

# Policy Research on the Africa Women's Protocol



## Introduction

On 11 July 2003, the Heads of State and Government of the African Union adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The Protocol is potentially a powerful force for positive change in the lives of African Women. However if this potential is to be realised, advocates for women's rights and gender equality must take deliberate action to ensure its popularisation, ratification, domestication, implementation, and monitoring.

With this in mind, Oxfam GB Southern Africa, commissioned a study to strengthen the popularisation and mobilisation campaign on the Protocol in 2004. The objectives of the study were to:

- make a comparative analysis of the Protocol and other relevant regional and international instruments as well as national legislation of the three countries to determine how the Protocol contributes to the existing framework for gender equality;
- analyse the national situation and the implications of the Protocol in the three countries in three thematic areas;
- identify challenges, best practices, and lessons learnt;
- make recommendations on popularising the Protocol and promoting its implementation.

The study was conducted at national and regional level. The countries studied were Mozambique, South Africa, and Zambia. The methodology included a literature review, interviews, and questionnaires.

## The value of the Protocol

One of the questions the research examined related to the value of the Protocol.

The study revealed that the Protocol fortifies the existing framework of commitments like the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Beijing Platform of Action, and the Millennium Development Goals. The Protocol reinforces the rights enshrined in the human-rights instruments that preceded it and stresses the principle of gender equality. It tackles areas hitherto unaddressed by legal instruments such as:

- violence against women;
- HIV and AIDS, health and reproductive rights;

- the exclusion of rape, sexual slavery, and other sexual violence in crimes against humanity;
- the protection of the rights of vulnerable groups like widows, the elderly, distressed, and nursing women.

Unlike CEDAW, which was often criticised by detractors as a western affair, the Protocol is a home-grown African instrument. However, it does not give a blanket endorsement of African culture like the African Charter on Human and People's Rights. The Protocol acknowledges that some customs, traditions, and values are harmful to women. It proceeds to outlaw traditions such as female genital mutilation, widow inheritance, and child marriages.

Furthermore it enshrines the right of women to live in a positive cultural context and to enhanced participation in the determination of cultural policies.

The Protocol also provides for remedies for women whose rights have been violated. As a legal instrument it can act as a shield against retrogression. It therefore improved the framework for the promotion and protection of women's rights.

## Implications of the Protocol in the thematic areas

The study examined the implications of the Protocol in three thematic areas: governance, violence against women, and health and reproductive rights.

### **Governance**

Article 6 requires states to take specific positive action to promote participative governance and the equal participation of women in the political life of their countries. It also requires states parties to ensure increased and effective representation and participation of women at all levels of decision-making.

In all three countries, the Protocol can be used to strengthen the regulatory framework for participation through legislating affirmative-action measures such as quotas. Even where great strides have been made such as in South Africa, progress is dependent on the goodwill of the African National Congress (ANC). The Protocol could be used to give impetus in areas that have lagged behind such as the judiciary, local government, the private sector, the armed forces, and the public service.

### **Violence against women**

In Article 4, state parties commit themselves to enact and enforce laws to prohibit all forms of violence against women whether it takes place in public or private. States are also obligated to adopt legal, administrative, social, and economic measures that ensure the prevention, punishment, and eradication of violence against women. They commit themselves to provide adequate budgets and other resources for the implementation and monitoring of these measures.

Resource constraints remain a major challenge in all three countries.

The Protocol tackles trafficking which remains a pervasive problem that none of the countries had adequately addressed. The study identified a need for more research, stronger legislation, and more effective action.

Article 5 prohibits and condemns all forms of harmful practices which negatively affect human rights and which are contrary to international standards.

In all three countries women remain the victims of harmful traditional practices. The Protocol could be used to strengthen the legislative and policy framework. While constitutions and laws provide general protection, no detailed laws or policies exist on specific harmful practices such as female genital mutilation, dry sex, abduction, forced marriage or *ukungena* (widow inheritance), or burning or victimising women branded 'witches'. Furthermore, grey areas remained for practices such as *lobola* (bride price), virginity testing, and some initiation rites. More work needs to be done and a consensus built on the circumstances under which some traditional practices become harmful and how women can be protected.

### **Health and reproductive rights**

Article 14 calls on state parties to ensure that the right to health of women, including sexual and reproductive health, is respected and promoted. It also enshrines the right of women to protection against sexually transmitted infections including HIV. It authorises medical abortion in cases of sexual assault, rape, incest, and where pregnancy endangers the mental and physical health of mother or foetus.

In light of the high prevalence rates of HIV in the region, the Protocol could be used to by activists to adopt a rights-based approach as opposed to a welfare approach in advocating for more effective action. In addition, the Protocol emphasises rural areas. This could help bridge the wide disparity in access to services in all three countries. With respect to abortion, in South Africa, the constitution grants women more rights than the Protocol. In Zambia and Mozambique however, the Protocol advances the choices of women in this regard.

## Level of awareness

At the time the study was undertaken in 2004–2005, the level of awareness was woefully low especially among critical actors such as the media and civil-society organisations.

It tended to be highest among actors such as NGOs and officials, who have actually been involved in the process of its promotion, adoption, and ratification. Many of the policy makers and officials responsible for its ratification or implementation were largely ignorant of its content. Few community-based organisations had heard of it and media coverage of the Protocol was negligible. In South Africa not even its ratification managed to catch the news. Although popularisation efforts have improved the situation, a lot remains to be done.

## Best practices

The study highlighted a number of best practices worthy of emulation:

### **Popularising international instruments**

One of the greatest hurdles encountered in the promotion of women's rights enshrined in supra-national instruments is that they tend to stay out of reach, unless a deliberate effort is made to give them practical relevance at the local level by making them binding on the government. In addition, they must be made better known, better understood, and more relevant to policy makers, ordinary women, and gender activists. The examples below attempt to do this.

- Solidarity for African Women's Rights (SOAWR) launched an innovative campaign promoting the ratification of the Protocol that included the use of text messages to extend its outreach. It dramatically increased the number of ratifications.
- Akina Wa Afrika published and disseminated a handbook entitled *The Protocol to the African Charter on the Human and Peoples' Rights on the Rights of Women in Africa: A Review of the Protocol and Its Relevance to Women in Uganda*. It targets policy makers.
- Women in Law and Development in Africa (WILDAF) was among the first of the African NGOs to simplify and translate CEDAW into local languages. WILDAF also treated magistrates to a satire depicting the injustices that women suffered at the hands of the judiciary after the women WILDAF had educated had their claims thrown out of court by gender-insensitive magistrates.

## **Creation of an enabling legal policy and institutional framework**

South Africa:

- Victory of women's organisations in lobbying for inclusion of non-sexism, in the founding principles of the Constitution; the Bill of Rights, especially the Equality Clause, and that the Constitution takes precedence if there is a conflict between customary law and the Constitution.
- Progressive laws and policies adopted which promote women's autonomy in the areas of governance, gender-based violence, and sexual and reproductive health rights.

Mozambique:

- Progressive laws and policies adopted including:
  - The Land Law, which protects the right of women to own land.
  - The Family Law
    - raises the minimum age for marriage to 18 years and makes it uniform for men and women,
    - allows women to inherit property in the case of divorce, and
    - legally recognises traditional marriages, which constitute the majority of marriages in Mozambique (Oxfam America 2006)

Zimbabwe:

- Sexual Offences Act which makes wilful transmission of HIV and marital rape an offence

Zambia:

- Policy which ensures that 30 per cent of all advertised land is allocated to women
- Free ART policy in the public-health sector since 2005

## **Test cases using international instruments**

### **Tanzania, Ephrohim Vs. Pastory**

Holaria Pastory challenged a Haya customary law that prevented her from selling clan land that she had inherited from her father. Her nephew

attempted to have the sale cancelled on the grounds that it was prohibited in terms of the Tanzanian Declaration of Customary law. The Tanzanian High Court relied on the fact that government had ratified CEDAW, and other international instruments, to confirm that women were constitutionally protected from discrimination, when it ruled that the rules of inheritance in the Tanzanian Declaration of Customary Law were unconstitutional and contravened international conventions that Tanzania had ratified.

#### **Zambia: Longwe Vs. Inter-Continental Hotel**

In 1984, Sara Longwe asked a Zambian ombudsman to order a hotel to stop discriminating against women after she was denied entry on the grounds that a male escort did not accompany her. Despite the ruling the hotel did not change its policy and in 1992 she went to the Zambian High Court arguing that the policy violated her right to freedom from discrimination on the basis of sex as enshrined in the new Constitution, as well as Articles 1, 2, and 3 of CEDAW. The Court relied on the Constitution to rule in her favour, but stated that Zambia's ratification of CEDAW meant that courts should look to the Convention when situations that were not covered by domestic law arose (Llana Landsberg-Lewis 1998).

#### **Collins M. Mwanamwalye and Martha Kembo Mwanamwalye**

This case established the law on sharing of matrimonial property upon divorce for customary law marriages. It established the principle of 50/50 sharing of matrimonial property at divorce.

### **Development of monitoring and evaluation tools**

- Development of African Gender and Development Index by the Economic Commission for Africa (ECA). It should be adapted as a monitoring tool for the Protocol.

### **Governance**

- Decision of the African Union that 50 per cent of the commissioners must be women
- Quotas: In South Africa, the ANC has been operating on a 30 per cent quota system which has recently been improved to 50 per cent. Tanzania has instituted quotas in its constitution. This way gender representation does not depend on the goodwill or programme of the party that wins elections.

### **Violence against women**

- In South Africa, specialised Sexual Offences Courts, Family Courts, and Equality Courts have been established as one-stop centres that respond to the needs of women and children suffering from domestic violence, rape, and sexual assault.
- In Mauritius, the government has played an active role in establishing and maintaining support mechanisms unlike many countries which reform penal codes and other laws and policies

but leave the provision of support structures, such as shelters for battered women to NGOs, churches, and other sectors of civil society.

### **Gender-responsive budgeting**

- In South Africa, the Portfolio Committee on finance introduced the women's budget process, to analyse the government's budgets from a gender perspective and thus pressurise government to allocate money to women's empowerment and development activities.

### **Building partnerships and alliances**

- The University of Pretoria's Centre for Human Rights developed a programme to support the work of the Special Rapporteur on the Rights of Women.
- In South Africa, the City of Cape Town and the Department of Local Government's incipient development of a gender network, including the Commission of Gender Equality (CGE) and the Office on the Status of Women (OSW), together with women's NGOs and organisational networks, such as the network on violence against women.

### **Involvement of men**

- FEMNET's programme on men against gender-based violence
- In South Africa, the National Gender Machinery (NGM), and women's organisations have encouraged the participation of men in their efforts to transform unequal gender relations. These have focused on gender-based violence, safer sex, and responsible sexuality.

## **Challenges**

The study outlined a number of challenges that could adversely affect the implementation of the Protocol. These include:

- Gaps and weaknesses in the Protocol itself, in content, enforcement mechanisms
- Ignorance about the use of international human-rights instruments and the absence of a culture of using them
- Co-existence of multiple legal systems and the public/private dichotomy
- Strength of patriarchy, tradition, culture, and religion



- Weakening of the women's movement in Africa
- Lack of political will
- Weakness of key institutions in terms of power, resources, and skills
- Weakness of partnerships and alliances
- Threats in the policy environment

## Lessons

The following lessons should guide future work on the Protocol:

### **Adopt a holistic approach**

To ensure maximum impact and follow through, efforts to promote the popularisation and implementation should be part of a national plan or strategy.

The strategy should take into account the peculiar circumstances of each country in a process driven by lead organisations in government and civil society. It should include links to the country's other relevant obligations such as international instruments and commitments like NEPAD and the Millennium Development Goals, and national policies, such as Mozambique's Plan for Absolute Poverty Reduction (PARPA) and Zambia's Poverty Reduction Strategic Programme.

### **Take the African Women's Protocol to the grassroots**

The African Women's Protocol must be unpackaged and repackaged to make it available, accessible, and user-friendly to different actors.

### **Promote its domestication and effective use**

If the African Women's Protocol is to be effectively implemented, it must be incorporated in the domestic laws of a country, as well as in the local, provincial, and national sector policies, programmes, and plans.

### **Break the private/public dichotomy and move the mountain of tradition**

Efforts to popularise the African Women's Protocol must target the actors and institutions that control the private domain where women live most of their lives.

Women must claim the right to live in a positive cultural environment and to participate at all levels in the determination of cultural policies which the Protocol enshrines. Well-thought-through

campaigns, which seek to build alliances with traditional, cultural, and religious leaders must be launched to promote understanding and convince religious and traditional authorities to support, or at least not stand in the way of, the implementation of the Protocol. The Protocol should also be used to help harmonise contradictory positions in statutory and customary law.

### **Transform targets for change into agents of change**

Efforts to popularise and implement the African Women's Protocol must target crucial actors in the campaign, such as the media and cultural leaders, seeing as both these actors are subjects and potential agents for change.

### **Start early**

Efforts at popularising the African Women's Protocol must target girls and boys at an age before their opinions become formed.

Most gender training and sensitisation targets adults whose opinions and belief systems have long been formed and are, therefore, hard to change. Education about the Protocol and other human rights should be included in school curricula as early as possible. Most of it focuses on people at the tertiary level, by which time it is more difficult to change a person's opinion.

### **Maximise the opportunities provided by technology**

Efforts at popularising the African Women's Protocol must make maximum use of the information revolution, while being mindful of the new threats it presents and of the need to bridge the digital divide between grassroots, the Protocol, and information technology.

## **Conclusion**

The policy research demonstrates that the Protocol, if properly harnessed, can serve as an effective empowerment tool for African women. Empowering African women, who make up more than half of the continent's population, will have a positive multiplier effect that will end with happier, healthier, wealthier, and more harmonious families and societies.

## **Recommendations**

Develop national/regional plans or strategies that include the following key elements:

- Identification of champions (individuals) and key drivers (institutions) to spearhead process

- Development of holistic national/regional plans or strategies tailored to each country's/region's circumstances
- Development of tools for dissemination such as:
  - Pamphlets of simplified versions of the Protocol
  - Translations of the Protocol into local languages and official languages such as Portuguese
  - Handbooks on the Protocol and its relevance to women in the particular country
  - Websites on the Protocol, its relevance, and how individuals and organisations can get involved in the campaign for its implementation
  - Posters and a slogan to help focus the campaign
  - Indicators to monitor and evaluate Protocol once it enters into force
  - Model curriculum for use in schools

Support activities to popularise the Protocol and ensure its ratification, domestication, and implementation such as:

- Media campaigns using television, radio, newspapers
- Use of popular culture such as drama, music, soap operas, and art
- Seminars for academicians, policy makers, government representatives, and civil-society organisations
- Face to face 'meet the people' tours to sensitise women at the grassroots level
- Correspondence campaigns: letters and text messages lobbying policy makers who play a role in the ratification process
- Essay writing competitions for girls and boys in schools

Build capacity and strengthen vital or strategic organisations:

Support Applied Research:

- Sector by sector analyses of the implications of the Protocol to national policies, programmes, and processes at the national, provincial, and local levels
- Best utilisation of Article 17 on the right to a cultural positive context
- Status of cultural practices such as bride price and virginity testing

- Relationship between culture and issues of sexuality
- In South Africa, the prevalence of female genital mutilation and trafficking of women
- Strengthening the women's movement in Africa in the current global environment

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