aspect of the campaign for the domestication of the Protocol cannot be ignored. Since the Protocol seeks to protect in particular those women especially vulnerable to violations, it is imperative that efforts to engage them in the process are strengthened.

Religious fundamentalism and conservatism

The significant increase in religious fundamentalism and conservatism will seriously threaten the campaign for the domestication of the Protocol. There is an increasing resistance to progressive measures to protect the rights of women. The Protocol aims to promote a number of measures which for some time have been resisted in a number of national and local contexts. In particular those measures prohibiting harmful traditional and cultural practices, that seek to promote sexual and reproductive rights and property ownership rights, are likely to be contentious. As part of the campaigning process, our nets should be cast wider to make strategic alliances with some of the more progressive but influential cultural and religious authorities, in order to circumnavigate this resistance.

It is imperative that strategies adopted for this campaign take these factors into account and prepare for the resistance that will surely come. It is critical that our networking, support and information-sharing capacities are enhanced so we can address the resistance collectively. A multi-pronged approach is required in which community mobilisation strategies are strengthened with, for example, the use of non-traditional methods such as the arts and popular culture. In addition, we must strategically incorporate documentation and

research initiatives that highlight the economic and social dividends that will flow from the domestication of the Protocol. The significant advantage that the Protocol has is that it is an instrument that was generated in Africa by Africans. It came out of the lived experiences of women in Africa. It should be highlighted that our governments actually formulated this instrument, working hand in hand with civil society in order to improve the quality of life of half of the continent's population.

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INSTITUTIONALISING STRATEGIES FOR THE PROTOCOL

MARY WANDIA

The Protocol on the Rights of Women in Africa was developed by the African Commission on Human and Peoples' Rights, in partnership with civil society organisations (CSOs) and the Inter-Africa Committee (IAC). The African Commission on Human and Peoples' Rights is the specialised African Union (AU) body charged with setting human rights standards, their implementation and monitoring. Thus, the Protocol falls within the mandate of this commission.

The provisions on implementation in the Protocol reinforce this. Article 26 on implementation and monitoring reads:

- 1. States Parties shall ensure the implementation of this Protocol at national level, and in their periodic reports submitted in accordance with Article 62 of the African Charter, indicate the legislative and other measures undertaken for the full realisation of the rights herein recognised.*
- 2. States Parties undertake to adopt all necessary measures and in particular shall provide budgetary and other resources for the full and effective implementation of the rights herein recognised.*

Article 27 mandates the African Court on Human and Peoples' Rights with interpretation matters arising from the application and implementation of the Protocol. The Protocol establishing the African Court came into force in January 2004 but a debate about merging the African Court on Human and Peoples' Rights with the Court of Justice has created uncertainty around an institution that is critical to the implementation of the Protocol.¹

Article 25, which deals with remedies, holds governments responsible for the violation of rights identified in the Protocol. As with all the provisions of the Protocol, this provision charges government institutions with the implementation of the Protocol at national level. It reads:

States Parties shall undertake to:

- a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated;*

b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.

The Protocol provides clear divisions of responsibility in the implementation and monitoring of its provisions. However, challenges to this are that:

- Few members fulfil their reporting obligations with the African Commission on Human and Peoples' Rights due to the lack of enforcement of non-compliance mechanisms
- The establishment of the African Court has been delayed because of the debate about merging it with the Court of Justice. This will create a vacuum once the Protocol enters into force.
- There is a lack of connection between the ministries of justice (closely linked with the African Court on Human and Peoples' Rights), the ministries of foreign affairs (closely linked with the AU) and the ministries of gender/women. The first two ministries do not communicate commitments undertaken at the regional level to the latter, leading to a gap in implementation and monitoring
- There is a lack of implementation of international human rights instruments at national level, due to lack of political will, awareness, resources and capacity for women's rights in gender machineries
- The role of the Special Rapporteur on the Rights of Women in Africa is not entrenched in the Protocol, leaving the Protocol without a mechanism for periodically reporting on its implementation. The African Charter on the Rights and Welfare of the Child has such a mechanism in the form of a committee which is enshrined in its provisions
- There is a lack of awareness of the existence and content of the Protocol at national level, which is critical in calling for implementation
- There is a lack of awareness by women's organisations in Africa of the mechanisms for CSO involvement/input into the African Court and the African Commission on Human and Peoples' Rights, which allow them to present cases of violations of women's rights once state remedies have been exhausted
- There are different ratification and implementation mechanisms for international instruments in Africa. For example, French-based constitutions allow for direct implementation of international instruments once a state ratifies them whereas the British-based ones require enactment of new bills by parliament before implementation or adoption by the cabinet

- There are multiple legal systems at national level (duality of the constitution) in many African countries, allowing co-existence of statutory, religious and traditional systems that lead to violation of women's rights, particularly those related to marriage, inheritance and divorce.

In order to overcome the challenges mentioned above and fast-track implementation of the Protocol, the following actions can be taken. The list is by no means exhaustive or relevant to all contexts.

At the national level, actions include:

- Advocacy with parliaments, judiciary, ministries of gender/foreign affairs/justice/finance and national human rights institutions to encourage them to support litigation, implementation and reporting mechanisms for the Protocol
- Linking up with and supporting work on gender budgeting initiatives to ensure allocation resources for implementation of the Protocol
- Connecting the ministries of gender, foreign affairs and justice through tripartite meetings and including CSOs to facilitate reporting on the progress in implementing the Protocol to the African Commission on Human and Peoples' Rights
- Legal reform – eliminating duality and entrenching implementation of international instruments in constitutions
- Raising awareness, in partnership with the media and national human rights institutions, on the content and role of the Protocol
- Coordinating civil society engagement with government on the Protocol and the African Charter on Human and Peoples' Rights. This can take the form of coalitions at national level to strengthen voice and action on implementation
- Integrating the Protocol in other AU review processes, such as the Solemn Declaration on Gender Equality in Africa (SDGEA) and the Africa Peer Review Mechanism (APRM).

At the sub-regional level, actions include:

- Building partnerships with regional economic communities (RECs) and their parliament on implementation of the Protocol
- Advocating the adoption of the Protocol as a monitoring framework on women's rights at REC and national levels
- Engaging CSO coordination/coalitions with RECs, similar to the regional coalition e.g. Southern African Development Community (SADC).

At the regional level, actions include:

- Using the Protocol as the auditing framework for the AU Commission and other AU specialised mechanisms on women's rights
- Women's organisations linking up with and supporting the coalition on the African Court to ensure the court is established quickly and that judges to be appointed include women with capacity for women's rights
- Integrating the status of implementation of the Protocol in the reporting framework on the SDGEA and APRM
- Popularising the role of the Special Rapporteur on Women's Rights in Africa, particularly in advocacy and monitoring the status of implementation of the Protocol.

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Endnote

¹ The court is now being made operational, with judges elected during the Khartoum Summit meeting of the African Union. In June 2006 the first meeting will be held to discuss how to make the court operational.



FINANCING THE PROTOCOL: CONSIDERATIONS FOR INFLUENCING BUDGETS FROM EXPERIENCES IN TANZANIA

MARY RUSIMBI

National budgets provide the truest indication of state priorities. The process of allocating scarce national resources reveals a government's highest priorities and identifies its favoured constituents when decision-makers are forced to choose among policy priorities. Policies and budget guidelines provide standards and set the direction of development goals, but budgets actually demonstrate the political will of a given government or country.

Hence, strategies to ensure the institutionalisation and implementation of the Protocol on the Rights of Women in Africa will necessarily include strategies to engage with resource mobilisation, allocation and tracking. This chapter draws on the experiences of the Tanzania Gender Networking Programme¹ (TGNP) in carrying out budget analysis and macro and micro policy-making, in order to contribute to strategising on the way forward for the Protocol.

*Gender-blind budgets are resulting
in wasted resources and negative outcomes,
and are widening gender disparity and poverty.*

Historically, budgets have been 'gender-blind' by failing to take into account the different effects of programmes and expenditures on women and men. In recent years, feminist economists and others have played a key role in drawing the attention of mainstream economists, planners and statisticians to the fact that budgets impact on men and women differently. They have also been instrumental in generating evidence that shows how gender-blind budgets are resulting in wasted resources and negative outcomes, and are widening gender disparity and poverty.

Furthermore, over the years, budgets in developing countries have also increasingly become 'poor-blind' and even 'anti-poor'. For example, the macro-

economic adjustment agreements entered into by many African countries with international financial institutions have focused on economic growth and stability indicators that have either not considered specific outcomes of budget execution for marginalised poor people or have set priorities that directly resulted in greater marginalisation.

Gender activists need to be clear about what a gender-sensitive and pro-poor budget looks like, in order to support advocacy activities in the region.

Characteristics of a gender-sensitive and pro-poor budget

A gender-sensitive and pro-poor budget would seek to ‘cushion’ people, especially poor men and women, against social adversity (in the short and medium term) with a view to reversing the negative effects of economic adjustments and market failures on their livelihoods. In this sense, such a budget enables both men and women to have more control of national resources and livelihoods, which creates empowerment.

In terms of development, a gender-sensitive and pro-poor budget takes a wider view of poverty, by noting that it is more than a lack of income. Within this broader view, poverty is a lack of education, access to services, access to non-monetary resources and income. Therefore, only a budget that focuses on increasing income and on improving access to other resources for both women and men can be called truly gender sensitive and pro-poor.

It is important to note that such a budget calls for a heightened and critical awareness of social class and gender dynamics – knowing who is located where and who does what – in order to allocate resources in a targeted manner, taking into account the class/poverty/gender nuances of development. It also calls for new kinds of questions, which focus on the priority concerns of women, youth, the poor and other marginalised people. Gender disaggregated data gathering processes within the government ministries and agencies are a necessary but not sufficient element in this process.

It is against this background that TGNP’s engagement in Tanzania’s public expenditure processes is discussed below.

Role of TGNP and its partners in influencing government budgets

TGNP and its key partner, FemAct, pioneered a gender budget initiative (GBI) in Tanzania that began in mid-1997. This initiative was developed in the context of structural adjustment programmes (SAPs), which began being imple-

mented in the country in the mid-1980s. The SAPs had extremely negative effects on women and poor men through dramatic expenditure cuts to social services, particularly to health care and education, as well as through the adoption of retrenchment measures to public institutions and privatisation.

Created out of this context, the aim of the GBI was to advocate for a gender-sensitive and a more people-oriented development strategy, and participatory and equitable allocation of resources. The strategy adopted was, and continues to be, influential in transforming planning and budgetary processes in order to utilise participatory techniques and take into account the practical and strategic needs of marginalised communities, particularly women, poor men, and youth. The strategy was/is not to develop a separate budget for different groups (for example women) but rather to integrate issues of equitable distribution of resources into all steps and stages of the budgetary process. At the same time, the strategy challenges neoliberal macroeconomic reform policies that prioritise profits, not people, and calls for an alternative macroeconomic framework based on participatory democracy.

To implement the GBI strategy, TGNP and its partners developed strategic interventions directed at engaging with the government, parliament and others.

The main strategies adopted include:

- Creating and sustaining a strong broad-based network/coalition of civil society organisations (CSOs) who share the same goals and vision for development, and who participate in different aspects of the campaign for a gender-sensitive, pro-poor framework for policy and resources
- Creating space for dialogue and building working relations with key government actors at central and sector level as well as in parliament (e.g. finance and social services sub-committees)
- Conducting research and otherwise generating the knowledge and facts needed to make powerful arguments about pro-poor and gender approaches in policies and budgets (for example, analysis of the impact of cost-sharing policies in health services and privatisation of water on women, youth and poor groups). As part of this strategy, dissemination of the data and information generated to key policy-makers and government technical staff is key, as well as its popularisation so as to contribute to public debate
- Lobbying and influencing key government actors and parliamentarians by training civil servants working on budgets on gender and budgeting issues.

Some of these strategies are also directed at advocating for dialogue sessions with key policy implementers and planners. TGNP and its coalitions have been active in identifying and sharing with government and parliamentarians some of the major limitations of the present macroeconomic and Poverty Reduction Strategy (PRS) II frameworks. As part of gender budgeting work, TGNP and other CSOs have been instrumental in influencing the recent PRS II review process by raising key issues with government and donors.

The PRS framework is a constraint for sustainable poverty reduction and promotion of gender equality because the framework continues to impose neoliberal macroeconomic reforms and is locked into unfair global relations in production, trade and debt, backed up by international military interven-

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tions, which limit sustainable and self-reliant development within Tanzania and Africa as a whole. The framework continues to reinforce government's heavy donor dependency while prioritising the corporate-led private sector and marginalises small-scale business and poor producers. This trend has the potential of reducing government resources further in real terms and thus limiting its efforts towards fighting against HIV/AIDS and other disasters as it increases its dependency on donor funding. This raises the question of the sustainability of the programmes under the PRS framework. The framework has limited potential for promoting significant poverty reduction strategies because indicators of quality of life for women and men in the poorer and marginalised groups are not well reflected. Official government data indicates higher mortality rates for mothers in childbirth, especially in rural areas, and major class/rural-urban differences in infant and child mortality rates, within the context of an overall decline.

Another issue is the application of analytical tools, instruments and skills for influencing and strengthening government capacity for gender-sensitive and pro-poor budget preparations, approval, implementation and tracking. Developing alternative budget tools, such as budget guidelines, is an example

of how these tools could be made more pro-poor and gender mainstreamed. Within this context, skills on gender budgeting and policy continue to be strengthened among budgetary planners and technocrats so as to enable them to play a progressive role in mainstreaming pro-poor and gender interpretations in national, sector and local level policies and budgets.

Influencing Medium Term Expenditure Frameworks (MTEFs) – budget preparations – is also key in providing opportunities for pro-poor and gender-equality objectives and indicators in budgets on a long-term basis. TGNP and its partners continue to influence how MTEFs, especially at sector level, can best deliver public services with pro-poor and gender-sensitive projections. TGNP has advocated for the development of pro-poor and gender-sensitive indicators in the annual MTEFs/annual budgets, as well as in raising issues of corruption in relation to budget allocations (for example: Why such high allocations towards administration, allowances and transport? Who benefits?).

Promoting progressive debate on debt and poverty and informing and supporting communities in gender budgeting issues with broader policy issues has strengthened pressure groups, enhanced public debate and created more opportunity for dialogue with policy-makers. This has been achieved by the development of position papers, booklets, posters and leaflets, and wide media publicity through the press and TV/radio.

Gender budget analysis

This is a key strategy for assessing and evaluating who, among men and women as well as between rich and poor, is impacted negatively by policies and budgets approved by parliament. For example, for the last few years, TGNP and other CSOs have provided pro-poor, gendered analyses of budgets to advocate – and hold government accountable for – promoting pro-people and gendered impacts of budgets at different levels. These analyses reflect the expectations of like-minded CSOs, in having a budget with objectives and indicators that lead to redistribution of income so as to achieve equity, and access for all to key resources and services.

For example, for the budget cycle 2003/2004, our analysis indicated that the national budget was neither pro-poor nor gender-sensitive because its main strategies and indicators did not, in a significant way, lead to increasing household income for the majority of the poor and, instead, created greater unequal distribution of income and less access to key resources that decrease non-income poverty (violence, women's workload, and so on). One indicator that demonstrates access to resources at the household level – and thus the

success of per capita income growth – is the rate of secondary school enrolment for girls. For the budget analysis of 2005/2006 our analysis challenged the government budget for making only modest efforts in reaching out to the majority of women and poor men in the areas of wages and taxation, employment, livelihoods and agriculture, education, water, health and HIV/AIDS.

As part of tracking who benefits (or is impacted negatively) from government resourcing strategies, the budget analysis developed by the CSOs is then

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of donors, politicians, decision-makers
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used to serve key purposes, including raising public awareness and encouraging debate on how public budgets are responding to the priorities of the poor, working people, women, youth and children. The analysis is also used to broaden avenues for further discussion and engagement with government planners and budget officials as well as parliament (for example the finance committee). In this way, the analysis contributes to strengthening the CSOs' own conceptual and analytical capacity in the area of policy, budgets and gender, as well as in involving them in broader public expenditure processes and issues, such as government accountability and transparency, and corruption.

Public expenditure reviews (PERs)

These are also key points of entry for TGNP and other CSOs aiming to influence strategic national policies and resourcing strategies. Several attempts have been made by TGNP/CSOs to engage with PER processes at both the national and sector level, with positive results in some cases in high-level financial/expenditure policy processes. For example, although we are yet to see enough operating strategies, for the last three years we have seen an increase of pro-poor and gender analysis in the core PER analyses/reviews, such as water sector PER studies, HIV/AIDS sector PER and national PER meetings and consultative processes. In the May 2005 public expenditure review annual meeting, TGNP and other CSOs voiced issues for the government's considera-

tion in key areas including the cross-sector strategy of the MTEF. Under this strategy, issues of financing, coordination, and quality and accessible services on health, education, water, HIV/AIDS, governance for women, poor men and children were deliberated upon. TGNP also challenged the continued reliance on neo-liberal macroeconomic reforms that have failed to promote broad-based sustainable development or reduce poverty, and called for alternative economic policies. This stand was supported by several speakers from CSOs and the national private sector.

All these have been and continue to be important efforts by TGNP and its key CSO partners in advocating progressive changes in government economic policies and in public expenditure/resourcing processes and accountability. The aim of these efforts is to advocate broad-based, gender-sensitive and pro-poor economic policies and budgeting strategies that prioritise the needs and interests of the majority of the poor women and men of Tanzania.

Victories, lessons and challenges

As we share these struggles to engage with public (economic) policies and budgeting processes through the GBI, we wish to claim some victories but admit some challenges and lessons as well. Overall, victories include:

- Changing attitudes among policy-makers and planners on gender, poverty and other development issues. An example of this change of attitude at policy/government level includes the current efforts by the government/National Bureau of Statistics in incorporating analysis of unpaid work of women in its national statistics through the conduction of a time use survey as part of its ongoing labour force survey
- Increased resources/budgets for cross-cutting issues, such as gender equality, HIV/AIDS, environment, young people and children in different sectors
- Enhanced partnerships between CSO coalitions/networks, resulting in more strategic approaches towards policy engagement efforts and process-related outcomes, such as capacity/gender awareness, policy analysis and advocacy, information-sharing and public engagement
- Enhanced networking between CSOs and members of parliament, resulting in MPs (women and men) viewing CSOs and gender organisations as key resources in the area of gender, policy analysis and pro-poor approaches, which MPs could make use of when overseeing the budget.

- On more specific issues, TGNP/CSOs have been providing NGOs in the country (and beyond) with effective strategies to promote popular struggles based on evidence from policy/budget implementation. For example, TGNP and FemAct are currently implementing a campaign on 'Return Resources Back to the People: HIV/AIDS is a Policy, Resource and Gender Issue'. This is a popular campaign aimed at raising public debate and awareness of the links between HIV/AIDS, poverty, resources and gender, while using the government's own official statistics and reports.

User fees and other costs deny a large proportion of the poor, women and youth access to health, water and other services. TGNP is part of the networks and gender working groups demanding the abolition of these fees. Using the government's own information and data, the networks highlight how current strategies on exemptions and waivers in health have failed to reach the targeted poor, including pregnant women, children and people living with HIV/AIDS. Alongside these efforts, there have been ongoing efforts from CSOs advocating that the government pay attention to the current strategies of home-based care in the area of HIV/AIDS as these strategies shift the burden of care from the government to the individual and the family, thus leading to increased unpaid work for women and children (girls and orphans), and blocking children from going to school. All these efforts are important in lobbying for gender-sensitive and pro-people policy formulation and monitoring of poverty eradication strategies.

As mentioned above, as TGNP and other CSOs struggle towards influencing ongoing economic policy and budgeting processes, they face key challenges. These challenges, which need to be seriously addressed in order to yield sustainable results, lead us to pose the following questions:

- Are the CSOs/gender organisations able to influence the government effectively on the policy and budget expectations of its citizens (women and men), within the current policy frameworks that continue to promote heavy dependency on external financing and neo-liberal economic models?
- What is the real impact of GBIs? In other words, does changing budget lines to increase budget allocation to some gender activities, without enhanced public monitoring of how resources have been utilised, have a major impact on the majority of poor women and men's lives?
- How seriously are the CSOs' views on budget improvement and performance taken by government and private sector actors?

- Are the CSOs/gender organisations aware of and leading the emerging politics behind GBIs? In other words, are we serving the needs of donors, politicians, decision-makers and practitioners or of the majority – poor and marginalised women and men?

Mary Rusimbi is the executive director of the Tanzania Gender Networking Programme (TGNP).

Endnote

¹ The Tanzania Gender Networking Programme (TGNP) is a non-governmental organisation working to obtain social transformation with a gender focus in all levels of society. TGNP works closely with other key NGOs in coalition such as Feminists Activism Coalition (FemAct), Intermediary Gender Networks (IGNs) and grassroots outreach groups.



INTEGRATING THE PROTOCOL AND REGIONAL INSTRUMENTS: THE CASE OF SADC

LOGA VIRAHSAWMY AND ROTIMI SANKORE

The Southern African Gender Protocol Alliance has been active in producing strategies for campaigning for the domestication and implementation of rights for African women and girls. The alliance members and regional networks such as the Gender and Media Southern Africa (GEMSA) network and the Media Institute of Southern Africa (MISA) add up to over 60 organisations.

The basis of the sub-regional strategy is that it is better to engage regional economic communities, such as the Southern African Development Community (SADC), on issues related to treaties and protocols, rather than engage member countries individually.

This chapter covers a variety of issues that affect women in Africa and suggests strategies to eliminate the causes as far as possible. For instance, in the political sphere, women within SADC do not have a regional platform on which to discuss issues of women's political participation and formulate strategies and this is recognised as an impediment to the participation of women in their country's political affairs. Women have so much to learn from each other but opportunities to engage in learning and sharing are limited.

The Southern African Gender Protocol Alliance is campaigning to raise the proportion of women in decision-making from 30 per cent to 50 per cent by 2020, and to elevating the SADC Declaration on Gender and Development to a protocol on accelerating gender equality in SADC. For this campaign, they have come up with detailed fact sheets on the following:

- Governance
- Education

- Economic empowerment
- Constitutional and legal rights
- Gender violence
- Health
- HIV/AIDS
- Information, communication and the media
- Institutional mechanisms.

Each fact sheet gives details of the provisions on these issues in key instruments, the strengths and gaps of these provisions, their implementation and the key recommendations.

Proportion of women in decision-making

SADC has endorsed the African Union (AU) position on gender parity in all areas of decision-making. In effect, it commits itself to ensuring gender equity in all its organs by including more women in its decision-making forums. The Southern African Gender Protocol Alliance, which comprises ten NGOs from around the region, has welcomed this decision by SADC but has also expressed disappointment at the failure by heads of state to seize the first opportunity to 'walk the talk' following their decision not to appoint a woman to one of their two top positions. While the alliance has congratulated the new appointees, it expressed disappointment that the regional body had failed to lead by example in ensuring gender balance in its own top decision-making structures. Only one out of seven senior management positions in SADC are held by a woman.

Research coordinated by Gender Links points out that incorporating all existing commitments into one comprehensive set of targets and indicators for achieving gender equality and setting new targets where these do not exist would be a global first. In the area of decision-making, the AU has come out in favour of gender parity but has not set targets for when this is to be achieved. Among the proposed measures is that the proportion of women in decision-making in 2005 be raised to 50 per cent by 2020, with different benchmarks for each country, depending on their starting point. Although only three countries have achieved the existing SADC target, on average, women comprise 20 per cent of the region's legislators: second only to the Scandinavian countries where the average is 38 per cent. Where it took the Scandinavians 60 years to achieve this, SADC has shown that rapid change is possible.

Elevating the SADC Declaration on Gender and Development to a protocol

The alliance has further expressed its disappointment over the SADC summit's final communiqué, which fails to mention the recommendation made by the Council of Ministers that the SADC Declaration on Gender and Development should be elevated to a protocol for accelerating gender equality. The Southern African heads of state have come under increasing pressure to take definite action to adopt the principle of the proposed protocol. This proposal follows an audit of the 1997 SADC declaration, conducted by experts from the region, who argue that moral persuasion has not worked in elevating the declaration to a protocol. It is hoped that legal strategies will result in a speedy elevation of the declaration and legally binding measures are now being sought to move SADC from commitments to implementation.

Many targets are required for ensuring that gender equality is achieved in the economic, social, constitutional and legal spheres. This underscores the recommendation made by the Council of Ministers that leaders adopt the principle of a comprehensive protocol that would bring together all existing international and regional targets and commitments, as well as enhance these where gaps have been identified. The proposed protocol seeks to use the positive experience of having targets to set several more strategic benchmarks. This includes requiring all SADC countries to amend their constitutions to include guarantees of gender equality (in line with the more recent constitutions in the region such as those in South Africa, Mozambique and Namibia) by 2010. They would also be required to specify that should there be a conflict between customary and state law, the constitution would take precedence. The new measures would also include a target of 2010 for all countries in the region to adopt comprehensive legislation and to make budgetary allocations for ending gender violence: one of the most glaring reflections of the gap that exists between gender equality on paper and in reality. The proposed protocol comes with an annual reporting framework and an independent SADC commission on the status of women that would monitor performance.

Vowing to continue the campaign for a binding sub-regional instrument on gender equality, the alliance is of the opinion that the outcome of the summit underscores the fact that while many milestones have been achieved, the struggle for gender equality is still far from over. Regional and national advocacy and lobbying will continue. Alliance members will also soon be reviewing a domestication and advocacy tool in the form of model legislation based on the Protocol. The tool was developed by alliance member CREDO for Freedom of

Expression and Associated Rights and will be shared with organisations across Africa that are campaigning for domestication of the Protocol. It is hoped that the model legislation can accelerate the domestication process by being adapted to country needs and circumstances where applicable.

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HARMONISING THE PROTOCOL WITH NATIONAL LEGAL SYSTEMS

IBRAHIMA KANE

Introduction

This paper addresses national legal strategies for the implementation of the new continental treaty on African women's rights.

Without any doubt, activists and African women in general wish to see the Protocol on women's rights become operational from the moment it comes into force – which may take place by the end of 2005. Above all, they wish to mobilise all those within member states who are in a position to contribute to the effective protection of women's rights through concrete legal initiatives, and to the domestication of this additional treaty to the African Charter; and to encourage member states to take actions to implement its measures.

The AU/SOAWR conference is an initiative to encourage collective reflection on ways in which African states can be compelled to give assurances that they will respect women's rights in a sustained manner, rather than to abnegate their obligations. The ultimate ambition of this approach is not only to take forward the debate on the role and the place of women in African societies, but additionally to encourage regional human rights initiatives¹ – which have until now not had the opportunity to ascertain the extent of the protection offered to women by regional human rights law – to clarify the precise nature and extent of the states' obligations, which are set out in the Protocol on women's rights.

Before examining in detail the different actions that women's rights activists and human rights organisations can undertake to lend support to the appropriation of this important instrument of women's rights protection in Africa, it is apt to draw attention to the fact that the application of international treaties by state entities is always problematic. By nature, when it comes to protecting individual rights, states are neither neutral nor generous. Moreover, all African states and their structures are controlled by men (the implications of such a situation for the protection of women's rights will be discussed below).

It should be clarified too that the Protocol on women's rights under discus-

sion is a treaty that has been negotiated within the framework of the African Charter. One of the provisions of this charter is to authorise member states to adopt the 'specific protocols and agreements [which] may...supplement the provisions of the Charter'.² And like the African Charter, the Protocol does not contain clauses which permit member states to opt out of or derogate from

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applying its provisions. This clarification is important because many African states have opted out of some provisions of international treaties, notably the United Nations' Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

As the African Commission on Human and Peoples' Rights (hereafter, 'the Commission') has specified, the only legitimate reasons for limiting the rights and liberties contained within the African Charter (and the supplementary treaties), are as stipulated in Article 27(2) so that rights '...shall be exercised with due regard for the rights of others, collective security, morality and the common interest'. The Commission has further stated that: '[P]ossible grounds for the limitation of rights must be based on legitimate public interest; and the consequent disadvantages must be absolutely necessary and strictly proportional to the advantages the limitations obtain. More importantly still, the consequence of a limitation must in no circumstances be to render the right itself illusory.'³

Against this background, the intention of this paper is to critically examine some ideas for action that might contribute to the effective application of the Protocol on the rights of women in the member states. The Protocol will only become a reality for African women if its content is widely known, and its measures can be invoked by offended parties in the courts of member states. To these ends, activists and human rights organisations must fight for the harmonisation of national legislation with the Protocol and monitor its effective application by the different institutions responsible for the implementation of international treaties within internal legal state structures.

Harmonisation of national legislation with the Protocol

This is essential for at least two main reasons. Firstly, it is a question of the obligation of member states to the African Charter, and thus to the Protocol on the rights of women. So long as states adhere to the continental treaty, they have committed themselves to recognising the rights, responsibilities and liberties that the latter enounces, and to 'adopt legislative or other measures to give effect to them'.⁴ This general obligation is reinforced by certain clauses of the Protocol, which explicitly recommend the adoption of legislative measures by the member states.⁵

Secondly, harmonisation will permit African states to sanction the non-observance of the standards as set out in the Protocol on the rights of women. The Senegalese criminal court was for example in the trial of the Chadian dictator Hissan Habre unable to apply the Convention against Torture, because Senegal had not harmonised its legislation with the Convention, notably the practice of universal jurisdiction in matters of torture.

But whether national legislation is harmonised or not, the Protocol has a legal precedence in member states. This was the explicit conclusion of the Vienna Convention of 1969 on the laws governing treaties. According to Article 27 'a member state [party to a treaty] is not entitled to invoke the provisions of its internal law as justification for the non-execution of a treaty'. The jurisprudence of the Commission states that 'popular opinion cannot be invoked to limit the responsibilities of member states towards the African Charter'.⁶ According to this august regional institution protecting human rights: 'the consequence of permitting national law to take precedence over the Charter could be to obliterate the importance and the impact of the laws and liberties provided for by the Charter'.⁷

Harmonisation modalities

In practice, harmonisation is a fairly complex legal process that not only requires judicial measures – laws, decrees, etc. – but also statutory, administrative measures. For example, the concrete implementation of Article 4 of the Protocol on women's rights – a woman's right to life, integrity and security – does not only call for the adoption of laws on violence against women. It also demands important administrative and political measures such as: the mass recruitment of women into the security services; the modification of training programmes for medical and legal personnel to take account of the particular forms of violence suffered by women; the provision of mental health services; and, above all, the establishment by the

state of social structures which are sufficiently robust to confront the civil aspects of gender-violence.

Theoretically, harmonisation modalities will vary according to whether a system of civil law or of common law prevails in a particular country. With the notable exceptions of South Africa and Namibia, whose constitutions oblige the courts to take account of international human rights norms when interpreting domestic legislation, it is generally accepted that where in Africa there are systems of common law in operation, human rights treaties need to be 'nationalised' in order to be integrated into states' domestic legal systems. Conversely, in systems of civil law, once treaties are ratified and published in official bulletins, they are in principle applicable at a national level.

However for the reasons already elaborated, whatever the legal system of the member state, the application of the Protocol requires the adoption of administrative and other laws and measures.

Who should take the harmonisation initiative?

A fully worked out procedural model for harmonisation does yet not exist. In principle, the state party to the Protocol is responsible, but nothing prevents civil society from being the initiator. The role of civil society in the application of the statutes of the International Criminal Court (ICC) is a pertinent example of such an initiative. In 2002 and 2003, a coalition of NGOs organised conferences in 20 African countries to advocate the implementation of the statutes. African women's organisations can in this respect follow the example of the NGO conferences on the implementation of the statutes of the ICC to progress the harmonisation of the Protocol with the legislation of member states.

A notable feature of the conferences on the ICC was their inclusive character. They brought together all stakeholders with interests in the implementation of the ICC statutes: civil servants from ministries of foreign affairs, justice, and home affairs; magistrates and lawyers; representatives from the police and fire services; parliamentarians; university professors and researchers; human rights organisations, activists and the media. The principle objective was to agree on a project for the legal implementation of the statutes, which would then be submitted to national parliaments for adoption.

This strategy had the advantage of implicating key actors in the envisaged reforms. Wide media coverage also served to disseminate information on the subject. It should be said that concretely, the strategy of this coalition did not bring about spectacular results: the countries that finally adopted these imple-

mentation projects are indeed rare. But in the effort to get the Protocol applied in member states, lessons may be drawn from this experience.

First, it is demonstrable that women's rights activists and organisations with an interest in the application of the Protocol should henceforth be prepared to closely collaborate with the relevant administrative and political structures (national human rights' commissions, ombudsmen, parliamentary legal com-

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missions, ministerial departments etc.). Above all, they should familiarise themselves with parliamentary life. Surprisingly, African human rights organisations rarely liaise with MPs or follow parliamentary debates and workings on a regular basis. It should be stressed that rapid changes in the ways these organisations function will be necessary if they are to be influential in the legal, political and social spheres: more than favourable dialogue, advocacy and lobbying for women's rights will be required.

Monitoring the application of the Protocol by member states

This is a useful means of pressurising states party to the Protocol to adhere to commitments to which they signed up by ratifying this important instrument for the protection of women's rights.

According to the African Charter, every two years, member states are obliged to undertake to submit to the Commission 'a report on legislative or other measures taken...to giving effect to the rights and freedoms recognised and guaranteed by the present Charter'.⁸ The review of these periodical reports is carried out during open sessions of the human rights' Commission. NGOs, notably those that have been granted observer status by this regional body to monitor the application of the African Charter, have the opportunity to present alternative reports on the current status of the implementation of the Protocol.

Following the debate about a state's report, the Commission prepares final remarks on the status of the application of the charter by the member state. These remarks will notably include information on the positive aspects of the

actions taken by a member state, will outline principle matters of concern, and will make recommendations. They are then sent to the member state, which is required to provide, within two years, information on the measures taken in order to implement the said recommendations.

At present, the number of states party to the African Charter that regularly present periodical reports is low. A number of them do however present, on a regular basis, periodical report to the bodies charged with monitoring the implementation of international treaties, and take it upon themselves to implement the recommendations they are given.

For example, in a recent case pertaining to a report submitted by Gambia to CEDAW, CEDAW concluded in their final responses that its convention had not been fully incorporated into Gambian law, and explicitly requested that the authorities ‘oversaw that the convention and corresponding internal legislation form an integrated part of the theoretical and practical training of judiciary personnel, including judges, advocates and prosecutors, in order to establish in the country, on a solid foundation, a judicial culture geared towards equality between men and women, and non-discrimination’.⁹

In the case of Benin, CEDAW was concerned that the member state ‘is mostly interested in equality *de jure*, rather than in equality *de facto*, or indeed

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legislation is any good.
Ask rather whether the laws
in force are applied.’*

in the real equality between men and women that the Convention demands’. Moreover it judged ‘the absence of initiatives aimed at evaluating the impact of laws and measures aiming to implement gender equality in areas such as decision-making, education, employment and health were worrying’. It therefore recommended to the Benin government to review ‘the entire set of its laws and programmes, to ensure their compatibility with the provisions of the convention, and to take all necessary legal and other measures to ensure *de facto* equality between men and women in all areas of life, and provide for adequate sanctions against both direct and indirect discrimination against women’.¹⁰

Women’s rights activists and human rights organisations must seize these opportunities to attract the attention of those regional bodies monitoring the

application of treaties concerning women's rights to highlight the achievements, but also to identify the reluctance of some states to apply the measures of the treaties. At the same time, they must take advantage of the publication of the final observations of country reports to promote the Protocol and other treaties related to women. As the same problems will likely come up when the Protocol is implemented, they should be able to reply on the substance of the recommendations to inform their advocacy in its support.

Recourse to litigation

Litigation is the most delicate strategy as it can both contribute to the advancement of the cause of women's rights,¹¹ and cause serious harm to women.¹² It should be added that the context in which such recourse is attempted is not ideal for the laws to be upheld, in particular when it comes to women's rights: it is not mere coincidence that the human rights' Commission has not examined a single petition about the violation of women's rights in 16 years.

In the current African context, the effective protection of women's rights will pass through a stage of developing litigation strategies. However, more deeply, such protection will be contingent on the one hand on the wider climate of opinion and the attitudes of judges, and on the other, on the rigorous training of women's rights activists and organisations.

As regards the situation of national judges, there must be an insistence of the insertion of specific modules which focus on the application of human rights treaties in general, and women's rights treaties in particular into training programmes. There must also be assurance of the availability of sufficient funds to permit judges' access to national, regional and international decisions relevant to human rights in general and women's rights in particular. The application of regional and international human rights law by a judge presupposes he is amenable to considering these dimensions, and assumes an obligation to make the laws a reality, and of benefit to offended parties.

As far as the litigation process itself is concerned, those responsible for carrying it out will require training which will permit them to clearly identify objectives, develop procedures and criteria, select the appropriate jurisdiction, and manage the entire process through until the final decision. Additionally, the regular publication and popularisation of the conventions ratified by states in their official bulletins will be necessary. In the current African context, all these aspects are of vital importance, most of all, when the protection of women's rights is at issue.

Conclusion

'Do not ask whether a country's legislation is any good. Ask rather whether the laws in force are applied.' This maxim seems to embody the credo of all those who are fighting for the meaningful respect of women's rights in Africa. Now we have available one of the most revolutionary women's rights treaties ever drawn up, our struggle must be to set to work to ensure that states that have ratified it begin to apply it. Only then will 'human rights' genuinely come to mean the rights of all human beings, who can claim 'to have been created to rejoice in the fact of their own humanity';¹³ and which will contribute to creating an Africa which is unified, integrated, dedicated to justice and peace, and political, economic, social and cultural integration, returning to pan-Africanism its true meanings;¹⁴ a continent 'composed of democratic states, respectful of individual rights and mindful of constructing stable societies'.¹⁵

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This paper was originally presented in French.

Endnotes

¹ For example, the African Human and Peoples' Rights Commission, which is charged by the African Charter 'to promote human rights and assure their protection in Africa' (Article 30 of the African Charter); the African Committee on the Rights and Well-being of the Child, which was created to 'promote and protect the rights and well-being of the child' (Article 32 of the African Charter on Children's Rights); and the African Court of Human Rights which is mandated to 'be knowledgeable about all aspects...concerning the interpretation and application of the Charter...and any other useful human rights instrument ratified by concerned States' (Article 3 of the Protocol on the African Court).

² Article 66 of the African Charter.

³ Communication No 140/94 and 145/95 *Civil Rights Agenda, Civil Liberties Organisations and Media Rights Agenda c. Nigeria*, paras 41 & 42.

⁴ Article 1 of the African Charter

⁵ Articles 2(1)(a)(b), 4(2)(a)(b) and 7 of the Protocol

⁶ Communication No 211/98 *Legal Resources Foundation c. Zambia*, para. 70

⁷ Communication No 105/93, 128/94, 130/94 and 152/96 in *Media Rights Agenda and Constitutional Rights Project c. Nigeria*, para. 66.

⁸ Article 62 of the African Charter.

⁹ Final Remarks: Gambia, 22 July 2005, CEDAW/C/GMB/CO/1-3 para. 18.

¹⁰ *Ibid*, para. 20.

¹¹ The decision of the Constitutional Court in Benin which declared polygamy unconstitutional.

¹² The first women to file a divorce case against her husband in Burundi in the 1990s was condemned to exile.

¹³ Abdullahi An-Na'im 'The Possibilities and Limits of Judicial Protection of Human rights in the Constitutions of African States', in *Ways of National Recourse to Universal Rights*, Interights, 2001, p.7.

¹⁴ *Strategic Framework of the African Union Commission 2004-2007*, Final Project, Paper No. 1, March 2005, p.5.

¹⁵ *Vision of the African Union and Mission of the African Union Commission*, Final Project, 22 February 2004, p.23.



STRATEGIC LITIGATION: A TOOL FOR DOMESTICATING THE PROTOCOL?

SIBONGILE NDASHE

The scepticism regarding the effectiveness of the law as a tool for realising women's rights is justifiably receiving attention and criticism. In a continent that continues to bear the hallmarks of deeply imbedded inequalities between men and women, feminised poverty and lack of resources, which often translates to lack of access to judicial institutions for the enforcement of newly conferred rights, it seems negligible to moot the law as a tool for reversing these inequalities. This, it is argued, does not seem to matter much when seen in the context of the profound lack of access to judicial institutions that would help in transforming paper rights into realisable rights that would assist in unburdening the continent's most vulnerable lived realities. This lack of a trickle-down effect is much more pronounced when considering the position that African women continue to occupy in most of our societies. With these stark realities in mind it must still be asked: In terms of this Protocol, what can be done differently to make governments accountable in a manner that makes a difference to women's lives?

The challenges facing the implementation of the Protocol are perhaps easier to identify but not convincing enough to necessitate a search for an alternative, as the rights-based approach remains the most convincing approach, to date, for the realisation of African women's rights. Amidst all of these hard realities, this chapter sets out to advance strategic litigation as but one of the tools for domesticating the Protocol.

What is strategic litigation?

Strategic litigation is sometimes referred to as test case litigation, public interest litigation, impact litigation or precedent setting litigation. Strategic litigation is used to challenge laws that are in violation of human rights standards and norms. Its strength lies in that a successful outcome may mean a change, not only in the circumstances of the individual litigant, but that a discriminatory or other constitutionally untenable rule, law, policy or conduct may be

declared invalid. A successful outcome is therefore likely to benefit the broader public as the barrier that exists in law may be struck down. Strategic litigation is, however, not a substitute for law reform but rather acts as a trigger to law reform, particularly where law reform is remiss.

Where do we begin?

The countries that have ratified the Protocol (see Appendix 3) have bound themselves to introducing a normative value system of gender equality. The acceptance of this value constitutes an undertaking to bring about a legislative and institutional framework that supports the establishment and maintenance of this normative value system. At present, there are a number of initiatives that support strategic litigation in some parts of the continent. There are, however, few that focus on strategic litigation for the advancement of women's rights – for a number of varied reasons. Strategic litigation marks a radical departure from the traditional methods of legal service delivery, volume or repeat litigation. Strategic litigation works in a number of settings and it is ideal for the enabling environment that has been created by the Protocol. The content of the provisions of the Protocol have not been tested as yet and it is the task of activists to bring cases before the court and develop jurisprudence that is responsive to the plight of African women. It is a very dynamic and creative environment, trying to get the courts built incrementally. The absence of cases pertaining to women's human rights before the African Commission have, for a long time, been a cause for concern and it had been speculated that the unclear and potentially ambiguous provisions of the charter relating to women's rights were a deterrent.

The different constitutional frameworks

A constitution is ordinarily the supreme law of a country. It constitutes an embodiment of the norms and a basis upon which the laws of a country must be tested. All laws, including international law, will be valid to the extent of their consistency with a country's constitution. At present, there are three different ways in which laws adversely impacting on women's rights have been provided for in constitutions throughout the continent. There are constitutions that:

- Provide for the right to non-discrimination and then proceed to exempt certain laws, often personal and customary laws, from being subject to the non-discrimination clause. These are the provisions often referred to as the clawback clauses

- Make provisions for all rights to be equally applicable. In the event of a tension the rights have to be balanced against each other and the stronger right will prevail
- Pre-empt an inconsistency between the various rights and therefore proceed to give preference to certain rights to prevail over other rights.

These three types of constitutions yield themselves to different outcomes for the advancement of women's human rights when employing strategic litigation. Arguments used in countries where the constitution gives preference to certain rights may not necessarily be useful in changing laws in countries where there are clawback provisions because then it will no longer suffice to

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only argue that a particular law is discriminatory. Clawback provisions exist to sanction discrimination in certain areas of law and therefore further and better argument needs to be advanced.

The advent of the Protocol introduces standards, which must be adhered to by states that have ratified it, regarding what constitutes the content of the rights contained in its provisions. These standards need to be seen as an introduction of normative values on gender equality.

The different constitutional frameworks have, in the past, meant that it was not possible to advance arguments used in another country or to rely on jurisprudence created in one country in support of one's case. Some members of the judiciaries are still rejecting case law from countries that have different constitutions, stating that the constitution is intended to cater for a different state of affairs (for example that the South African constitution provides for remedying past injustices occasioned by race and gender discrimination), a situation which, the judges hold, is not envisaged in those countries or simply that the constitution provides differently. Some judges refuse to hear arguments on international human rights instruments when those instruments have not been domesticated, by simply stating that their hands are tied as the constitution demands that for international law to be applicable it must first be domesticated.

Legal dualism

Many constitutions state that for international instruments to be applicable, the state must domesticate it. International law is not, as such, part of domestic law in most common-law countries. Such law does not become part of domestic law until parliament so enacts or the judge declares the norms thereby established to be part of domestic law. Article 29 (2) of the Protocol provides as follows:

For each State Party that accedes to this Protocol after its coming into force, the Protocol shall come into force on the date of deposit of the instrument of accession.

It is unlikely that the import of this provision is to override the constitutions that require that international instruments must be domesticated. For those states that have only ratified at an international level, and whose constitutions demand that they must domesticate, domestication remains an important step that needs to happen. Failure to domesticate has been one of the reasons cited for the failure of litigators to raise the provisions of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and other international human rights instruments when presenting arguments before national courts.

Strategic litigation?

Legitimate expectations

In international law it is increasingly becoming accepted that citizens whose governments have ratified international instruments have a legitimate expectation to have the instruments that have been ratified domesticated so that, based on this doctrine, the courts can find the instruments applicable. There may be a need to pursue this doctrine in respect of governments who have ratified but have not domesticated international instruments.

Bangalore principles

The judges will not do so automatically simply because the norm is part of international law or is mentioned in a treaty – even one ratified by their own country. But if an issue of uncertainty arises (as by a lacuna in the common law, obscurity in its meaning or ambiguity in a relevant statute), a judge may seek guidance in the general principles of international law, as accepted by the community of nations. The Bangalore principles can be relied on in the event of uncertainty, ambiguity and obscurity in common law and constitution.

Interpretative principle

Over the years, other theories have made their way into courtrooms and, ultimately, into court decisions, which are able to advance the understanding of constitutions as documents that need to be consistent with human rights standards and norms. Courts have been urged to adopt an interpretative principle when construing the meaning of constitutional texts. What is hoped for is that the text is construed so as to resolve any ambiguities that may exist in favour of a construction that upholds universal human rights in preference to one that does not.

The judiciary

Women's rights responsive judiciary

A judiciary that understands the varied and complex manifestations of women's inequality is key to strategic litigation. When conducting strategic litigation the adverse impact of a judiciary that is not able to appreciate the sources of women's inequality is often to confirm and further entrench discriminatory laws that exacerbate women's inequality.¹

Separation of powers

This doctrine is used to limit the powers of governments by separating governmental functions into judiciary, legislature and executive. Although in many countries a strict separation of powers does not exist, members of the judiciary still find it difficult to give orders to the executive or legislature, even when

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requiring them to remedy a breach or violation of fundamental rights, on the basis that such an order would violate the separation of powers. Increasingly, however, there have been events that have necessitated a move from strict adherence to this doctrine, as the enforcement of fundamental rights quintessentially requires that orders be made against the legislature and the executive to fulfil their constitutional obligations.

Although strategic litigation in itself may not be a tool, engagement with the judiciary by civil society formations and other groups is key in familiarising the judiciary with the content of the Protocol in a manner that enables them to appreciate claims based on the provisions of the Protocol.

Some lessons for the Protocol

Engagement with other role players

Traditionally, litigation has often been regarded as a lawyer's tool. When used as a tool to alter societal relations it is not enough to only involve lawyers, as the task at hand requires a multi-pronged approach. It is therefore important to harness relations with institutions conducting research in the field of women's rights.

Research institutes

In a number of strategic litigation cases, expert evidence and research conducted has been able to persuade the courts and provide a human face to the violations complained of. There is also a need to communicate to researchers the kind of research that one needs, as in many areas where strategic litigation can and should be taken, research is often not available. However, researchers do not ordinarily like their work to be used in court proceedings as it may require them to be experts or to be involved in protracted court battles.

Community-based organisations and other service providers

These groups are able to pick up on emerging trends and documenting them as and when they arise. It is important to create an efficient referral mechanism when partnering with community-based organisations. Clarity regarding the services that organisations undertaking strategic litigation are able to provide to members of the public is needed from the outset.

State departments

Sometimes, due to bureaucratic bungles or tardiness, states are slow to pass legislation to correct constitutional defects. In these situations, state department officials can ask organisations to consider undertaking strategic legislation in specific areas in order to trigger law reform or the relevant legislative amendments.

Other feminist scholars

It is true that some of the arguments that are advanced in court proceedings are subject to fierce contestations within the feminist movement. Consensus will

not exist in some instances and the lawyers will revert to insisting that they have an ethical duty to protect their client's interest. Some of the arguments will be very patronising towards their intended beneficiaries but they may well be the arguments that carry the day. The end result should always be to protect women's rights.

The legislature

Litigation is often seen as a process with two mutually opposed parties and strategic litigation often requires that the litigation be conducted against the state as it is a way of getting states to fulfil their constitutional obligations. Often members of parliament who are responsive to gender issues have seen legislation intending to confer rights on women shelved, mainly because there is no political will and also because the issues contained there are not considered urgent enough by other MPs. Strategic litigation can help in break-

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ing the stalemate. At present, more than three African countries have shelved their domestic violence legislation because of the seemingly contentious issue of marital rape. Strategic litigation can be used to break this stalemate, as the failure to provide for such a crime constitutes a violation of the right to be free from violence.

There is a need to get the legislatures to broaden the rules of standing before the courts to enable interested parties to undertake litigation in the public interest. This will help to get organisations to approach courts and ask for declarations. In most cases involving women's rights, the issues involve individuals litigating against family members, employers or strangers in matters of a very private nature. It is often difficult to proceed with high-profile cases as litigants risk being stigmatised, depending on what the case is about. It is therefore useful to get rules relaxed to enable civil society groups to approach a court and ask for a declaration on the failure of the state to provide for some specific relief. The main deponent can use individual cases to highlight to the courts the difficulties that often face women when they try to assert their rights in courtrooms.

The maintenance of consistent debates on the content of the provisions

Pre-empting resistance

The Protocol is presented in the form of a skeleton. Its substance is largely dependant upon the courts who will be interpreting the provisions to provide litigants with the substance of what the provisions contain. The consensus that now exists around what each provision entails ceases to exist once the Protocol is entrusted to everyone, including those who do not support what it stands for. Resistance that was encountered when the Protocol was discussed will continue to arise, albeit in different forms.

Watering down

There will also be attempts to water down some of the key provisions of the Protocol on the basis that 'they are not realisable' for some women. Attempts to 'empower' women outside the provisions of the Protocol will be made and there is a responsibility to ensure that women who are powerless are not further disadvantaged by being lured to privatise themselves into constitutionally untenable practices.

Although it is not always possible to agree on strategies to be pursued when undertaking strategic litigation, the debate on what constitutes the core content

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of the provisions of the Protocol needs to be sustained. Some writing regarding the content of the provisions of the Protocol, although not authoritative, can be of some persuasive value to the courts. The task of delineating what the incidence of the exercise of rights is and the nature of the state's obligations in relation to individual rights is still difficult to resolve. The more poignant issue, however, is how one can use international human rights instruments to compel states to provide an institutional framework that is able to complement the legislative framework that is easily attainable through strategic litigation.

Grappling with these issues in a constructive manner, which asserts – using the human rights framework – the meaning of these provisions, is also useful when attempting to develop a feminist jurisprudence.

Comments on selected provisions of the Protocol

Article 2: Elimination of discrimination against women

1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:
a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application...

Many constitutions embody the principle of equality between men and women. The problem is located in the clawback clauses. Cultural relativism entrenched in some constitutions is the issue that needs to be subject to litigation once and for all to enable the emergence of a jurisprudence that sets out the factors that need to be weighed up against each other if customary law is inconsistent with the right to gender equality. In the countries with clawback clauses these are the arguments that must still take place and be won by the women's movement before rights can be asserted.

b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women...

These are the provisions that require litigating for programmatic duties. Advocacy groups need to monitor the implementation of government programmes.

Article 3: Right to dignity

1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.

The value of including dignity as a fully justiciable right lies in that a number of practices that discriminate against women also violate the right to dignity. It is this interrelatedness that makes it difficult for states that have clawback

clauses to justify retaining a practice that violates dignity, as many – if not all – constitutions that justify discrimination do not sanction the violation of the right to dignity.

Article 4: The rights to life, integrity and security of the person

1. States Parties shall take appropriate and effective measures to:

a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public...

A similar provision in the South African constitution has assisted in building, incrementally, the jurisprudence on violence against women. Traditionally, the courts have construed their role as being limited to refraining the state from inflicting harm on private citizens but now this introduces a duty to the state to stop others from inflicting harm. Sadly, the progressive jurisprudence has not had a corresponding impact on the level of violence perpetrated against women. Most of the cases that have been before the courts were brought by middle-class white women who had some access to legal resources. Activists need to try and ensure that the rights entrenched are able to reach all of the intended beneficiaries.

Conclusion

The implementation of the Protocol depends on how the various parties who can ensure its implementation are able to respond to this challenge. It is little steps, like lawyers beginning to plead human rights standards before domestic courts, to other efforts where parties get together and formulate strategies for domesticating the Protocol in their individual countries that make the difference. It is the constant search for gender implications and employing a gendered analysis that unearths strategic litigation.

For strategic litigation to succeed there is a need to:

- Coordinate efforts, especially in the beginning
- Pick the right cases to avoid getting the wrong decisions
- Choose the right client to make a favourable impression before the court
- Exchange pleadings
- Engage constructively regarding strategies.

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Endnote

¹ The South African Constitutional Court has on two occasions been confronted with indirect discrimination against women: in the Jordan case dealing with commercial sex workers and the Robinson decision, which dealt with the rights of parties in domestic partnerships. On both outings the court has failed to appreciate the gendered nature and extreme vulnerability of parties in domestic partnerships and of women who are commercial sex workers.



THE CASE FOR ALTERNATIVE DISPUTE RESOLUTION AND NEGOTIATION AS STRATEGIES FOR DOMESTICATION OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

ANNE ATIENO AMADI

It is internationally accepted that all women, regardless of race, colour, religious affiliation, economic status or any other factor face discrimination just by the fact of being women. Male power is a feature in all male–female relationships, with women being vulnerable to all manner of acts that men are ordinarily shielded from. Disputes often arise in the family set-up, such as distribution of matrimonial property upon a marriage breaking down or succession differ-

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ences in the event of the death of a husband/father. For the few women who are able to access the judicial system, litigation is almost always the option for them to try and claim their rights.

The Protocol on the Rights of Women in Africa legitimises the struggles for gender equality and the promotion and protection of African women’s human rights, and is a potential force for freedom and justice for African women. Countries that have incorporated the Protocol can use their courts to uphold their international legal obligations to protect women’s human rights. In states that have yet to incorporate the Protocol into national law, courts can still play a crucial role by engaging in judicial activism to achieve the same goal.

The Federation of Women Lawyers (FIDA) Kenya has engaged for over a

decade in litigating for the rights of women. In order to respond to the ever-increasing number of clients, the organisation found it necessary to engage in cases that involve socially significant and precedent-setting issues that would either advance the rights of women or call to attention the concerns of women in the observance and protection of their rights.

Some of the challenges FIDA Kenya has faced in applying international conventions in litigation to pressurise the government to domesticate international conventions/treaties are that:

- The principle of *stare decisis* dictates that cases with similar facts must be decided in similar manner. The majority of judges are afraid to shift from the principle and would always make judgements from existing precedents and available municipal laws rather than engage in judicial activism and decide a case based in international human rights standards
- Litigation is time-consuming and costly. The shortage of judicial officers has contributed to huge backlogs hence delays in finalisation of matters
- Judgments are not 'owned' by the parties in the suit, and so enforcement and/or compliance becomes a challenge, especially regarding the dissatisfied party
- Litigation proceedings are public. More often than not, adverse publicity tends to divert attention from the issues at hand and this may influence the decision of the presiding judges to some extent
- The dominance of men in the judicial system poses a risk of women's issues being trivialised in addressing complaints by way of civil suits. A judge who does not believe in the women's movement is unlikely to allow judgments that would go against his sentiments.

These are just a few of the limitations experienced in litigation.

Alternative dispute resolution (ADR)

ADR is a concept that encompasses a variety of processes or mechanisms by which conflict or disputes can be resolved as opposed to litigation. It presents a whole range of options or methods by which conflict can be resolved, depending on the type of dispute or the issue to be addressed. African countries are moving towards arbitration and mediation processes in their court systems.¹ The campaign to pressure African governments to ratify the Protocol puts women on one hand as claim holders and government on the other as duty bearers in a 'conflict' situation.

At its most primary level, conflict is a disagreement, a misunderstanding or competition of interests. It may also be defined as a sense, whether real or perceived, by one entity that its primary self-interests are being threatened by another. The women's movement may be perceived as a threat, hence the African governments' reluctance to either ratify or domesticate the Protocol, among other international human rights instruments, into municipal legislation. This works against the women's movement in demanding the promotion and protection of women's rights with a resultant 'conflict'.

Categories of typical conflicts

Data disputes

These revolve around or are created by information. They are sometimes referred to as informational disputes. Lack of information or incomplete information may cause conflict. An individual or group observing the behaviour of another without knowing motivations may become suspicious, giving rise to a dispute.

Often, new information can cause conflict, especially where new information is seen as contradicting the older order and people are forced to rethink that which they have always known. African women's claim to rights previously unrecognised by society may be viewed with suspicion – and therefore unwillingness – by men, who form the greater part of government, to domesticate 'foreign' conventions.

Value disputes

These arise as a result of a clash of ideas. What are considered 'African values' may be in conflict with the provisions of international conventions.

Relationship disputes

These are the most common type of dispute. They include marital disputes and commercial disputes, but are not necessarily restricted to those.

Behavioural disputes

These are caused by a clash in habits, customs behaviour and culture. They are closely intertwined with value disputes. They are mostly of a personal nature but are not limited to that.

Structural disputes

These take place mainly in bureaucracies and institutions.

In a discussion of women's rights, elements of all of the categories of conflict may be present, whether it relates to lack of resources, inadequate laws and

regulations or personality clashes. In general, regional treaties are more likely than global ones to have an impact on local human rights, as they are less likely to be seen as being imposed by 'outsiders'.

Some options available in responding to conflict are:

- Avoidance – simply ignoring the problem or emotionally or physically moving away from the source of grief
- Toleration – accommodating the issue by giving the other party everything they want while expecting nothing in return, ignoring it or bearing it without complaint
- Mediation – bringing in a third party to assist in reaching an agreement
- Litigation – going to court and having a judge or magistrate preside over the matter and make a decision on the dispute
- Self-help – taking the law into your own hands, possibly with no regard to the law
- Negotiation.

How does negotiation work?

Negotiation is a formal discussion between people trying to reach an agreement or an exercise to influence somebody or something. It basically involves talking to the source of your grief face-to-face and hope that by so doing your problem will be solved.

Human beings are natural negotiators. Each party in a negotiation attempts to win by having their interests satisfied by trying to persuade the other to see things or issues 'their' way. The main goal is to meet certain interests or needs in a collaborative, peaceful manner but at the same time without being apologetic about stating your interests.

Negotiation strategies

Principled negotiation is based on interests and needs and is designed to produce wise agreements in an efficient and mutually amicable manner. It relies on:

- Separating people from the problem
- Focusing on interests (needs, desires, and expectations) not positions. This is to overcome the drawback of focusing on stated positions when the objective is to satisfy underlying interests

- Generating options, raising a variety of possible solutions before making a decision. Setting aside time for joint brainstorming can create options for mutual gain. For example: How will men benefit from the domestication of the Protocol?
- Criteria legitimacy, that is, ensuring that the result or process is based on some objective standard, custom, law or practice.

After negotiation, a good agreement is reached if it:

- Meets the legitimate interests of the parties to the extent possible
- Resolves conflicting interests fairly
- Is durable
- Preserves ongoing relationships.

Interests are basic things that people need to protect or upon which they need to obtain gain. They cannot be negotiated away, although priorities can change. There may be an infinite number of interests but basic needs like food, shelter, and clothing cannot be negotiated away.

The goal of integrative bargaining is to maximise the interest satisfaction of all the parties to the greatest extent possible. By integrating the interests of the parties, rather than merely negotiating competitively, agreements are reached that are far better for the participants and less likely to be reneged on at a later time. Not all negotiations end in a win-win situation as at times winning means minimising losses.

Whilst the goal of negotiations is for the parties to maximise their self-interests to the greatest extent possible and to do so through a process that

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integrates the competing interests of the parties, negotiations do not always go smoothly. There is a lot of give and take. Power shifts – there are gains on some interests and losses on other issues. For women to be able to negotiate for the ratification or domestication of the Protocol, it is imperative to equip women in the feminist movement with the necessary ADR skills to enable them first and foremost to identify the suitable negotiating partners and also to engage in skilful negotiations.

Tips for successful negotiation

To help break an impasse, create momentum or keep negotiations going, remember:

- That attitude is all-important. Assume a cooperative sense of power so that all players can negotiate from a position of strength
- That people support what they help create
- To show respect for others' dignity and professionalism
- To act rather than react
- To stick to the issue at hand
- To keep things in perspective
- To never make personal attacks
- That it is alright to agree to disagree.

Any negotiation has the goal/desire of an end agreement that satisfies the interests of the parties – getting there is the battle. If the parties can have a satisfactory experience in negotiations and believe they have been able to participate fully and fairly, they are more likely to abide by the terms of the agreement than reject it.

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To attain satisfaction the better approach is to be calm and even-handed, recognising and trying to accommodate the other party's interests. It is important to determine the interests of the other side, discover the reasons for resistance to proposals and allow explanations and education about one's own interests. It is paramount to create trust and a process that seems fair and regular.

Conclusion

It is the duty of governments to enact enabling laws and policies at national level which will consolidate and deepen the rights articulated under international laws and protocols. The domestication of the Protocol should not be a privilege but a right. Rights of equality, non-discrimination, elimination of all harmful practices, access to justice and equal protection of the law are all interests that cannot be negotiated away.

Given the prevailing attitudes of African governments, the use of negotiation as a strategy to remind them of their duty to protect the rights of all citizens – men and women – may stand a better chance than applying competitive pressure. Women’s rights lobby groups and organisations should try creating a platform of negotiations with their governments and, more importantly, educate the government on women’s interests. It is also important to strengthen women’s capacity in negotiation so they can negotiate skilfully.

‘A good deal is a state of mind.’² If people believe they have received a good deal, they probably have. If we achieve domestication of the Protocol through negotiation, the governments of Africa just might perform on their commitments. In addition, relationships with the feminists will have been developed and it will be more likely they negotiate successfully in the future.

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Endnotes

¹ For example Uganda and Tanzania have a court annexed alternative dispute resolution system in place.

² Lee Lacocca – quoted by Patricia Malberg in *Negotiation Principles and Practice*.

PART FOUR:

THE PROTOCOL
AND ITS IMPLICATIONS
FOR WOMEN IN CONFLICT
AND WITH HIV/AIDS



APPLYING THE PROTOCOL TO WOMEN IN CONFLICT SITUATIONS

AMIE JOOF-COLE

West Africa has and is still experiencing very high levels of conflict, especially intra-state conflict. The conflicts have had a devastating effect on the African people, causing drops in political, economic and social development, and continuous instability for both the states concerned and the continent as a whole.

In the late 1980s conflict erupted in Liberia, which lasted for almost a decade and signalled the advent of Charles Taylor, who exported war to Sierra Leone. Sierra Leone witnessed one of the most gruesome civil crises ever seen in West Africa. Not only did the crisis record the most gruesome murder and mutilation of civilians by the rebel factions, it also displaced a significant number of the nation's population, most especially women and children, some of whom are yet to return as they continue to receive rations as refugees in the neighbouring countries of Guinea Conakry and the Gambia. Ivory Coast, a former bastion of democracy in Africa, is today the epicentre of crisis in the region.

Politically, West Africa is prone to crises, with almost all its countries, with the exception of Senegal and Cape Verde, having experienced military coups. One can say that taking West Africa as a whole, the military regimes that emerged ended up being even worse than the civilian governments that they overthrew. Consequently, the region is confronted with economic crises, indebtedness, poverty, political instability, disease and frequent human rights violations.

Women and children are often among those most acutely affected by conflict, though they frequently have little or no role in creating the situations in which they find themselves. It is important to consider the practical impacts conflict has on women's lives.

Article 10 of the Protocol on the Rights of Women in Africa emphasises the right to peace. It states:

- 1. Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace.*
- 2. States Parties shall take all appropriate measures to ensure the increased par-*

ticipation of women:

a) in programmes of education for peace and a culture of peace;

b) in the structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels;

c) in the local, national, regional, continental and international decision-making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women;

d) in all levels of the structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular, women;

e) in all aspects of planning, formulation and implementation of post-conflict reconstruction and rehabilitation.

3. States Parties shall take the necessary measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular.

Women as involuntary and voluntary participants in hostilities

Few women who participate in conflicts do so by choice. In many cases, women are abducted by soldiers to be used as 'sex slaves', cooks and cleaners in the camps. During their abductions, women are frequently subjected to physical abuse, sexual abuse, torture and even death. Sometimes when opposing forces attack, these same women are abducted again.

It would be a mistake, however, to believe that women are always innocent bystanders to conflict. When it comes to infiltration and attacks, some groups prefer using women because they appear less suspicious, are not always subjected to body searches, and can wear devices beneath their clothes and appear pregnant. Women may also take part in hostilities by providing men with the moral support needed to wage war. They can also be useful providers of information in relation to the enemy's position or strategies.

Women as civilians

Most women experience the effects of armed conflicts as part of the civilian population. Women and girls (like men and boys) suffer the direct and indirect effects of fighting, enduring indiscriminate bombings and attacks as well as lack of food and the other essentials needed for survival. Invariably, however, women bear greater responsibility for children, the elderly, and the wider com-

munity – especially when the men have left to fight or have been detained or killed. With men gone, and the traditional support mechanism for protection in the community broken, women are at increased risk.

Most women and children flee conflict in search of safety and end up being refugees. Those who refuse to flee often stay because they are either too sick to go or are widows. They stay to take care of the elderly, the sick, and the young; to support family members; or to assess the security situation in order to advise fleeing relations on whether to return. Ironically, many of these women believe that their gender will protect them from hostilities. But contrary to their beliefs, women are frequently targeted precisely because they are women. Women also suffer when the fighting is close to where they live and work. This limits their movements as well as their access to work, food, water, and medical assistance. The situation is especially grave for those in need of maternal or child healthcare.

Women are also subjected to harassment, intimidation and attacks, at their homes, in their villages and at check points. Their personal security and freedom of movement is greatly hampered by a lack of identity documents, increasing their risk of abuse and sometimes even sexual violence.

Women as victims of sexual violence

In many conflicts, women and girls are systematically targeted for sexual violence, sometimes with the broader political objective of ethnic cleansing. It is now evident that rape is being used as a weapon of war. Reliable statistics concerning the number of victims of sexual violence are not easy to come by as they are often simply based on the number of people seeking medical help for pregnancy-related issues and for sexually transmitted infections such as HIV/AIDS.

Conflicts force many women and girls to go into sex work in order to make a living and survive. They also create room for other forms of sexual exploitation such as trafficking. Those who survive sexual violence are frequently unwilling to speak out for fear of being ostracised and rejected by their families and communities. Many victims also believe that no one can help them because the harm has already been done.

Displaced women in times of conflict

Women and children make up the majority of the world's refugees and internally displaced persons. Fleeing and living in displacement camps creates numerous problems for women and exposes them to enormous risks. Women who flee their homes generally take few possessions with them and many

become separated from their families. They are then forced to rely on the people in the countries in which they are seeking refuge or on assistance from international and non-governmental organisations (NGOs). Forced to travel long distances to look for water, food, firewood and medication, they are frequently exposed to attacks by soldiers, injury from mines and sexual abuse.

Women in camps for displaced persons frequently have to shoulder all the responsibilities for the entire family's survival. At the same time, the special needs of women are sometimes not taken into account by camp authorities and organisations. Women in situations of displacement lack the privacy needed to maintain their personal hygiene and dignity because they have to share facilities with other people, including men. For these reasons, women need to be actively involved in the planning, implementation and evaluation of the humanitarian activities carried out and of the assistance distributed.

Detained women during conflicts

Women are also detained as a result of conflict, often in conditions worse than their male counterparts. Women in detention are sometimes detained with their young children or they have to leave those children behind to be taken care of by other people.

This enforced separation can be very traumatic for women. Women also have specific needs that are hard to meet in detention. For instance, women and girls of menstruating age often have problems in obtaining suitable sanitary protection, regular access to sanitary facilities and appropriate clothing to deal with their menstruation in a manner that preserves their health and dignity. Furthermore, women are subjected to maltreatment, including sexual violence, torture and other forms of degrading inhuman treatment while in detention. This abuse puts them at risk of pregnancy and may cause health problems such as HIV/AIDS. They therefore live in perpetual fear.

Women in peace building

There are many examples of women's groups coming together in support of peace. One example is Roots for Peace, an association formed by Angolan women in 1994 with the aim of bringing an end to the conflict and promoting peace and security. Another example is the Liberian Women's Initiative, also established in 1994. They claimed that the disarmament process in their country needed to be speeded up and called on the UN not to ignore their recommendation to provide incentives to the fighters to disarm.

In 1999, the First Pan African Women's Conference for Peace and Non-Violence was held in Zanzibar. In 2000, women peace activists from Liberia and Sierra Leone met in Abuja at the invitation of the Economic Community of West African States (ECOWAS) and together with their counterparts from Guinea, launched a regional women's peace movement, the MANO River Union Women Peace Network (MARWOPNET) There are many other examples of women organising themselves to promote peace in conflict-torn areas.

However, the consequences conflict has on women's lives need more attention than they are currently receiving. Women have realised that conflicts in Africa tear apart families and destroy lives. We therefore need to establish approaches to peace and security that include women's ideas and interests.

Women, media and conflict

If more attention is to be given to how conflict affects women, women must play a role in the identification, treatment, dissemination and evaluation of the information that is produced. If women are to participate fully in brokering peace, in decision-making and in post conflict reconstruction, it is imperative that they work in partnership with all the forms of media at their disposal to raise awareness, to ensure participation of women of all ages, to influence policy decisions and to ensure accountability on the part of governments, NGOs and international organisations.

Women must put themselves into the picture both as producers of information and as the subjects of it. When referring to the media, we mean radio news, radio dramas, television programmes, print media, popular music, interactive video dialogues, posters, talk shows, call-in shows, community media projects, the internet – and more. By doing this, women may ensure their voices are heard at all levels.

Currently, very few women journalists are taking an active role in peace and conflict reporting. This is partly due to the highly gendered bureaucratic structures of media institutions where the majority of women do not have decision-making powers. At other times, women journalists are not interested in such tasks, are afraid of the risks involved or do not have access to the training needed to take up the challenge. It is therefore necessary to address gender specific professional problems so that we get women's perspectives on conflict. Of equal importance is the need to document the efforts undertaken by women to create and promote peace and security in Africa. The media should publicise women's involvement in peace processes and actively lobby for the inclusion of women in peace negotiations. It is worth investigating how women define

peace and reconciliation within their families and communities, and the skills and knowledge they use to work towards these goals. The media should cover these aspects of women, rather than portraying them as mere victims.

The media can also play an important role in the process of healing following conflict. During the period of reconciliation and rehabilitation, the media can help empower groups such as women's groups that had previously been voiceless. Television, radio and print materials can provide specific social support to women's groups. The media can thereby help in rebuilding civil society. Women outside of the media also have a role to play. The women's movement must establish its presence in organising anti-conflict campaigns so that women become more visible as peace initiators. Others must work to ensure people are not denied information because of poverty, lack of access or repressive media laws that inhibit free expression or illiteracy.

Conclusion

It is crucial to document through research the role of the media in generating conflict and its potential to manage conflict. The research should also cover the use of language, culture, sources of information, adherence to professional norms and ethics in the media. The media should be systematically engaged as an agency for peace promotion and conflict resolution. We should develop media resource packages for reporting on peace and security and endeavour to democratise the media so that it becomes easily accessible to and useable by different social actors.

The perpetrators of violence against women, especially rape and the subsequent unwanted pregnancies, which constitute a crime against humanity, should be brought to justice. Women in post-conflict situations should be encouraged and protected to give evidence against the perpetrators of rape and other forms of violence against women.

In order to make these changes, women's organisations, human rights groups, media outlets, community groups and other social actors should collaborate to maximise human, material and financial resources to avoid unnecessary duplication and conflict among themselves. If we do this, we may all come to a better understanding of how women are affected by conflict, how they can participate in preventing and managing conflict as well as promoting peace and stability.

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HIV/AIDS – A CHALLENGE TO SUCCESSFUL IMPLEMENTATION

ELIZE DELPORT

Introduction

The HIV/AIDS pandemic arguably poses the greatest threat to the promotion and attainment of gender equality in Africa. It has the power and potential to nullify each and every human right and to erode any development gains. Conversely, the AIDS virus can only flourish when socio-economic rights like the right to adequate healthcare and proper nutrition are violated. It is only if the rights to equality and non-discrimination are violated that the virus can take advantage of the social, political and economic vulnerability this creates to flourish unabated among women. Far from being merely a health issue, the pandemic is now recognised as a human rights and development crisis. Gender inequality is at the root of this crisis.

The statistics are alarming and clearly expose gender fault-lines. In sub-Saharan Africa, approximately 23 million adults aged 15–49 are living with HIV/AIDS. Of these 57 per cent (13.1 million) are women. This region is burdened with the highest HIV prevalence rates and displays the most disproport-

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and development crisis.*

Gender inequality is at the root of this crisis

tionate impact of the pandemic on women and girls. In 1985, roughly half a million women and half a million men were living with HIV/AIDS in sub-Saharan Africa. However, the number of women living with HIV/AIDS relative to men has increased every year. Particularly affected are young women aged 15–24, who are currently over three times more likely to be infected than young men.

The impact of HIV/AIDS on women and girls

Gender roles and relations have a significant influence on the course and impact of the HIV/AIDS pandemic. It is acknowledged that HIV/AIDS poses a greater threat to the lives and futures of women and girls. Gender inequality and power imbalances between women and men in every society heightens the vulnerability of women to infection and leaves them with heavier burdens when HIV/AIDS enters households and communities.

Research shows that gender influences how a person experiences and responds to the HIV/AIDS epidemic. Gender influences include:

- Individual risk and vulnerability to HIV infection
- The experience of living with HIV/AIDS
- The impact of an individual's HIV-related illness and death within a family or community
- Responses to the pandemic at the individual, community and national level.

Understanding the influence of gender relations on the ability of individuals and communities to protect themselves from HIV and effectively cope with the impact of AIDS is crucial for expanding the response to the epidemic.

The centrality of gender inequality to the pandemic

The United Nations General Assembly Special Session on HIV/AIDS (UNGASS) convened in June 2001 marked a critical turn in the awareness of the international community of the centrality of gender inequality and discrimination to the pandemic. On this occasion, delegates from 180 countries acknowledged that gender equality and the empowerment of women are fundamental elements in reducing the vulnerability of women and girls to HIV/AIDS.

In the declaration adopted at the special session, states committed themselves to a wide range of actions to combat the HIV/AIDS pandemic, many of which address its gender dimensions. States are called upon to review the social and economic impact of HIV/AIDS at all levels of society, especially on women and the elderly – particularly in their role as caregivers – and on families affected by HIV/AIDS, and to address their special needs. States committed themselves to intensifying efforts to challenge gender stereotypes and attitudes, and gender inequality in relation to HIV/AIDS, encouraging the active involvement of men and boys. Furthermore, the declaration calls for national strategies to promote women's full enjoyment of their human rights and the elimination of discrimination against women. However, the question

the declaration leaves open is what women's human rights actually are in the context of the pandemic.

In an innovative publication entitled 'Turning the tide – CEDAW and the gender dimensions of the HIV/AIDS pandemic', the United Nations Development Fund for Women (UNIFEM) explains how, as a blueprint for women's human rights, the Convention on the Elimination of all Forms of Discrimination (CEDAW) is a critical tool for assisting us to understand what gender equality and the elimination of discrimination will require.

In many of the critical areas for addressing HIV/AIDS from a gendered perspective – whether it is access to health services, care and care-giving, women's leadership and participation or the ability to negotiate safer sex – CEDAW provides the guiding human rights principles and directives for action which, if realised, can turn the tide of the HIV/AIDS pandemic.

The Protocol on the Rights of Women in Africa has the potential to build on the framework that CEDAW provides and to ensure the development of a strategic human rights response specifically suited to those most affected by the pandemic – the women of sub-Saharan Africa.

The Protocol on the Rights of Women in Africa

Explicit reference to HIV/AIDS in the Protocol is limited to Article 14, which deals with health and reproductive rights. This article provides that:

1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:

[...]

d) The right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;

e) The right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices...

The implementation of these provisions is likely to be fraught with practical and ethical difficulties. Given the vast body of research that points to the gender and human rights dimensions of the HIV/AIDS pandemic, it is rather unfortunate and disappointing that the Protocol uses the out-dated approach of classifying the pandemic as merely a health issue.

While issues of gender and HIV/AIDS are not explicitly mainstreamed in the text of the Protocol, all is not lost provided we make every effort to ensure that issues of gender and HIV/AIDS form an integral part of our implementation strategies. Many articles in the Protocol provide appropriate responses to, and protection against, the ravages of the pandemic.

As a starting point, aspects of the pandemic for which the Protocol has special relevance should be identified and our key responses set out. In addition, reference should be made to the guiding articles of CEDAW and the relevant general recommendations of the CEDAW committee.

This exercise should provide tools to support efforts to integrate a rights-based approach into programmes, policies and strategies to respond to the gender dimensions of the pandemic.

Building on the strategy suggested by UNIFEM in 'Turning the tide – CEDAW and the gender dimensions of the HIV/AIDS pandemic', the following may serve to illustrate this approach.

Gender inequality and safer sex

The challenges

Power imbalances and inequalities between men and women render many women unable to negotiate safer sexual practices with their partners. Such imbalance and inequality may stem from family structures, economic relations, differences in education and experience, exposure to violence and cultural expectations. In unequal relationships, women demanding safer sex may risk impoverishment or assault. Social norms dictate that women should be passive and compliant in sexual relations. The right to decide how and when sex takes place is regarded as a

*The number of women
living with HIV/AIDS relative
to men has increased every year*

male prerogative. There are numerous constraints on a woman's ability to engage only in sexual relations and practices that she chooses or desires. The autonomy needed by a woman in order to negotiate safer sex, depends on the realisation of her right to equality in many different areas of life.

The provisions of the Protocol, if effectively implemented and enforced, provide protection and guidance in the following ways:

Inequality within the family

Power imbalances within family relations often stem from forced marriages, male ownership and control over family resources and legal impediments to women obtaining divorce. Article 6 of the Protocol obliges states parties to ensure that women and men enjoy equal rights and are regarded as equal parties in marriage. In this regard, appropriate national legislation must be enacted to ensure, amongst other things, that:

- Marriage will not take place without the free and full consent of both parties
- The husband and wife must, by mutual consent, choose their matrimonial regime and place of residence
- During her marriage, a woman will have the right to acquire her own property and to administer and manage it freely.

Article 7 of the Protocol obliges states parties to enact appropriate legislation to ensure that women and men enjoy the same rights in cases of separation, divorce or annulment of marriage. Such legislation must provide men and women with the same rights to seek the end of a marriage and with the right to an equitable sharing of the joint property deriving from the marriage.

Early marriage of girls

Early marriage is regarded as a major factor in increasing women's vulnerability to HIV. Marriage to an older man creates significant imbalances between husband and wife in terms of experience, authority and economic autonomy. The situation is exacerbated when a girl leaves school in order to marry and/

*Early marriage poses a serious
threat to the health, education and
employment prospects of girls*

or falls pregnant at an early age. Early marriage poses a serious threat to the health, education and employment prospects of girls.

Article 6 of the Protocol obliges states parties to enact and enforce legislation to set the minimum age of marriage for women at 18 years. The further requirement that no marriage takes place without the free and full consent of both parties has the potential to protect against forced marriages. The require-

ment that every marriage should be recorded in writing and registered in accordance with national laws in order to be recognised may provide additional protection against early and forced marriage.

Early marriage may be seen as a harmful practice which negatively affects the human rights of women and which is contrary to international standards. In this case, Article 5 of the Protocol obliges states to take all necessary measures to eliminate such practices, including the creation of public awareness of harmful practices through information, formal and informal education and outreach programmes.

Early marriage often goes hand in hand with violence against women. Article 4 of the Protocol obliges states to enact and enforce laws to prohibit all forms of violence against women in public or private, including unwanted or forced sex. States are also obliged, through curricula and social communication, to eradicate those traditional and cultural beliefs, practices and stereotypes that legitimise and exacerbate the persistence and tolerance of violence against women.

Other initiatives and best practice

When exploring ways to include issues of HIV/AIDS in a Protocol implementation strategy, one may consider current initiatives and research that provide useful guidelines and recommendations in this regard. As time is not on our side, it makes sense to use existing information rather than to reinvent the wheel. Examples of current initiatives and research are:

The UN Task Force on Women, Girls and HIV/AIDS in Southern Africa

This task force was convened by the UN Secretary General in 2003 and it identified key actions to reduce prevalence rates among girls and women.

Actions to reduce prevalence of HIV/AIDS among women and girls include:

- Protecting female school enrolment figures
- Protecting girls and women from the direct and long-term risk of HIV infection as a result of violence
- Protecting the rights of women and girls to own and inherit land
- Addressing gender norms, violence, stigma and discrimination as potential barriers to women's access to care and treatment
- Collapsing the bridge of infection between older men and younger women and girls.

The task force indicated that strategies were required to:

- Strengthen the legal and policy frameworks that support women's rights to economic independence
- Challenge the social norms and values that contribute to the lower social status of women and girls and condone violence against them
- Ensure access to health services and education
- Empower women and girls economically.

Women and HIV/AIDS: confronting the crisis – a joint report by UNAIDS/ UNFPA/ UNIFEM

This recent report provides valuable direction for prioritising areas of intervention. It stresses that everywhere women and girls, especially those living with HIV/AIDS, must be involved in interventions. It identified actions that must begin without delay.

- Support positive women and their organisations and networks
- Make AIDS money work for women
- Ensure that adolescent girls and women have the knowledge and means to prevent HIV infection
- Ensure equal and universal access to treatment
- Promote girls' primary and secondary education and women's literacy
- Recognise and support home-based caregivers and AIDS patients and orphans
- Promote zero tolerance of all forms of violence against women and girls
- Promote and protect the human rights of women and girls.

Conclusion

The time has come for those promoting and protecting the human rights of women in Africa to mainstream issues of HIV/AIDS in all areas of activity. With the Protocol, CEDAW and other initiatives providing strategic direction in this regard, this task will be made far easier.

Elize Delport is director of Mhalva Consulting Services.

APPENDICES



APPENDIX 1: THE MEMBERS OF THE SOLIDARITY FOR AFRICAN WOMEN'S RIGHTS COALITION

African Center for Democracy and Human Rights Studies (ACDHRS)

The main objective of ACDHRS is to give meaning to Article 25 of the African Charter on Human and Peoples' Rights, which requires states parties to, 'promote and ensure, through teaching, education and publication, respect of the rights and freedoms contained in the Charter and to see to it that these freedoms and rights, as well as corresponding obligations are understood'. The centre complements the work of the African Commission, serves the entire African continent in its unwavering mission of promoting human rights and democracy through training, action-oriented research, legal service, publications, documentation and networking. For more information please visit www.acdhhrs.org.

African Women's Development and Communication Network (FEMNET)

The African Women's Development and Communication Network (FEMNET) is a regional, membership-based non-governmental organisation (NGO). It operates through national focal points, most of which are women's NGO umbrella organisations. FEMNET's Regional Secretariat is based in Nairobi, Kenya. Since its inception in 1988, FEMNET has played a leadership role for African women's NGOs at regional and international decision-making and policy forums.

FEMNET works in the programme areas of advocacy, training and communications. The organisation also runs a documentation centre, specialising in materials related to gender in Africa. More information of FEMNET can be obtained from its website www.femnet.or.ke, which is updated quarterly.

Akina Mama wa Afrika (AMwA)

Akina Mama wa Afrika (AMwA) is a pan-African, non-governmental development organisation and registered UK charity, set up in 1985 by women from different parts of Africa, resident in the United Kingdom. AMwA aims to provide development services for African women, serves as a resource and research forum on African women's issues, and provides a platform for African women to participate in policy and decision-making. AMwA is an NGO in consultative status with the UN Economic and Social Council.

AMwA aims to provide solidarity, support, awareness, and to build links with African women active in the areas of their own development. Over the past 15 years since it has been in existence, AMwA has actively supported initiatives to strengthen links with the women's movement in Africa. AMwA's ethos is 'Speaking for Ourselves'. The organisation was founded and operates on the premise that African people have a key role to play in their own development and the shaping of their own destinies.

AMwA serves as a networking, information, advocacy and training forum for African women, and builds their leadership capacities to influence policy and decision-making. AMwA does this by:

- Building the leadership capacities of African women and their organisations
- Creating leadership development opportunities for African women at various levels
- Highlighting the skills, expertise and creativity of African women
- Sensitising and empowering African women
- Challenging sexist and racist stereotypes by emphasising positive images of African women.

For more information please visit www.akinamama.org.

Association des Juristes Maliennes (AJM)

Association des Juristes Maliennes (AJM) seeks to defend the rights of women through popularising the law and providing legal aid to less fortunate women and female detainees. AJM works to promote the rights of women through the elaboration, adoption and application of national laws and advocates for decision-makers to harmonise national laws with the international conventions that have an impact on the status of women. In its effort to promote and defend the rights of women, the AJM is a part of national, regional and international networks. AJM has been involved in the drafting and lobbying for the ratifica-

tion of the Protocol and continues to undertake activities aimed at popularising the Protocol among their members and other legal practitioners. AJM is working at all levels – from parliament and government to the grassroots – in order to ensure an understanding of the Protocol and its eventual application for the benefit of the women of Mali. AJM can be reached on the following email address: cabinetsoya@afribonemali.net

Centre for Human Rights – Pretoria University

The centre was established in 1986 at the Faculty of Law of the University of Pretoria after a large and successful conference on a bill of rights for South Africa. The aims and objectives of the centre relate to the study, protection and promotion of human rights and the fostering of a human rights culture, mainly through research, technical assistance with legislative change, training (on professional and grassroots levels), conference and seminars, the rendering of legal advice, internship programs for the law students, a moot court competition, and a student volunteer development project (SASVO). The centre's aim is to contribute to the advancement of democracy in South Africa, as well as empowerment and education of South Africans.

The activities of the centre, which target students, legal practitioners, civil society, NGOs, nurses, teachers, social workers, trade union leaders, etc, include:

- **Research:** The centre offers a comprehensive LLM in Human Rights and Constitutional Practice, comprising four modules and a mini-dissertation. Ongoing research focus on various aspects of human rights like child labour, international protection of human rights, human rights law in Africa, social and economic rights, private racial discrimination, etc.
- **Education and training:** Educational programmes on gender equity issues, human rights in general to civil society are presented by the centre through seminars and workshops. It has established legal advice centre in Hammanskraal, Stree Law, South African Students Volunteers (SASVO) form part of its outreach programmes to schools and the communities.
- **Advocacy and information:** The centre engages in advocacy as a project and in collaboration with others on the topics listed under research on the centre's website. Information is documented and distributed through both electronic and printed media and is hosted in its resource centre, including other related titles.

For more information on the centre please visit www.up.ac.za

Coalition on Violence Against Women (COVAW)

The Coalition on Violence Against Women – Kenya (COVAW-K) is a women’s human rights organisation that is committed to the eradication of all forms of violence against women and the promotion of women’s human rights. COVAW(K) has continued to grow over the years and has locally spearheaded the Annual Sixteen Days of Activism Global Campaign, which has been instrumental in placing violence against women in the public and political domain.

COVAW(K) believes that violence against women, whether in the private or public domain, is a human rights violation, that women have the right to be free from violence; the right to self-defence; and that people have the capacity to learn and change. The organisation is managed by a board comprising of five women while the secretariat, which runs the daily affairs of the organisation, has eight full time staff who work with the assistance of interns and volunteers.

For more information on COVAW please visit www.covaw.or.ke

Cellule de Coordination sur les Pratiques Traditionnelles Affectant la Santé des Femmes et des Enfants (CPTAFE)

Since its inception in 1984 CPTAFE has fought a lot to curb FGM in Guinea. To achieve this objective CPTAFE developed a strategy with four main steps:

- Advocacy for people’s behavioural change
- Re-conversion of circumcisers in other income generating activities
- Voting for and implementing laws against FGM
- Caring for victims of FGM
- Building institutional capacities of organisations and structures to fight against FGM.

Utilising local radio stations, one of CPTAFE’s main strategies is media outreach. Focusing on the popularisation of the law, CPTAFE trained parliamentarians and youth on the best methods of disseminating information on the law against FGM. Committees of parliamentarians and youth developed messages about the anti-FGM law that were broadcast nationally on radio and television. CPTAFE also created an FGM helpline. Since 2004, CPTAFE has undertaken various popularisation interventions to raise the profile of the African Women’s Protocol in Guinea; and has also conducted advocacy actions

directed at government and parliamentarians to ratify the Protocol. CPTAFE can be reached at morissanda@yahoo.fr

Equality Now

Equality Now was founded in 1992 to work for the protection and promotion of the human rights of women around the world. Equality Now's Africa Regional Office is based in Nairobi (Kenya) and has for the past two years been coordinating the campaign for the popularisation, ratification and domestication of the African Protocol on Women's Rights. It is registered as an NGO in Kenya. Working with national human rights organisations and individual activists, Equality Now documents violence and discrimination against women and adds an international action overlay to support their efforts to advance equality rights and defend individual women who are suffering abuse. Through its Women's Action Network, Equality Now distributes information about these human rights violations to concerned groups and individuals around the world, along with recommended actions for publicising and protesting against them. The Women's Action Network is committed to voicing a worldwide call for justice and equality for women. Issues of urgent concern to Equality Now include rape, domestic violence, reproductive rights, trafficking of women, female genital mutilation, and equal access to economic opportunity and political participation. For more information please visit www.equalitynow.org.

Fahamu – Networks for Social Justice

Fahamu has a vision of the world where people organise to emancipate themselves from all forms of oppression, recognise their social responsibilities, respect each other's differences, and realise their full potential. The word Fahamu means 'understanding' or 'consciousnesses in Kiswahili. Formed in 1997, Fahamu uses information and communication technologies as a tool for social change by:

- Developing supported distance-learning materials for human rights and civil society organisations
- Developing innovative ways to make information and learning for change accessible
- Being a catalyst for critical social debate
- Producing social justice e-newsletters – see www.pambazuka.org
- Undertaking social policy research.

Fahamu is committed to serving the needs of organisations and social movements that aspire to progressive social change and that promote and protect human rights. It believes that civil society organisations have a critical role to play in defending human rights, and that information and communications technologies can and should be harnessed for that cause. Fahamu is committed to enabling civil society organisations to use the internet to promote social justice and believes that civil society organisations have a critical role to play in defending human rights. Fahamu develops and runs open and distance learning programmes and publishes Pambazuka News, a forum for social justice in Africa. More information on Fahamu can be obtained from www.fahamu.org

Federation of Women Lawyers Kenya (FIDA Kenya)

The Federation of Women Lawyers (FIDA) Kenya is a non-profit non-partisan and non-governmental membership organisation of women lawyers and women law students. The organisation is committed to the creation of a society that is free of all forms of discrimination against women through provision of legal aid, women's rights monitoring, education and referral.

FIDA Kenya was started in 1985 following the third United Nations Conference on women held in Nairobi. The FIDA Kenya secretariat was established in 1991. The vision of FIDA Kenya is to help create a just society that is free from all forms of discrimination against women by reason of their gender or their being female.

Realising that women play an active and significant part in the development of our society and form the majority of Kenya's population and yet they face major systemic obstacles that prevent them from full enjoyment of their rights and privileges, FIDA Kenya:

- Offers quality legal services to a limited number of women
- Creates awareness of legal rights and educates women on how to claim them through self-representation in court
- Researches, monitors and reports women's rights violations
- Lobbies and advocates for reform of laws and policies and policies that discriminate against women
- Undertakes transformative public interest litigation whose impact can lead to amendments in discriminative laws

More information on FIDA Kenya can be obtained from the website www.fidakenya.org

The Inter-African Network for Women, Media, Gender Equity and Development (FAMEDEV)

FAMEDEV is an Africa regional media centre, with its headquarters in Dakar, Senegal. FAMEDEV works towards reinforcing and sustaining the promotion and development of African women journalists and communicators by supporting and encouraging the use of quality, gender friendly media and communication tools, promoting press freedom and freedom of expression in order to enhance the visibility of African women in different sectors of development.

In order to contribute to the development of the African continent, FAMEDEV has the following objectives:

- To promote the development of the African continent through information, education, communication and new technologies by disseminating this information to marginalised populations and vulnerable groups
- To sensitise African people especially women, youth and children on main development issues and ways and means of liberating Africa from poverty
- Create and strengthen a network of journalists and communicators for the production, management and exchange of information on pertinent themes such as poverty, freedom of expression, gender equity, human rights, children's rights, regional integration, civic education, the environment, public health and the transfer of technologies
- Involve women and men in the media in conflict prevention, management and resolution through civic journalism
- To mobilise and encourage men and women of the media to be more interested and sensitive to public health issues such as HIV/AIDS, malaria, drug abuse and TB, which ravage the African continent, aggravate poverty and impede Africa's development
- To promote programmes favourable to press freedom, good governance, democracy, regional integration, peace and security in African societies and the human rights of children and minorities.

For more information on FAMADEV visit www.famedev.org

Fundação para o Desenvolvimento da Comunidade (Foundation for Community Development) – FDC

The Fundação Para o Desenvolvimento da Comunidade (FDC) was established in 1994 under the leadership of Graça Machel. It is a private non-profit institution which aims to strengthen the capacities of underprivileged communities, with the objective of overcoming poverty and promoting social justice in Mozambique.

The FDC's values are the product of the shared convictions of its founding members. They represent the aspirations and desires of who they are; want to be and what they would like to do with the institution, personified by the founding members and their collaborators, and these values ought to be shared as well by their partners: Respect for the human person, Solidarity, Social Justice, Work, Honesty and Initiative.

FDC's role in the development of Mozambican communities includes grant making, capacity building, convening, advocacy, networking, and promoting national philanthropy. The major beneficiaries of FDC's programmes are the poor and vulnerable communities of Mozambique, in particular: women, children, youth, the elderly and people who are affected by social exclusion such as the unemployed and disabled.

FDC's strategic objectives for 2004–08 are to promote human development in disadvantaged communities, providing capabilities and skills for the people to improve their living conditions as well as to contribute to the prevention of the spread of HIV and to the reduction of the impact of HIV/AIDS on those infected and affected. Its objectives also include strengthening the organised forms of civil society and community leadership so that these may intervene and be able to sustain development in their communities and also promoting the establishment of a favourable environment for community development in Mozambique through lobbying and advocacy at various levels of decision-making. FDC seeks to strengthen its capacity to serve needy communities with a view to seeing that its actions have a greater impact in the communities where it works.

FDC's interventions prioritise the Mozambican provinces with the lowest human development index (HDI), in particular the northern provinces of Cabo Delgado, Nampula and Niassa as well as Tete and Zambézia Provinces in central Mozambique. FDC HIV/AIDS interventions have been selected according to the epicentres of the epidemic.

There is a growing consensus that factors such as lack of access to education, health and adequate nutrition are interlinked and are major factors in the poverty status of the communities. The gender imbalance that hinders wom-

en's access to resources as well as pandemic issues such as HIV/AIDS worsen all interventions efforts to overcome poverty. Therefore FDC has adopted a lifespan approach to its development programmes, in particular those dealing with health, education and livelihoods.

For more information about FDC please visit their website www.fdc.org.mz

Human Rights Law Service (HURILAWS)

HURILAWS started in 1997 as a specialist provider of human rights legal services and purveyor of skills in the legal aspects of transition management. Today, HURILAWS is also a public policy think-tank and pressure group working in partnership with multi-sector development and change actors to promote accountable and transparent governance in Nigeria. In particular, HURILAWS is the driver of the Multi-Sector Law Group (MSLG), which is a multi-disciplinary network of civil society actors and organisations for democratic change in Nigeria, chaired by Olisa Agbakoba, Senior Advocate of Nigeria (SAN) and founder of HURILAWS

HURILAWS is an independent, non-profit service, dedicated to providing public interest and human rights law services to advance the legal protection of human rights. HURILAWS advances human rights in Nigeria using the following tools, among others: strategic impact (test case) litigation, legislative advocacy, legal aid/assistance research and publications and the advancement of women through law. For more information about HURILAWS please visit www.hurilaws.org

The Inter-African Committee (IAC)

The Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC) is a non-governmental organisation working to promote the health of women and children in Africa and amongst migrant communities. IAC was created in 1984 in Dakar, Senegal following a unanimous decision reached by African women and men to fight and eradicate harmful traditional practices and promote those that are positive. Since its creation IAC has deployed great efforts to eradicate practices such as FGM, early marriage, nutritional taboos, etc, and to promote breast-feeding, child spacing and child care.

The Inter-African Committee has the following mandate:

- Reduce the morbidity and mortality rates of women and children through the elimination of female genital mutilation (FGM) and other harmful traditional practices

- Promote traditional practices, which are beneficial to the health and well being of women and children
- Advocate at national, regional and international levels on the importance of actions against harmful traditional practices.

The work of IAC both in Africa and the rest of the world have shown very encouraging results among them the following:

- Involvement of 28 countries in the IAC network
- Breaking taboos and demystification of FGM
- Adopting FGM legislation by 14 African countries
- Winning support of the OAU
- Mobilising youth and religious leaders
- Recognition by the UN (1995 population award)
- Public renouncement and laying down of knives by sensitised practitioners
- Counselling and care of women victims of FGM.

IAC activities are concerned mainly with democratising the Protocol to make people know about it and its application to grassroots campaign for the elimination of FGM and other harmful traditional practices (HTPs).

Oxfam GB

Oxfam GB works with others to overcome poverty and suffering. Oxfam's approach includes three types of interventions, namely, Humanitarian response, Development work and Campaigning.

Alongside this, Oxfam supports regional African organisations and networks to challenge effectively continental and international policy-making institutions to respond to poverty and exclusion, and to ensure that the rights of women and men are fulfilled and protected.

Oxfam GB has been mobilising resources for the campaign on the African Women's Protocol since mid 2004 and has also provided financial support for certain activities of the campaign. For more information about Oxfam GB please visit www.oxfam.org.uk

Sister Namibia

Sister Namibia is a feminist, non-party political women's rights organisation that works towards a society liberated from patriarchal domination in which

all people have equal rights, are empowered to enjoy equal opportunities, and live in peace, prosperity and dignity.

Its mission is to empower women and girls in the struggle for gender equity and equality through media work, research, capacity building, networking and collective action.

Sister Namibia's goals are:

- To increase awareness among women of the ways in which political, social, cultural, legal and economic systems of power control and oppress girls and women
- To oppose and challenge sexism, racism, homophobia and other discourses and practices that divide and oppress people
- To promote the full recognition and protection of the human rights of all girls and women
- To promote women's participation in good governance based on gender justice
- To build the women's movement in Namibia and establish links to the regional, continental and global movements.

As part of its activities, Sister Namibia publishes a bi-monthly magazine *Sister Namibia*, produces a weekly radio programme on a community radio station, runs a resource centre, provides training on women's human rights with a focus on political empowerment and sexual rights, and develops and implements campaigns on these issues. They raise awareness on the AU Protocol on the Rights of Women in Africa through all their media work and training activities, and are planning a series of radio programmes on the Protocol during 2006. For more information about Sister Namibia please write to Liz Frank at sister@iafrica.com.na

Union Nationale des Femmes de Djibouti (UNFD)

Union Nationale des Femmes de Djibouti (UNFD) was created on 30 April 1977. UNFD works for the empowerment of women and the protection of maternal and child health. UNFD also works to end poverty, illiteracy and all forms of discrimination against women. UNFD undertakes advocacy activities amongst the population of Djibouti and also targets the leaders in these activities. UNFD works to ensure that laws are passed that are favourable to women. Since mid-2004, UNFD has been campaigning for the African women's Protocol engaging the media and involving the first lady in the campaign. They were instrumental in pushing for Djibouti ratification of the Protocol. More for information about UNFD please write to Degmo Mohamed Issac at unfd@intnet.dj

Voix de Femmes

Voix de Femmes is an association whose membership consists of over a hundred women and men who have volunteered to fight for women's rights in the legal, economic, socio-cultural and political fields. It is made up of professionals and non-professionals who have come together to disseminate information aimed at sensitising women in Burkina Faso on their rights so that they can effectively take part in decision-making forums and participate in all institutions in society. Voix de Femmes intervenes mostly in their active members' areas of expertise. These include, creating awareness of legal instruments, reproductive health rights and HIV/AIDS, and female genital mutilation. The objectives of the association are to:

- Popularise women's human rights
- Contribute to civic education for women
- Fight the violence against women scourge
- Simplify legal instruments relating to women's rights so that they can be better understood by women
- Work towards the elimination of all forms of discrimination against women
- Sensitise women on matters relating to HIV/AIDS and sexually transmitted infections
- Fight against the poverty of women.

In line with the activities of the association, Voix de Femmes' projects include those geared towards translating legal instruments on women's rights into national languages with a view to disseminating them to as wide an audience as possible. It also works towards seeking the harmonisation of national legislation with international instruments to ensure that they adequately address the rights of women. Voix de Femmes organises workshops, seminars and campaigns modelled around its core themes and objectives and trains women in the development of micro-economic projects. It also offers consultation services for other matters such as harmful traditional practices like female genital mutilation, inheritance rights and reproductive health rights.

Besides directing their activities towards women, Voix de Femmes also educates chiefs, local councillors, senior police officers, magistrates, religious leaders, young girls and the community at large on issues of women's rights. It has organised radio broadcasts on topics such as marriage, divorce, succession, filiations, etc, and has sensitised women in three provinces on the rights of women in prison. It is currently in the process of building a rehabilitation cen-

tre that will help women recover from the effects of female genital mutilation as well as work to prevent the practice. For more information please write to them at vofemme@yahoo.fr

Women in Law and Development in Africa (WiLDAF)

Women in Law and Development in Africa (WiLDAF) is a pan-African network of organisations and individuals who work in the area of law and development to promote and strengthen strategies which link law and development to increase women's capacity to claim and enjoy all their human rights. WiLDAF's membership now comprises of over 600 organisations and individuals in 31 countries in Africa, with country networks in 26 countries: Benin, Botswana, Burkina Faso, Cameroon, Cote D'Ivoire, Ethiopia, Ghana, Guinea, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritius, Mozambique, Namibia, Nigeria, Senegal, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia and Zimbabwe. WiLDAF was set up in recognition of the importance of creating a critical mass to speak with one voice and to increase pressure for change which enables women to take their rightful place in society. WiLDAF has been involved in initiating programmes which bring women's rights and advocacy groups together at national, sub-regional and Pan-African levels in various forums. For more information please visit www.wildaf.org.zw .

Women's Rights Advancement and Protection Alternative (WRAPA)

Women's Rights Advancement and Protection Alternative (WRAPA) is a registered non-governmental, non-political, non-profit charitable membership organisation founded in 1999. Activities of the organisation include legal aid and counselling services for women, mobilisation and sensitisation, skills training and advocacy for legal reforms. In pursuance of its vision for enhancing access to justice for women WRAPA supports litigation by women all over Nigeria under various circumstances and within the three legal systems in Nigeria. For more information please visit www.wrapa.org (under review).



APPENDIX 2: LIST OF CONFERENCE PARTICIPANTS

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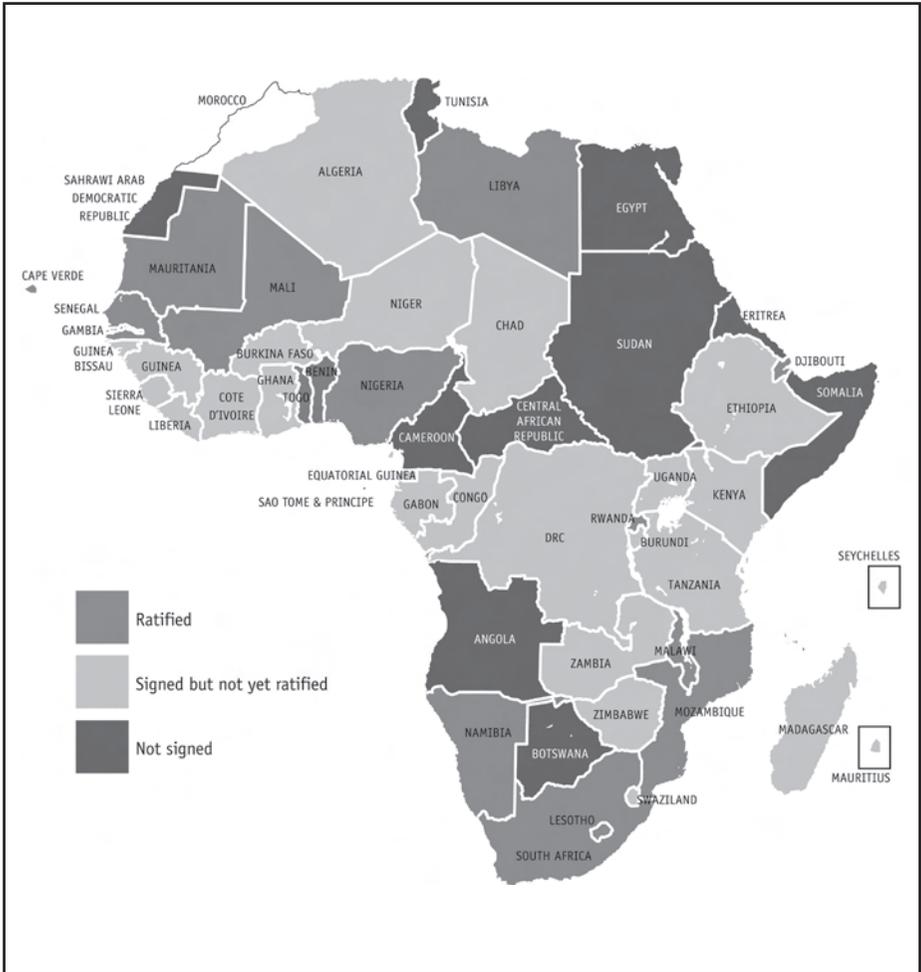
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APPENDIX 3: COUNTRIES WHICH HAVE RATIFIED THE AU PROTOCOL ON THE RIGHTS OF WOMEN IN AFRICA



Who has signed, who has ratified (as of January 2006)?

In chronological order

Countries who have ratified the Protocol		Countries who have signed but not ratified the Protocol		Countries who have not signed the Protocol
Comoros	18/03/2004	Tanzania	05/11/2003	Angola
Libya	23/05/2004	Zimbabwe	18/11/2003	Botswana
Rwanda	25/06/2004	Ghana	31/10/2003	Cameroon
Namibia	11/08/2004	Burundi	03/12/2003	Central African Rep.
Lesotho	26/10/2004	Democratic Rep. of Congo	05/12/2003	Egypt
Nigeria	16/12/2004	Sierra Leone	09/12/2003	Eritrea
South Africa	17/12/2004	Guinea	16/12/2003	Sahrawi Arab Democratic Republic
Senegal	27/12/2004	Liberia	16/12/2003	Somalia
Mali	13/01/2005	Kenya	17/12/2003	Sao Tome & Principe
Djibouti	02/02/2005	Uganda	18/12/2003	Sudan
Malawi	20/05/2005	Algeria	29/12/2003	Tunisia
Gambia	25/05/2005	Burkina Faso	26/02/2004	
Cape Verde	21/06/2005	Côte d'Ivoire	27/02/2004	
Mauritania	21/09/2005	Congo	27/02/2004	
Benin	30/09/2005	Madagascar	28/02/2004	
Togo	12/10/2005	Ethiopia	01/06/2004	
Mozambique	09/12/2005	Niger	06/07/2004	
		Chad	06/12/2004	
		Swaziland	07/12/2004	
		Gabon	27/01/2005	
		Mauritius	29/01/2005	
		Equatorial Guinea	30/01/2005	
		Guinea-Bissau	08/03/2005	
		Zambia	03/08/2005	
		Seychelles	24/01/2006	