

AU ECHO

The Newsletter of the African Union Commission



2016:
**AFRICAN YEAR OF
HUMAN RIGHTS**
with a focus
on the Rights
of Women



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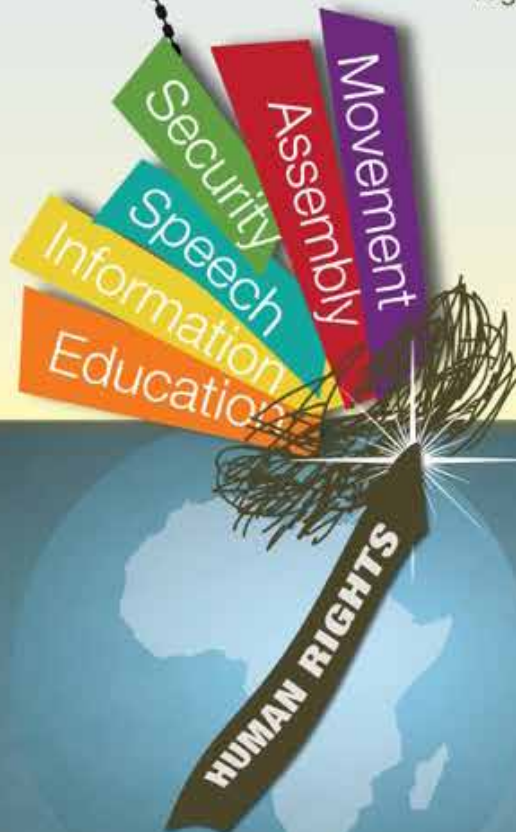


27th AU SUMMIT

African Year of
Human Rights with
particular focus on
the Rights of Women



10 - 18 July, 2016
Kigali, Rwanda



Foreword

This year, we take stock and reflect on our achievements in the search of a better life for all segments of the African people under the Theme: *Year of Human Rights, with particular focus on the Rights of Women* - a theme, which is indeed, both an opportunity and a challenge for all Africans. We are guided in that quest by the African Union's vision for an integrated, prosperous and peaceful Africa, driven by its own citizens and having a strong voice in the international arena. This is THE AFRICA WE WANT, as expressed by our people in Agenda 2063 and its first 10-year Implementation Plan which is already being implemented.

The African Union has created many frameworks and normative instruments to achieve an inclusive, democratic and prosperous continent, observing human rights principles. We encourage all of our Member States to urgently ratify and implement all of these instruments which espouse our shared values.

The human rights that we celebrate this year are about investing in Africa's most precious resource, the over one billion people, the majority of whom are young, and over half of whom are women. It is about investing in their health, quality education, access to basic services and infrastructure, security, freedom of movement, freedom from early and forced marriages, justice, and beneficiating our rich natural resources and more besides. Human rights must be adhered to as civic and socio-economic aspirations are pursued, which will ensure we have a continent that is peaceful, people centered and plays a dynamic role in the world.

This year we are focusing on women's rights; because it is our fundamental obligation and it makes socio-economic and political sense. Investing in well over half of all humanity and which is responsible for bringing the rest to life is a guarantee for sustainable peace, community stability and cohesion. Investing in women contributes to the prosperity of families, communities and the continent.

This newsletter gives you a snapshot of some of the ways in which our continent is observing human rights, especially women's rights, through domestication of relevant AU instruments. The articles are written by Africans from far and wide, some of whom may never have been to the African Union, but who are aware of its role in setting the human rights agenda. There are many good stories, but also challenges and recommendations. We are grateful for their contributions and urge all African citizens to continue taking an interest in promoting the African narrative, as we, together, build the Africa we want.

Long live Africa!

Dr. Nkosazana Dlamini-Zuma
Chairperson, African Union Commission

Preface

The African Union (AU) Heads of State and Government at the January 2015 Summit in Addis Ababa declared 2016 as the African Year of Human Rights with Particular Focus on the Rights of Women, dubbed Project 2016. Coming on the heels of the 2015 theme of Women's Empowerment and Development towards Agenda 2063, these themes signify the importance that the AU attaches to women's rights and the urgency with which it aspires to realize its 50 year development blueprint: Agenda 2063. The emphasis beckons a new dawn for human rights enjoyment and protection and a move towards *the Africa We Want*.

The year 2016 marks a watershed moment in the continental human rights trajectory. It marks the 35th Anniversary of the adoption of the African Charter on Human and Peoples' Rights in 1981; the 30th Anniversary of the entry into force of the African Charter in 1986; the 29th Anniversary of the operationalization of the ACHPR in 1987 and also the 10th Anniversary of the operationalization of the Court. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) will be 13 years old in 2016.

Project 2016 provides an opportunity to consolidate gains made over the years. It is meant to catalyze greater action and momentum to further the human rights agenda. It ensures better coordination of human rights initiatives on the continent. It is intended to spur greater impetus towards universal ratification and implementation of human rights instruments. In the final analysis, the idea is to inculcate a true human rights culture on the continent. It is equally an opportunity for Africans to tell their stories and share their efforts in uplifting their communities.

In the last half century, the OAU/AU succeeded in articulating and adopting numerous shared values

instruments on human rights. It has also established treaty monitoring institutions, with the mandate to examine, evaluate and provide technical support for the implementation of these norms in Member States. These redress mechanisms for human rights violations have improved the human rights landscape in Africa as exemplified by the significant reduction in harmful practices such as female genital mutilation as well as early, child and forced marriages.

Africa boasts a plethora of progressive human rights instruments which have been articulated on a wide range of human rights issues. A major challenge remains the political commitment of all Member States to ratify, domesticate and implement the provisions therein. The success of the AU will depend largely upon the importance given to the promotion, protection and enjoyment of human and peoples' rights on the continent.

To be effective, the Union must deepen the culture of democratic governance, respect for the rule of law and respect for human and peoples' rights. By inculcating a culture of human rights, the AU stands a better chance of realizing its Pan-African vision of "*an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the international arena*". If Africa is to make sustained economic, social and political progress, it must be committed to the realization of rights for all of its people.

Project 2016 marks a renewed opportunity for collective responsibility, dedication to and ownership of initiatives towards the promotion, protection and enjoyment of human and peoples' rights on the continent.

Dr. Aisha L. Abdullahi
Commissioner, Political Affairs - AUC

Editorial

Information is the oxygen of the modern age- so the saying goes.

This issue of the AU ECHO, the newsletter of the African Union Commission, is special: because it is our biggest to date, containing a lot of useful information for the benefit of our continent.

The AU ECHO is a mechanism to share information, a platform through which Africans can tell their own story. It is open to all African people to provide well researched, evidence based articles on how AU instruments, decisions and guidelines are domesticated at national level and the impact they have on the lives of the people. The subject of each issue of the newsletter is guided by the annual theme of the AU. As such, all the scripts that we are carrying in this issue are discussing Human Rights with particular focus on the Rights of Women. Articles make reference to some of the major human rights instruments of the AU such as the African Charter on Human and People's Rights, the Maputo Protocol and the African Charter on the Rights and Welfare of Children among others.

Aside from discussing successes, authors have highlighted challenges faced by member states, institutions and individuals in the quest to further human rights on the continent. Many have gone on to recommend possible solutions to some of the challenges. We would like to extend a special word of thanks to each and every one of our contributors.

We would also like to express sincere gratitude to the leadership of the African Union Commission for promoting the African Year of Human Rights with a focus on the Rights of Women, especially Dr Nkosazana Dlamini Zuma, our Chairperson and Dr Aisha Abdullahi, the Commissioner for Political Affairs. Their leadership has, no doubt, contributed to the enthusiastic response to our call for papers.

Deepest appreciation goes to Dr Khabele Matlosa who reviewed all the articles and provided guidance, Ms Nebila Abdulmelik who gave invaluable assistance and expertise in the editorial and publishing process, and Mr Jacob Nyoyo who took care of the editing of the French articles. The newsletter has benefited immensely from these interventions.

To our readers, we trust that the information in this newsletter will give you an appreciation of the work of the African Union and its value to our everyday lives.

Warmest wishes

Mrs. Wynne Musabayana
Editor

Maputo Protocol on Women's Rights: A Living Document for Women's Human Rights in Africa

*Submitted by the Women, Gender and Development Directorate (WGDD)
of the African Union Commission*

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) remains one of the most progressive legal instruments providing a comprehensive set of human rights for African women. Unlike any other women's human rights instrument, it details wide-ranging and substantive human rights for women covering the entire spectrum of civil and political, economic, social and cultural as well as environmental rights. It would not be incorrect to name it the African Bill of Rights of Women's Human Rights.

Since its adoption 13 years ago in 2003, the Maputo Protocol has contributed in shifting the trajectory on the promotion and protection of women's human rights in Africa. At the first instance, it challenges the old stereotypes about the role of women in society and places women as full, effective and equal partners with men in the development of their communities. It places a moral obligation on African Union Member States to promote equal opportunities for men and women to play meaningful roles in society. The Maputo Protocol is indeed a demonstration of the goodwill and total commitment of the African Union Member States to invest in the development and empowerment of women, who represent the majority population in most African countries.

Through this progressive instrument, Africa has witnessed the adoption of equally innovative laws, policies and other institutional mechanisms at a national level to advance women's human rights. For example, according to a report of the African Union Special Rapporteur on the Rights of Women in Africa,¹ Benin

has adopted a family code on gender equality that prohibits polygamy and affords children equal access to rights irrespective of their status; Sierra Leone's Registration of Customary Marriage and Divorce Act protects women entering into customary marriage from forced marriages; and South Africa promulgated the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) which is regarded as the most important law after its constitution. It guarantees women equal protection and benefit of the law. Policy arrangements in place include Algeria's introduction of the solidarity school bonus for students from disadvantaged communities and distribution of free books and uniforms to promote girls' education and women's literacy²; Ethiopia's establishment of a Health Extension Programme (HEP), which deploys Health Extension Workers (HEW) to communities as a means to take key maternal, neonatal and health interventions to communities in order to reduce maternal and child mortality;³ and Tunisia's creation, within the development scheme of 2016 – 2020, of a programme which provides financial support to women's projects.

Many African Union Member States have established special national machineries to promote and protect the rights of women. In addition to human rights commissions, which are traditionally regarded as National Human Rights Mechanisms, there are specific Gender Equality or Equal Opportunities Commissions specifically dedicated to the rights of women. These are found, for example, in countries such as Uganda, Kenya, Rwanda, South Africa and Zimbabwe.

¹ The report was given as part of a presentation on the "State of Ratification of the Maputo Protocol" during the AU Ministerial Consultation Meeting held on 18 March 2016, on the margins of the 60th Session of the United Nations Commission on the Status of Women (CSW), in New York, USA. <http://www.peaceau.org/uploads/special-rappor->

[teur-on-rights-of-women-in-africa-presentation-for-csw-implementation.pdf](#) accessed on 14/05/2016 11h49.

² Algeria's 2015 report to the African Union Commission on the Solemn Declaration on Gender Equality in Africa

³ Ethiopia's 2015 report to the African Union Commission on the Solemn Declaration on Gender Equality in Africa

The above demonstrates that indeed the Maputo Protocol is a living document that should continue to be translated into domestic laws and programmes to ensure that women enjoy the rights provided in the Protocol.

While celebrating the great achievements that the Maputo Protocol has brought to the African human rights agenda, it is also recognized that more action is needed to guarantee women and girls the full enjoyment of their human rights. Many challenges still persist that hinder women and girls from attaining their full rights. These include, among others, en-

trenched cultural and religious practices, exclusionary economic systems; low or lack of support for women candidates in politics and public life; as well as women's inability to own or inherit land.

The declaration of 2016 as the Year of African Human Rights with a Particular Focus on the Rights of Women represents a call for accelerated action for African Union Member States to remove all barriers that impede the full enjoyment of women's human rights and to create enabling environments for women and girls to reach their full potential, in furtherance of Africa's Agenda 2063.



Photo credit: FEMNET

Human Rights Protection in Africa: Special Focus on Rights of Women

By Osai Ojigbo *

“Human rights are not things that are put on the table for people to enjoy. These are things you fight for and then you protect.” – Wangari Maathai

Introduction

The promotion of human rights and its protection in Africa has been a long winding and often bumpy road. Since the fight to end colonial rule in Africa to the present day, Africa has struggled to ensure a system of human rights that meets the aspirations of its people.

Between 1961 and 1979, African jurists, experts, lawyers and governments participated in a series of conferences and consultations to debate and develop a system for human rights protection in Africa.¹ Two recommendations from the Rule of Law conference in Lagos in 1961 pointed to the development of an “African Convention of Human Rights” and a continental court that was accessible to everyone.² However, while the African Charter on Human and Peoples’ Rights (African Charter) was adopted in 1981, the promotion and protection of rights contained therein was given to the African Commission on Human and Peoples’ Rights (ACHPR)³ rather than a court. With the coming into force of the African Charter in 1986, the ACHPR was formally constituted in 1987.

It took over 10 years for a protocol to the African

Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (African Court Protocol) to be developed and adopted in 1998; and a further 5 years after that for it to come into force in 2004. The African Court was not fully operational until 2006 when the first judges were sworn in. The strength of the African Court is the binding nature of its judgments and the possibilities for execution of the judgment⁴ in comparison to the ACHPR whose decisions are recommendations and are more of a persuasive rather than binding character.

Africa’s Human Rights Framework

While the African Charter is the foundation for human rights in Africa, a number of specific human rights conventions, charters, protocols and statutes provide a robust system of human rights protection.⁵ These include:

1. OAU Convention governing the specific aspects of refugee problems in Africa
2. African Charter on the Rights and Welfare of the Child (ACRWC)
3. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol)
4. African Charter on Democracy, Elections and Governance (ACDEG)
5. African Youth Charter (AYC)

In addition to the ACHPR and the African Court, other institutions such as the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) and the Regional Economic Communities’

¹ B. Obinna Okere, “The Protection of Human Rights in Africa and the African Charter on Human and Peoples’ Rights: A Comparative Analysis with the European and American Systems,” *Human Rights Quarterly* [1984] 6(2) 141-159 p.144

² The Law of Lagos 1961; available at: http://www.chr.up.ac.za/images/files/documents/ahrdd/theme36/rule_of_law_lagos_1961.pdf (Date accessed 18 November 2015)

³ See Art. 30,

⁴ Articles 28-30 African Court protocol

⁵ See the AU Treaties page: <http://www.au.int/en/treaties>



Photo credit: World Bank

(RECs) courts such as the ECOWAS Community Court of Justice, provide formal judicial or quasi-judicial protective mechanisms. For the instruments and the different complaint mechanisms to be effective, it is necessary for the African Union (AU) member states to ratify them as well as implement them at national level. With regards, to the African Charter, all AU Member States except one have ratified it. Other human rights treaties are behind in achieving universal ratification.

The Protection of Women's Human Rights in Africa

Article 2 of the African Charter provides that every person regardless of sex (among other things) has rights and is entitled to enjoy them. The African Charter goes further in Article 18(3) to urge states to eliminate discrimination against women and ensure the protection of their rights. The African Charter is further complemented by the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) which unequivocally rein-

forces women's rights in totality, while expounding on specific and unique experiences of African women regarding inheritance, widowhood and harmful practices for example. In particular, the Maputo Protocol sets the standards for women's human rights in Africa. The definition of violence against women recognises both physical and emotional violence as well as threats of violence.⁶ It recognises the role of women in political and public life while encouraging state parties to invest more in legislation and other measures to secure equal representation of women and men in decision-making.⁷ The Maputo Protocol in a special way provides in Article 27, that the African Court will be charged with interpretation of the application and implementation of the protocol.

⁶ Article 1(j) Maputo Protocol

⁷ Article 9, Maputo Protocol

While 50 African Union (AU) member states have ratified CEDAW⁸, only 37⁹ have ratified the Maputo Protocol. This means that the more progressive and African-focused targeted provisions in the Maputo Protocol are not being implemented; to the detriment of women and girls in those countries. An analysis of the Maputo Protocol ratification status shows that all AU member states except two have signed it. Both countries have however ratified CEDAW. South Sudan, AU's newest Member State ratified CEDAW on 30 April 2015.

Despite the significant number of ratifications to the Maputo Protocol it cannot be said that women's human rights are fully realised at national level. Studies have shown that a number of factors including lack of political commitment; patriarchy; lack of coordination by government departments in following up on states' commitments; lack of access to verifiable data; and limited capacity for data and information processing have contributed to low levels of implementation.¹⁰

In the same vein, the fact that only 29¹¹ AU member states have ratified the African Court Protocol and only 7¹² have made the declaration permitting individuals and NGOs to directly access the African Court, limits access to justice at the regional level. These limitations and the slow ratification of the protocol defeat the intention of the early conceptualisation of human rights protection in Africa.¹³ The intent was to secure and codify human rights and

provide a regional mechanism that enforces human rights.

In addition to non-ratification, poor awareness of the Court has prevented potential claimants to access it.

Conclusion and Policy Recommendations

Africa is in a better position to protect human rights today than it was over 50 years ago. The robust human rights framework, instruments and institutions that exist provide the tools for securing human rights. Progressive and positive change in human rights enjoyment particularly women's rights, requires greater cohesion at national, regional and continental level. The standard setting at continental level will inform the framework and guidelines for action at national level. While local contexts cannot be ignored, they should not limit rights which are universal, inalienable, and indivisible.

The following recommendations would go a long way in realizing the rights of women and girls if implemented:

1. **Ratification and domestication of AU Instruments.** This is a call for AU Member States to ratify human rights instruments yet to be ratified and allocate adequate resources for their implementation. The issue around the willingness of African governments to ratify UN instruments and the resistance or delays in ratifying AU instruments requires further interrogation that can inform strategies for increasing ratification of key instruments.
2. **Coordinated national mechanism responsible for compliance to AU instruments.** The African Union Commission, through the secretariat of the African Governance Architecture (AGA) i.e. the Department of Political Affairs implements the Human Rights Strategy for Africa, that provides the basis for engagement and coordination among the respective AU organs and institutions. Simi-

⁸ The UN Convention on the Elimination of Discrimination Against Women (CEDAW). The CEDAW Status: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (Date last accessed: 20 November 2015)

⁹ Sierra Leone is purported to be the 37th State since it ratified the Maputo Protocol on 2 July 2015 but as at November 18, 2015 is yet to deposit its instruments of ratification.

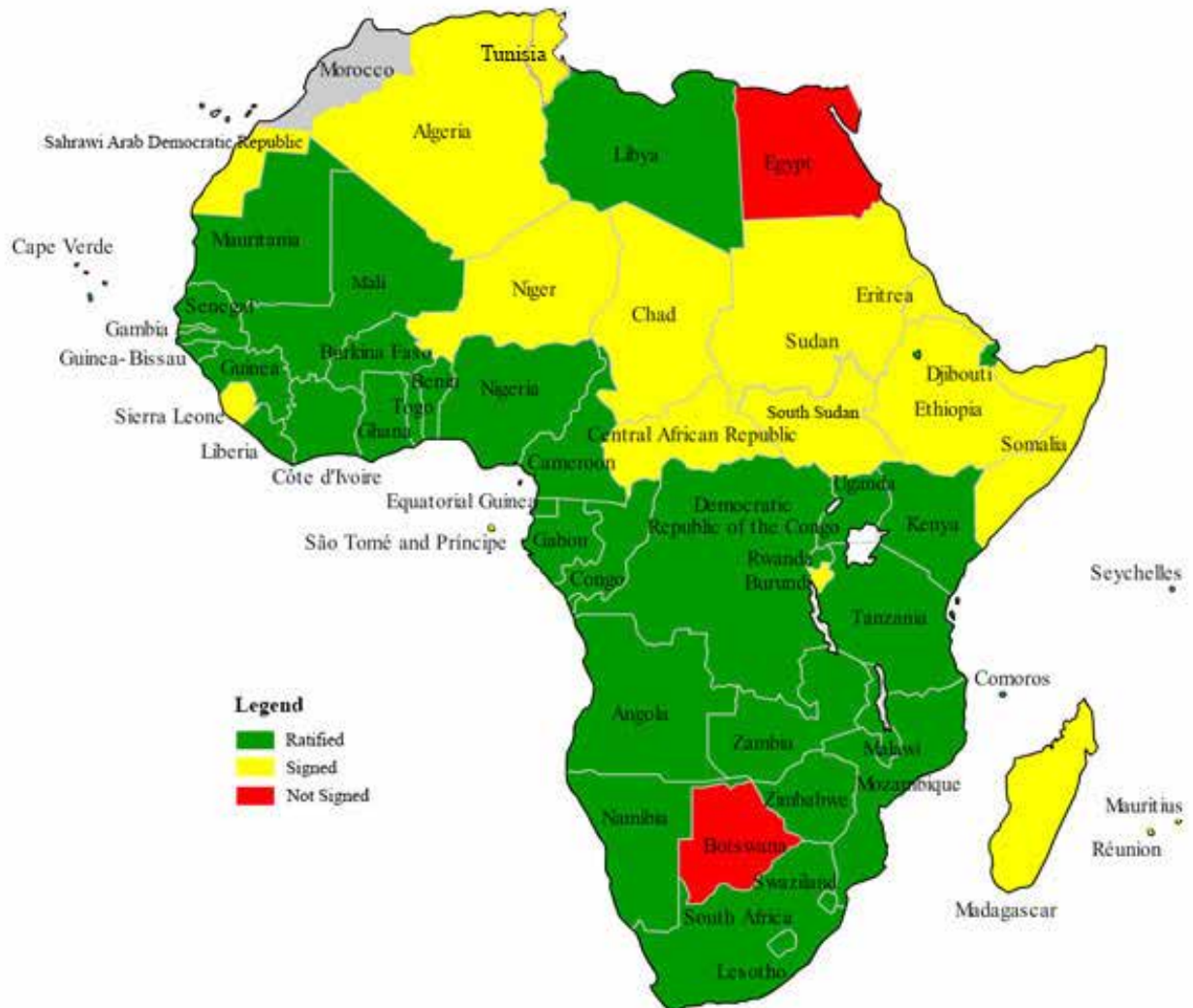
¹⁰ See State of the Union Continental Compliance Report 2014 – Realising Africa's Aspirations; Available online at: <http://www.sotu-africa.org/wp-content/uploads/2015/10/SOTU-Continental-Compliance-Report-2014-English1.pdf>

¹¹ Cameroon became the 29th country to ratify on 24 August 2015.

¹² Mali, Burkina Faso, Ghana, Rwanda, Tanzania, Malawi, Cote d'Ivoire as at November 2015. See also: <http://en.african-court.org/index.php/about-us/court-in-brief>

¹³ See note 2 above;

Protocol Watch



<http://www.soawr.org/content/protocol-watch>
Courtesy: Solidarity for African Women's Rights (SOAWR) Coalition

lar mechanisms are required at domestic level to facilitate active monitoring of a state's obligations under ratified AU treaties, and ensure compliance.

3. **Strengthening Legal System including Legal aid.** When there is a violation there must be an effective remedy. Equality before the law as well as access to justice provides a balance for resolving conflict and punishing violations. An ideal system should be accessible, effective, efficient and timely. The process from investigations, prosecution and adjudication and punishment should be victim friendly and gender sensitive. Provision of legal aid makes it possible to support claimants especially women, who often are constrained by family commitments preventing them from pursuing any legal action.

This year, which is the African Year of Human Rights with a special focus on the Rights of Women offers opportunities to reflect and act on improving living

conditions of citizens in Africa. It is time to re-emphasise and recognise the pivotal role human rights plays. It should be the foundation of all interventions aimed at ensuring development, progress and peace in Africa.

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The State of Human Rights and Women's Empowerment in Africa: Focus on Ghana

By Ewald Quaye Garr* and Benjamin Joe Danso**

Introduction

The transformation of the Organization of African Unity (OAU) into the African Union was informed by the continent's commitment to promoting peace and security and thus human rights in the twenty-first century.¹ **The establishment of the AU was therefore hailed as an opportunity to put issues relating to human rights and the rights of vulnerable groups, particularly women, firmly on the African agenda.**

The AU began to prioritize the protection of human rights. This is reflected in the ratification of human rights instruments such as the African Charter on Human and People's Rights (ACHPR)² and the 'Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa' (the Maputo Protocol). **The ACHPR seeks to promote and protect human rights and basic freedoms on the continent, and is complimented by the Maputo Protocol (2003), which aims, amongst other things, to ensure that the rights of women are promoted, realized and protected in order to enable them to fully enjoy all their human rights.**³

The AU declared 2015 as the "Year of Women's Empowerment and Development Towards Africa's Agenda 2063". The theme was chosen to acknowledge the persistent efforts made in the implementation of the AU Gender Architecture at the nation-

al, regional and continental levels, and the positive and visible results of the implementation of gender equality and women's empowerment instruments since Beijing 1995. To further bolster its commitment to the protection of the rights of women on the African continent the AU has declared 2016 as "The Year of Human Rights with Particular Focus on the Rights Women".⁴

This article examines the continent's human and women's rights trajectory with Ghana as a reference point. The following sections will discuss Ghana's implementation of the African Charter on Human and People's Rights and the Maputo Protocol, the challenges so far and some recommendations on the way forward.

Ghana's Performance in the Promotion of Human Rights and the Rights of Women

Ghana has ratified both the ACHPR (1989) and the Maputo Protocol (2003). Over the years the country has made significant strides in the promotion and protection of human rights and the rights of women by way of legislative instruments, laws, institutions, and policies in consonance with the ACHPR and the Maputo Protocol. Chapters 5 and 6 of Ghana's 1992 Constitution seek to promote the enjoyment of fundamental human rights and the protection of basic human rights and freedoms, including the rights of the disabled, the aged, children and other vulnerable groups.

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¹ Bience Gawanas (2010). *The African Union: Concepts and Implementation Mechanisms Relating to Human Rights*

² Ibid

³ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. Available at http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf

⁴ Address by Hon. Justice Bernard M. Ngoepe, Vice President of the African Court on Human Rights and People's Rights, on the occasion of the Opening of the 55th Ordinary Session of the African Union. Available at <http://www.achpr.org/sessions/55th/speeches/opening-statement-court/>



Ghana is taking measures to improve the welfare of women and children
Photo credit: World Bank

Apart from the constitutional provisions, various governments in Ghana's Fourth Republic⁵ have adopted medium term policy measures that broadly reflect the provisions of the ACHPR and Maputo Protocols. The Ghana Poverty Reduction Strategy (2002-2005), the Growth and Poverty Reduction Strategy (2006-2009), Ghana Shared Growth and Development Agenda (GSGDA 1) (2010-2013) and the GSGDA II (2014-2017) provide the overall structure for advancing human rights, improving the participation of women in key sectors of the economy as well as putting in place measures to bridge the inequality gap between men and women.

The establishment of the Ministry of Women and Children Affairs in 2001, now Ministry of Gender, Children and Social Protection has advanced the welfare and equal status of women (and children) in the country. The expansion and re-designation of the Ministry with a three-fold mandate to first, ensure gender equality through mainstreaming gender considerations; second, to promote the welfare and protection of children; and third, to empower the vulnerable, excluded, aged and people with disabilities through the use of social protection interventions to achieve national development, is a deliberate effort by the Government of Ghana to mainstream issues of gender into the broader national agenda. The Ministry has also facilitated the implementation of the Affirmative Action Policy (AAP) that led to the establishment of Gender Desk Officers (GDOs) in all ministries, departments and agencies.

Additionally, several laws have been passed to protect women from abuse, assert the rights of women and girls and to enhance their welfare. This includes the Domestic Violence Act, 2007 (Act 732) which provides protection against various forms of gender based violence including acts of intimidation, harassment, psychological, physical and sexual abuse. It further prohibits the justification of violence with consent. Under the Criminal Code, rape is a crimi-

nal offence that carries a sentence of 5-25 years. The Criminal Code, 1960 (Act 29) section 69A has been amended to criminalise and punish harmful practices such as female genital mutilation.⁶ The Children's Act of 1998 (Act 560), has also been passed to prevent child marriages. Section 14 of the Act puts the minimum age of marriage at 18, and children between 16 and 18 years may marry under parental consent. Other progressive laws include Human Trafficking Act 694 (2005), and Amendments to the Intestate Succession Law PNDC 111, and Spousal Property Rights Bill (currently before Cabinet).

Among other milestones, Ghana has almost achieved gender parity in school enrolment.⁷ The country currently has its first female Chief Justice and Chairperson of the Electoral Commission, and 20% of members of parliament are women. Policies on free pre-natal and delivery services for women are being implemented and there has also been an expansion of gender responsive budgeting to ensure resource allocation for gender equality programmes.

Challenges in the Promotion of Human Rights and the Empowerment of Women

The constitutional provisions, laws, institutions, and policies notwithstanding, women in Ghana still suffer from forms of discrimination and abuse. These include limited access to productive resources such as land, technology, information and credit; as well as meaningful and sustained access to leadership and decision making positions. These can be attributed to patriarchal socio-cultural beliefs and practices which perpetuate negative perceptions of the role of women.

⁵ Ghana's Fourth Republic began in 1992 with the coming into force of the 1992 Ghanaian Constitution

⁶ Garr, E. (2009) Female Genital Mutilation in Ghana: Feasibility Studies. Study conducted for International Action Against the Circumcision of Girls and Women (INTACT). eV., Unpublished.

⁷ Ministry of Gender, Children and Social Protection (2014). Ghana's Fourth Progress Report on the Implementation of the African and Beijing Platform of Action and Review Report for Beijing +20. Available at http://www.unwomen.org/~media/headquarters/attachments/sections/csw/59/national_reviews/ghana_review_beijing20.ashx?v=1&d=20140917T100721

Recommendations

Although Ghana has seen significant improvements in the protection of human rights and the rights of women, there are some challenges that need to be confronted in order to further strengthen and consolidate the culture of protecting the human rights and rights of women. In this regard we recommend an intensification of public sensitization and education of women on legal and human rights, swift enforcement of the constitutional provisions, and the implementation of the ACHPR, Maputo Protocol and related international conventions. The Domestic Violence Victims Support Units (DOVVSU) of the Police Service should be well resourced and decentralized to all districts in the country to ensure compliance to human rights and rights of women as established by law. Furthermore women's participation in decision making and the taking up of leadership roles must be promoted.

Acknowledgements

This article was prepared by Ewald Quaye Garr and Benjamin Joe Danso under the auspices of the Institute for Democratic Governance (IDEG). Special thanks to Mr. Kwesi Jonah, Senior Research Fellow at IDEG and former Head of Department of the Political Science Department of the University of Ghana who supervised the article and Dr. Emmanuel Akwetey, Executive Director of IDEG, who provided the general oversight to ensure that a quality report was produced and submitted. Profound appreciation also goes to Isaac Haruna, Afiba Dolphyne and Eileen Goody-Gans Lartey for their inputs and critical review of the article.

The Female Face of Migration: towards the Empowerment of Migrant Women

by Faith Maberá*

The unfolding migrant crisis in Europe, depicted as the worst humanitarian and migrant crisis since World War II, has glaringly exposed a number of crucial issues in the discourse on international migration, especially as it pertains to forced migration. Key among these issues are the rights of refugees and asylum seekers, the responsibilities of transit and destination countries, and even more pertinently, the rights of migrant women. The concept 'migrant women' is an umbrella term that may refer to a range of circumstances relevant to women on the move who are of different ages; vary in terms of legal status (legally resident, undocumented migrants or refugees); and who migrate for a myriad of reasons (voluntary or forced migration).

Women continue to make up a significant portion of international migrants, with the International Organization for Migration (IOM) estimating that approximately half of the world's 1 billion migrants and half of the estimated 51 million displaced persons are women. A concept which captures the centrality of gender in migration is the 'feminization of migration'.¹ The feminization of migration is premised on three notions. The first idea denotes the quantitative increase in female migration; the second notion entails the visibility of female migration in the migration literature; and the third perspective conceptualizes feminization of migration as an approach which addresses the gendered dimensions of migration, emphasizing the agency of women in the migratory context as well as the potential of migration as an empowerment tool for women. **Up until the 1980's,**

women were largely 'invisible' in the migratory discourse, translating to the absence of a gendered analysis of how issues such as gender roles, division of labour, equality and gender equity interact with the various forms of migration.

Prior to the uptake of gendered approaches to migration, women were generally seen as passive subjects of international migration, dependent on male migrants and only moving as part of the household. However, the predominance of women in the care employment sector, in health, nursing, food service, housework, and care for children, elderly and ill people, illuminated the role of women as autonomous agents in the labour market and as breadwinners, thereby shifting notions of traditional gender roles. Feminization of migration has to be understood in the context of the 'age of migration'² where, in addition to its engendering, migration has increasingly been characterized by *globalization* (variety of states impacted by migration); *acceleration* (quantitative increase in migrant numbers); *differentiation* (migrants belong to a range of ethnicities and nationalities) and *politicization* (elevation of migration issues to the realm of high politics).

On the positive side, migration is an avenue for the empowerment of women as it provides an opportunity for them to improve their economic situations as income earners and contributors to the upkeep of households. However, at the same time, **migra-**

¹ Notes

Swing, W.L.2015. 'IOM Director General's Message on International Women's Day 2015' <http://weblog.iom.int/iom-director-general%E2%80%99s-message-international-womens-day-2015>

² Castles, S. and Miller, M.J. 1998. 'The Age of migration: International Population Movements in the Modern World,' in *The Feminization of Migration: Dreams and Realities of Migrant Women in Four Latin American Countries* edited by C. Lipszyc, p.8



Women make up a significant portion of international migrants

Photo credit: World Bank

tion can be disempowering as the migrant economy replicates inequalities that discriminate women for being both women and foreigners, hence they are forced to work in low-income sectors. Moreover, women in the labour market are exposed to gender pay gaps, lack of access to pension and social protection services and are highly vulnerable to exploitation and gender-based violence. At the other end of the spectrum, women who have been forced to migrate escaping conflict and instability or who are victims of trafficking are triply vulnerable to gender-based violence in countries of origin, transit countries and destination countries. The perilous journey of crossing borders is filled with harrowing accounts of rape, xenophobia and physical violence at the hands of smugglers, humanitarian workers and immigration authorities.

In the African context, a progressive document as far as women's rights are concerned is the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the Maputo Protocol. In addition to enshrining civil and political rights; economic and social rights; rights to peace and development and reproductive rights; **the Maputo Protocol also speaks to the elimination of all forms of discrimination and violence**

against women and calls for the full protection of asylum-seeking women, refugees, returnees and internally displaced persons (IDPs), prohibiting all forms of sexual exploitation in armed conflict situations and in refugee camps and settlements.

Despite the momentous potential of the Maputo Protocol for the promotion of women's rights, issues of non-implementation and non-ratification continue to militate against its use as an effective policy tool for women's empowerment. As of 2015, 36 out of the 54 African states had ratified the Maputo Protocol. However, several of the states that have ratified have displayed reservations around controversial articles particularly those covering early marriage, property rights and reproductive rights, all of which are directly related to women's equality. Therefore, the onus rests on African governments and policy officials to move away from an 'add and stir' approach that has dominated policy discourse around gender equality and the legislation of women's rights. At the international level, policy documents that specifically address the rights of women migrants include the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their

Families (ICRMW); the 1995 Beijing Platform for Action and the 1951 Convention relating to the Status of Refugees which specifically covers the rights of refugees and the legal obligations of states.

The empowerment of migrant women begins by recognizing that migrant women are bearers of rights and advocating for a rights-based approach to female migration. A rights-based approach to migration examines the gendered hierarchies that impede the full realization of the rights of migrant women with the aim of galvanising states, civil society, non-governmental organisations and other stakeholders to fulfil their obligations in securing the human rights of migrant women and in turn, elevate their capacity for human development. Dovetailing a rights-based approach is the migration-development nexus which emphasizes the view of women as development agents as opposed to passive victims of gendered dimensions of the migration discourse. Instead of instrumentalizing women as victims of the dark side of migration entailing trafficking, political instability and global economic restructuring; **the agency of women should be acknowledged as determinants of the migratory project, remittance**

managers and beneficiaries of the migration and development agenda.

The AU's declaration of 2015 as the Year of Women Empowerment and Development towards Africa's Agenda 2063; and 2016 as the Year of Human Rights with Special Focus on the Rights of Women presents a unique opportunity for African leadership to address gender gaps in the policy documents relevant to women's rights as well as to amplify efforts towards the empowerment of women as change agents towards the African Agenda 2063 and the 2030 Agenda for Sustainable Development. Relevant to migration, progress towards securing the rights of migrant women can be realized by incorporating a rights-based approach towards migration, by focusing less on reactive approaches to migratory crises and more on long-term models and frameworks that tackle structural challenges at the heart of migration governance.

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The Role of the Pan African Parliament in Promoting the Rights of African Women

By Adv. Galal Nassir*

INTRODUCTION

The Pan African Parliament (PAP) was conceived in the Treaty Establishing the African Economic Community signed in Abuja, Nigeria 1991 (Abuja Treaty) **as a platform for the voices of the peoples of Africa and their grassroots organizations on matters of continental integration.** With the transformation of the OAU (Organization of African Unity) to the African Union (AU), the Pan African Parliament was incorporated into the Constitutive Act of the African Union as one of the organs with a unique mandate to represent the aspirations of the peoples in the decision making processes of the AU, regarding the imperative of pursuing African Unity through political and economic integration.

PERSPECTIVE OF THE PAP

Africa's past history is replete with examples of marginalization and exclusion of women in critical areas of life. Women represent more than half of the population of our continent and have a critical role to play in its development and as such, deserve equal opportunity as the men folk, as well as the platforms to realize their legitimate aspirations. Women represent an untapped resource in all spheres of development and there is irrefutable evidence of extraordinary performance and positive results when women are engaged in key positions that are vital to the development of our continent.

It is however regrettable that despite a track record of excellence, this very critical segment of the society remains the most marginalized in the African socio-economic and political spectrum. Women are still faced with challenges of poverty, high illiteracy,

sexual violence, abuse, high infant and mortality rates and HIV/AIDS.

Few governments have taken effective measures to address this challenge especially with regard to the domestication and implementation of provisions of international and regional treaties that aim to promote the rights of women and create an enabling environment for women and girls in Africa.

The adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa by the African Union Heads of State and government was welcomed with expectation of change. **The Protocol seeks to promote and protect the rights of African women by reinforcing international human rights standards and adapting them to address context-specific violations of African women's rights.**

The declaration of 2015 by the Assembly of Heads of State and Government as the 'Year of Women's Empowerment and Development towards Africa's Agenda 2063' and the subsequent declaration of 2016 as the 'Year of Human Rights with a Particular Focus on the Rights of Women' further demonstrated the willingness of our leaders to address the persistent challenges faced by women as a result of social, economic and political marginalization, gender-based violence and discrimination against women and ensure that they participate in and benefit directly from the growth and transformation opportunities capable of improving their lives and livelihoods.

It is therefore crucial that African leaders and State Parties commit to this vision to ensure the elimination of all forms of discrimination against women

and violations of women's rights and improve their access to, and control of, finances, land, education, health, sciences and technology and decision-making in political governance and business enterprises. Parliamentarians, custodians of democracy and human rights and representatives of the people will engage in discussions that contribute to the promotion of the welfare of women.

WORK OF THE PAP

The Pan-African Parliamentarians represent all the peoples of Africa and pursue the objective of, amongst others, facilitating the effective implementation of the policies and objectives of the AU as well as promoting the principles of human rights and democracy in Africa. In order to achieve its objectives, the PAP, **since its inception has embarked on deliberate programmes including the promotion of the African Women's Protocol as part of its drive to protect women's rights and enhance gender equality and affirmative action for women across Africa.** It has also played a pivotal role in mobilizing parliamentarians in their role as agents and champions of change.

The PAP established ten Permanent Committees that deal with various sectors and areas of concern relevant to the African continent and its people. The Committee on Gender, Family, Youth and People with Disabilities has a mandate to consider issues relating to the promotion of gender equality and assist the parliament to oversee the development of policies and activities of the Union relating to family, youth and people with disabilities.

In addition, the PAP has, in line with Rule 85 of its Rules of Procedure, established the PAP Women's Caucus to play an oversight role with regards to women's rights and gender issues. It has been involved in the advocacy on the ratification, domestication and implementation of women's human rights instruments including the African Protocol on Women's Rights as well as monitoring the implementation of women's human rights instruments on the continent.

The PAP instituted the Annual Women's Conference, a platform for the propagation of the decisions and policies of the African Union on women. Through this forum, the PAP has focused on human rights, peace and security, maternal health, child mortality, social and economic empowerment, involvement in political and decision making processes and numerous other gender issues.

Furthermore, the Annual Women's Conference has been used to track the progress made towards the implementation of gender focused programmes, policies and activities by the AU and monitor progress in the implementation of the Millennium Development Goals (MDGs); i.e. promote gender equality and empower women, reduce child mortality, improve maternal health and combat HIV/AIDS, Malaria and other diseases.

MILESTONES

The Pan African Parliament has worked to strengthen and consolidate efforts to empower women through meaningful participation of women and equal partnership in driving the development agenda in Africa. In partnership with national parliaments, PAP has promoted the development and the strengthening of platforms for women's participation in governance, and established a mechanism to give priority to policies and programmes to curb the marginalization of women.

Through the Annual Women's Conference, the PAP is able to harness the enormous potential of constructive engagement of African women to Africa's development agenda. The PAP Women's Conference in 2012 was held under the theme, "The Role of Parliamentarians in Promoting Maternal, Newborn and Child Health in Africa on Maternal and Child Health" to support the African Union campaign to 'end child marriage' in Africa; and launch the *Pan African Campaign Against Marriage of Under Age Girls*. In 2013 the PAP advocated to promote the Right to Life, Integrity and Security under the theme, "*Parliamen-*



PAP is working to consolidate efforts to empower women

Photo credit: World Bank

arians Responding to Violence against Women in Africa: From Legislation to Effective Enforcement” to develop strategies to address violence against women on the continent in collaboration with national and regional parliaments. The Annual Women’s Conference of 2015 dwelt on the theme “2015 Year of Women’s Empowerment and Development towards Africa’s Agenda 2063: From Dialogue to Action-The Role of PAP Women in Parliament”.

Cognizant of the impact of conflict on women and children, the **PAP has undertaken fact-finding missions to assess the situation of women and girls in conflict areas** including Chad (May 2006); Central African Republic (April 2007); Burkina Faso (2008); Saharawi Arab Democratic Republic (July 2011) and Sudan and South Sudan (September 2012). In order to increase awareness and eradicate harmful traditional practices such as female genital mutilation/

cutting (FGM/C), the PAP undertook fact-finding missions to various member states including Ethiopia in 2009. It contributed to the launch of a pilot training programme for African midwives in Sudan in 2012; towards strengthening health systems, particularly in the provision of maternal health services in Africa.

The PAP marked the tenth anniversary of its establishment in 2014 with a Women’s Dialogue convened to promote women’s empowerment and their participation in all spheres: social, economic and political. It commemorated the 2015 Africa Day Celebrations under the theme, “2015 The Year of Women’s Empowerment and Development towards Africa’s Agenda 2063” to position African women favourably in the long term development trajectory of Agenda 2063 for a prosperous and unified Africa.

In order to accelerate the ratification and domestication of AU legal instruments including the African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the PAP has strengthened ties with regional and national parliaments through the annual conference of speakers of African national parliaments and parliaments of regional economic communities. Through this conference, parliamentarians are sensitized on African Union decisions especially the legal instruments and the need to achieve speedy ratification and domestication.

The Seventh Annual Conference of Speakers of African Parliaments held under the theme, "2015 The Year of Women's Empowerment and Development towards Africa's Agenda 2063" in August 2015 obtained the commitment of speakers of African parliaments to expedite the process of women's empowerment at all levels and, most importantly, to consider policies for inclusive financing for women and initiate and pass laws and regulations that facilitate women's access to resources, land as well as ensure that, parliaments have entrenched policies for gender equality and that women at the local level participate fully in the development process.

The Assembly of African Union Heads of state and Government at its meeting in June 2014, at Malabo, Equatorial Guinea adopted the revised Protocol to the Constitutive Act of the African Union on the Pan African Parliament. The revised Protocol assigns attributes of a legislature to the PAP through the power to propose draft model laws for adoption by the Assembly in areas approved by the Assembly, as well as propose model laws for the consideration and possible adoption by the Assembly as a matter of the AU procedure of treaty making.

The implication of this provision in the revised Protocol is that the PAP will be in a better position to develop and propose model laws that have direct bearing on the lives of African women. Additionally, significant attributes of the revised Protocol include the fact that

the **representation of women parliamentarians at the PAP has been increased to two or three for each delegation of five from a national parliament of AU member states**, thus enhancing women's representation in political and decision making processes.

CHALLENGES AND WAY FORWARD

The Pan African Parliament as the AU organ representing the people is uniquely positioned to provide a platform to mobilize citizen participation in the affairs of the African Union and promote the rights of women. To better deliver on its mandate, it requires legislative powers which can be obtained through the process of ratification of the revised Protocol by 28 member states of the African Union. The leadership of the PAP has embarked on intensive advocacy but the process has been slow. The support of the Heads of State and Government is solicited, for it to come into force and strengthen the PAP to play its pivotal role, i.e. represent the aspirations of the peoples of Africa, in the decision-making processes of the African Union as was contemplated in the vision behind its establishment.

The PAP recognizes the huge potential of Africa's women and remains committed in its advocacy for the domestication by member states, of key provisions of protocols that relate to women's rights, as well as support and monitor the implementation of policies that translate into actions to mainstream the inclusion of women into the various spheres of life; to promote gender equality and redress imbalance.

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Celebrating 25 Years of the African Charter on the Rights and Welfare of the Child

By Ayalew Getachew Assefa and Kamení Ngankam*

“Looking back to look ahead”

2015 marked the 25th Anniversary of the adoption of the African Charter on the Rights and Welfare of the Child (ACRWC). The African Charter on the Rights and Welfare of the Child (also known as the African Children’s Charter) is the only region focused child rights instrument in the world and can be seen as the legacy of the founders of the Organization of African Unity (OAU) to African children. Shortly after the establishment of the UN Convention on the Rights of the Child (CRC), the OAU Assembly adopted the Children’s Charter in 1990. It has since been ratified by 47 African countries. Though the adoption of this Charter has been influenced by preceding child rights instruments, it has significantly advanced the protection of children in Africa. The African Children’s Charter is crafted in a manner that enables it to address the problems of African children. The ACRWC re-emphasises the African philosophy of human rights, as stated in its preamble:

“...Taking into consideration the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterise their reflection on the concept of the rights and welfare of the child,

Considering that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone...”

The monitoring body established by the African Children’s Charter to promote and protect the rights enshrined in the Charter; the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), convened a conference to commemorate the 25th Anniversary of the Charter in November 2015, at the headquarters of the African Union. The objectives of the conference among others were to

assess the impact of the Charter in advancing child rights in Africa over the past 25 years, and to develop an Agenda for the next 25 years based on the lessons learnt. The conference brought together experts on children’s rights, the Chairperson of the Permanent Representatives Committee (Zimbabwe), officials from the African Union Commission, the Special Representative of the UN Secretary General on Violence Against Children, members of AU human rights organs, UN agencies, non-governmental organizations, civil society organizations and academic institutions, who debated on thematic papers ranging from child marriage; right to name, birth registration and nationality; child participation; children with disabilities; children affected by armed conflicts; etc. The outcome of this conference was the adoption of a Children’s Agenda for the next 25 years, in line with Agenda 2063.

Provisions of the African Children’s Charter

The necessity for the adoption of an African specific instrument for African children given the existence of the UN CRC is often questioned. Several arguments account for this. The exclusion or marginalization of African countries in the drafting process of the UN CRC is the major factor which led to the establishment of a region specific instrument. Due to such under representation, most of the concerns of African children were neglected. Moreover, some specific omissions from the CRC, such as the situation of children living under apartheid, factors disadvantaging the female child, socio-economic conditions of African children, and a compulsory minimum age for military service necessitated the adoption of this regional instrument. This is clearly envisaged in the document itself. The preamble of the African



The ACRWC is the only child focused child rights instrument in the world

Photo credit: ACRWC

Children’s Charter states that the Charter was established to recognize the situation of African children which ‘remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger’ (Para 4 of the Preamble).

The African Children’s Charter encompasses a wide range of rights and obligations for the advancement of children’s rights in Africa. The four ‘pillars’ of the CRC, namely, the principles of non-discrimination, the best interest of the child, life survival and development, and participation, are also incorporated with the same status in the African Children’s Charter. In addition, it also consists of provisions which are articulated in an innovative and progressive manner for the advancement of children’s rights in Africa. This enables the Charter to accord a greater degree of protection for African Children.

The first point which should be noted with regard to the progressive nature of the African Children’s Charter as it relates to its non-qualified definition of a child is article 2, which defines a child as below the age of 18, without attaching any claw-back clause that allows a situation where a child below the age of 18 could attain majority earlier under applicable law. This may give countries leeway to take actions which contravene the interests of children. For instance, countries might employ such qualification to justify acts such as recruiting child soldiers during armed conflict and allowing early and child marriages.

In addition, the African Children’s Charter has also granted a higher degree of protection to children in Africa through its position on social, economic and cultural rights. The Charter avoids the traditional separate treatment of human rights as civil and political rights on the one hand and economic, social and cultural rights on the other hand. The current view

of human rights treats all rights as interdependent, and the Charter is in line with this contemporary understanding of human rights. Moreover, the concept of progressive realization of rights, which is part of the CRC, does not appear in the African Children's Charter.

Another innovative articulation of the African Children's Charter is article 4(1), which states that the best interest of the child is 'the' primary consideration in all actions concerning the child and is paramount over the other three principles. The same principle is embodied in article 3(1) of CRC, but differently from the African Children's Charter, in that it states that in all actions concerning children, the best interests of the child shall be 'a' primary consideration. The article 'a' in the CRC shows that in determining on issues which pertain to the child's interest, the best interest principle may not be the only principle to be consulted. The Convention allows other principles and considerations to be taken into account. However, the African Children's Char-

ter takes a different stance and uses the article 'the', which basically means, the best interest of the child is the only principle to be consulted in matters of the child's interests.

The other added value of the African Children's Charter has been manifested through the inclusion of the concept of children's duties. Proceeding from the view that a child is part of a community of people, the African Children's Charter gives children the responsibility to work for the cohesion of the family, to respect their parents, superiors and elders at all times and to assist them in case of need. This unique feature of the Charter contributes towards the provision of a forum of participation for African children. It allows children to be involved in matters which might affect their interests and experience adulthood in advance and hence secures the realization of 'true' participation.

Moreover, the Charter includes the child's rights to participation, which includes the right for the child's

25 Key messages on the African Charter on the Rights and Welfare of the Child

Advocacy Messages to State Parties to the ACRWC and AU Member States for an Africa Fit for Children

- Ratify the African Charter on the Rights and Welfare of the Child.
- Submit periodic reports to the Committee on the Implementation of the Charter.
- Withdraw reservations placed against the application of some of the provisions of the Charter.
- Adopt domestic laws and policies to give effects to the provisions of the Charter.
- Popularize the Charter and make it accessible to all segments of the society in a friendly language.
- Take into account the rights of the child in the definition of all development policies and allocate the resources needed.
- Enforce immediate, compulsory and free birth registration for all children as stipulated in the General Comment on Article 6 of the Charter.
- Harmonize civil, customary, and common law definitions of the child in line with article 2 of the Charter and make effective article 21(2) which prohibits child marriage and set the minimum age of marriage to be 18.
- Harmonize the minimum age of employment with the provisions of the Charter (Art. 15).
- Harmonize the age of military enrolment with the provisions of the Charter (Art. 22).
- Adopt and strengthen strategies to fight against female circumcision, female genital mutilation and harmful cultural practices.
- Prohibit corporal punishment and intensify combatting all forms of violence against children, especially girls.
- Ensure quality, free and compulsory education for all children.
- Promote the creation of recreational facilities and opportunities for all children.
- Promote, protect and fulfill the rights of orphans, children with disabilities and other vulnerable children.
- Promote freedom of expression, freedom of association, freedom of conscience and religion and establish children's assemblies across countries.
- Take appropriate measures to combat child trafficking, child labour and sexual exploitation.
- Establish child-friendly justice systems and raise the minimum age of criminal responsibility to 12 years.
- Promote universal access to health care and facilities, to ensure child survival.
- Extend the special treatment of incarcerated and imprisoned mothers and expectant mothers (General Comment No.1 on article 30).
- Promote family welfare services especially in grassroots/rural communities.
- Cooperate with the Committee in dealing with communications (complaints), and respect the decisions and recommendations of the Committee on such communications.
- Establish specific dissemination protocols to popularize the Day of the African Child theme and Concept Note, and engage with children, youth organizations in implementing the recommendations in the Concept Note.
- Ensure the inherent right to life of every child, including the prohibition of death penalty against children and youth organizations in implementing the recommendations.
- Ensure that all children are protected from all forms of economic exploitation.

ACRWC 25 Years
Celebrating the 25th Anniversaries of the Adoption of the African Charter on the Rights and Welfare of the Child
1990 - 2015

An Africa Fit for Children
Date the celebration on our social media:
#ACRWC25
#MyCharterMyRights
#RatifyReport

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views to be held in all judicial or administrative proceedings affecting his/her interests, and provides that those views must be taken into consideration. The Charter also guarantees the right of participation of the child in artistic and cultural life and in administrative justice. Considering the child as an autonomous individual, these provisions are of great importance in Africa, where children are considered to be the property of both their parents and the community at large.

Trying to address the plight of the girl child in Africa, article 11(3)(e) of the African Children's Charter obliges member states to take affirmative action and measures with regard to female, disadvantaged and gifted children. This in turn addresses social imbalances, which can be corrected by states' actions.

Generally, the Charter imposes an obligation upon member states to take special measures with regard to children with disabilities. It completely prohibits use of and recruitment of children in armed groups, and provides a provision for state parties to take all appropriate measures to eliminate harmful social and cultural practices prejudicial to the welfare, dignity and development of the child.

Ensuring Accountability

To monitor the implementation of this instrument, the African Committee of Experts on the Rights and Welfare of the Child was established in 2001 in accordance with article 32 of the African Children's Charter. The Committee comprises 11 independent experts who are elected by the Assembly of the African Union. Each member is elected for a non-renewable term of five years. According to articles 33-37 of the African Children's Charter, members must be nationals of a state party to the Children's Charter. They must also be individuals of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child. Drawing its mandate from article 42 of the African Children's Charter, the Committee undertakes a number of activities

with a view to promoting and protecting the rights and welfare of the child in Africa.

The ACERWC launched a campaign on the Universal Ratification of and Reporting on the Implementation of the ACRWC in 2013 to be carried out over a two-year period culminating in November 2015 during the commemoration of the 25th anniversary of the adoption of the ACRWC. The campaign aimed at achieving universal ratification and states parties' fulfillment of their reporting obligations by November 2015, promoting the effective implementation of the ACRWC, and advocating for the withdrawal of reservations. Since the launch of the campaign, the Secretariat of the Committee has witnessed an unprecedented flow of state parties reports, i.e. 19 since January 2014.

State parties are required to submit an initial report within 2 years of the ratification of the Charter, and periodic reports subsequently every 3 years. To date, 32 states parties have submitted their reports, thanks to the continuous advocacy of the Committee and 5 countries have also submitted their periodic reports. Though some reports are overdue for years now, the Committee still pushes states parties to expedite the reporting process and submit their reports. Concurrently, civil society organizations contribute to give an alternative voice to state parties' reports by submitting complementary reports to the Committee. Promotional visits to countries that have not ratified the Charter were conducted by the Committee in the past. Advocacy missions to South Sudan (July 2014) and Central African Republic (December 2014) were fruitful as the South Sudanese National Legislative Assembly voted to ratify the African Children's Charter in October 2014. Hopefully, we will welcome the 48th State Party to the ACRWC in the days ahead.

Also invested with the mandate to interpret the provisions of the Charter, the Committee has the power to issue authoritative interpretation of the Charter, in order to clarify its meaning and scope. This is generally done through “General Comments”. These are tools used by treaty bodies to provide a substantive elaboration of the meaning of treaty provisions, as well as an in-depth analysis of procedural concerns regarding the human rights treaties. To date, the Committee has issued two General Comments respectively on article 6 and 30 of the Charter. General Comments N°1 (GC 1) on article 30 deals with children of imprisoned parents, while General Comment N° 2 (GC 2) is concerned with the right to a name and nationality recognized by article 6 of the Charter. Two general comments are being finalized, one on Article 31 of the Charter which deals with the responsibility of the Child, and a Joint General Comment on Child Marriage with the African Commission on Human and People’s Rights.

There is much to celebrate as we mark the 25th anniversary of the African Children’s Charter. At the time of writing, (June 2016), 47 Member States of the African Union have ratified the Charter and there is an encouraging pace with regard to state parties’ compliance on their reporting obligations on the implementation of the Charter. State parties to this instrument are taking legal and practical measures to harmonize their national laws and policies on children with international and regional standards. The constitutions of many African countries cover the rights of the child in considerable detail, which

evidently helps to ensure the full realization of the rights and well-being of children in Africa. Moreover, tangible progress has been witnessed towards the achievement of the Millennium Development Goals (MDGs) and the fulfillment of children’s rights to survival, development and protection.

However, with all the progress towards the protection of children’s rights, grave child rights violations remain an urgent and serious concern in many African countries. While many children in Africa are able to grow, learn and thrive as part of loving families and communities, others suffer due to issues like poverty, conflict, natural disasters, and harmful practices such as early marriages. Many children in Africa are still affected by different types of abuse, including economic and sexual exploitation, gender discrimination in education, child labour, child marriage, and their association in armed conflicts.

Therefore, celebrating the 25th anniversary of the African Children’s Charter is an urgent reminder that we have still a long way to go and much remains to be done to create an Africa fit for children.

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A chance for real change and inclusion for women and girls

By Louise Carmody*

The African Union's dedication of 2016 as the "Year of Human Rights with particular focus on the rights of Women" offers hope to women and girls across Africa for real improvements in their daily lives and in the enjoyment of their human rights. Human rights play an intrinsic role in achieving sustainable development and tackling the inequalities and discrimination that continue to hold people, and particularly women and girls, in poverty and exclusion.

As a global human rights movement with presence in 15 African countries and three regional offices across the continent, Amnesty International has been campaigning for over a decade for positive changes for women and girls in Africa. The African continent has witnessed the powerful transformations that can take place when women and girls are empowered to claim their rights. Increased political participation of women in South Africa and Rwanda, and the election of a female President in Malawi and Liberia are key examples. Progress can also be made when national

laws are reformed to protect women's rights. At the local level, Amnesty International has witnessed the power of women and girls supporting campaigns for better access to maternal health services.¹

Despite this progress, gender inequality remains the most pervasive form of inequality around the world and throughout Africa. 2016 provides a vital opportunity to emphasise that human rights principles require addressing gender inequality and empowering women and girls to claim their rights so that they can partake fully in public and political life and benefit from development on an equal footing with men and boys.

In reality, women and girls continue to face pervasive gender discrimination and violations of their human rights. Some are at greater risk of exclusion and human rights violations when gender discrimination is compounded by discrimination on other grounds, as for example in the case of adolescents and girls; women and girls of minority or indigenous status; and women and girls living in poverty or belonging to marginalized groups. This is evident in the persistently high rates of preventable deaths and injuries of women and girls in pregnancy and childbirth.

Thousands of girls continue to be subjected to child, early and forced marriage, female genital mutilation and other harmful practices. All women and girls should be able to freely decide whether or when to get married, whom to marry, and whether or when to get pregnant. However, across the continent, barriers to such choices are fuelled by social attitudes that value men and boys over women and girls.

¹ <https://www.amnesty.org/en/latest/campaigns/2015/04/this-campaign-is-a-stepping-stone-how-women-and-girls-are-fighting-for-better-healthcare-in-south-africa/>



Adolescent mother with her baby daughter
Photo credit: Amnesty International 2014



Gender discrimination impacts on girls' ability to enjoy their right to education
Photo credit: Yohannes Zirotti

Violence against women and girls is a persistent and devastating manifestation of gender discrimination. Too often, laws and policies fail to protect survivors of sexual and gender based violence or provide them with justice. Discriminatory attitudes place women and girls at increased risk of sexual violence during armed conflict. In a recent report, Amnesty International has recommended that members of Boko Haram be investigated for the war crimes of rape, sexual slavery, and other forms of sexual violence.² Similarly, women's participation in conflict resolution and peace-building is denied, despite the enormous opportunities that their participation can bring. Les-

² Amnesty International, *'Our job is to shoot, slaughter and kill': Boko Haram's reign of terror in North East Nigeria*, AFR 44/1360/2015; Amnesty International, *'Circles of hell': Domestic, public and state violence against women in Egypt*, MDE 12/004/2015.

sons learned from Liberia³ highlight the importance of including women in peace-building processes, including in the re-integration of persons associated with fighting forces.

Gender discrimination also impacts on women and girls' ability to enjoy their right to education. There have been cases where pregnant girls have been excluded from mainstream schools and barred from sitting vital exams. Such action not only stigmatizes an estimated 10,000 girls but risks destroying their future life opportunities. It is vital that children and adolescents are provided with education, including comprehensive sexuality education, so that they are

³ Amnesty International, *Lessons from Liberia: Reintegrating women in post-conflict Liberia*, AFR 34/002/2009. <https://www.amnesty.org/en/documents/AFR34/002/2009/en/>



Fondation Cardinale Emile Biyenda provides refuge to survivors of rape, early, forced and child marriage and unwanted pregnancies in Ouagadougou
Photo Credit: Amnesty International

empowered with information and skills to make decisions about their own bodies and challenge gender inequality.

The *Year of Human Rights with particular focus on the rights of Women*, dubbed 'Project 2016', presents a momentous occasion to place gender equality and women and girls' rights - including their sexual and reproductive health and rights - at the forefront of the development agenda. It coincides with African Heads of State beginning to implement their vision of sustainable development, human rights and peace for all under the African Union's commitment for Agenda 2063 and the United Nations "2030 agenda for Sustainable Development" (SDGs). In doing so, states must ensure that the implementation of the SDGs at national and regional levels is gender-sensi-

tive, rights-based, inclusive and aligned with states' human rights obligations. Women and girls must be enabled to truly participate in the planning, implementation and monitoring of the SDGs.

The Sustainable Development Goals specifically recognise the importance of sexual and reproductive health and rights as an integral part of achieving women's empowerment and gender equality. The specific targets under both Goal 5 on gender equality, and Goal 3 on health require states to achieve a significant reduction in their maternal mortality ratios, and ensure universal access to sexual and reproductive health services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes.



Photo credit: Amnesty International

The comprehensive human rights obligations under the African Charter, Maputo Protocol and African Charter on the Rights and Welfare of the Child offer a vision of what really focusing on women's rights in 2016 entails. In a year, much progress can be made in increasing the respect, protection and fulfilment of women and girls' human rights, with women and girls as active agents in the process.

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Putting Women First - Zambia's Anti Gender Based Violence Act of 2011

By Chidoori Rumbidzai Elizabeth

In April 2011 Zambia passed one of the most comprehensive laws on gender-based violence in the SADC (Southern African Development Community) region, the Anti-Gender Based Violence Act no. 1 of 2011. Not only does the act offer a comprehensive framework for protection, but also a means of survival for victims and survivors of gender based violence, and prosecution of perpetrators. Perhaps what is most important and ground breaking about the Act is that it specifically provides for:

- i. The establishment of a gender based violence fund to assist victims and or survivors
- ii. Establishment of shelter to support victims and or survivors of gender based violence.
- iii. Provision of emergency monetary relief
- iv. Addressing of harmful traditional practices

Yet the act remains largely unknown by the majority of Zambian women, the very people it is meant to protect.

Women constitute 51% of the total population in Zambia, with statistics indicating that one in five women has experienced some form of sexual violence at some point in their lives, with spousal abuse/ domestic violence registering the highest incidents of gender based violence (GBV). Zambia is signatory to various international, regional and sub-regional instruments protecting and promoting women's rights and these include the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, CEDAW, and the SADC Protocol on Gender and Development. Zambia therefore has a duty to ensure that these instruments are domesticated and implemented.

The Act defines gender based violence as "any physical, mental, social or economic abuse against a person because of that person's gender." In particular, the Act lists the following as amounting to gender based violence:

- Violence that results in or is likely to cause physical, sexual or psychological harm or suffering to a person, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life; and
- Actual or threatened physical, mental, social or economic abuse that occurs in a domestic relationship.

The Act seeks to address all forms of gender-based violence. It goes on further to list the types of abuses arising from cultural practices to include forced virginity testing, forced marriages, "sexual cleansing" and child marriages. It also defines such abuse to include "abuse perpetrated on a person by virtue of the person's age, physical or mental incapability, disability or illness."

In pursuance of the Anti-GBV Act, the Zambian government has started constructing shelters in three districts in Zambia. In the last five years or so, the Government has also reviewed laws such as the penal code to increase protection of women and children from sexual violence and also developed the National Gender Policy 2014 based on the review of the National Gender Policy of 2000. The National Plan of Action on Gender Based Violence (NPA-GBV) 2010-2014 lays out the government's commitment to eliminate GBV. Civil society and several non-governmental organizations have played a pivotal role in ensuring adequate protection for women.

The Act in itself is a result of over 10 years of advocacy for a comprehensive piece of legislation

The Police Victim Support Units and the one-stop centres at Mtendere and Chawama clinics in Lusaka, Buchi Clinic in Kitwe, Chipata, Mazabuka, Livingstone and Kabwe District Hospitals and Ndola Central Hospital were established. World Vision, UNICEF and YWCA (Young Women Christian Association) have also established one-stop and drop-in centres. Various NGOs also provide social services and counselling services to victims, for example Lifeline Zambia has a 24hr toll free telephone counselling service accessible from all the mobile phone networks in Zambia (Dial 933). It provides counselling and guidance in cases of gender based violence, HIV and AIDS and other social issues.

It can be argued that the rise in the number of GBV cases being reported can be attributed to an increase in awareness of the Anti GBV Act. However, in

as much as there has been much progress, there remains a lot of work to be done. There are still many challenges and limitations to be overcome and these include ineffective implementation, inadequate financial and human resources, and lack of public awareness of relevant legislation, and weak monitoring and evaluation strategies. The Act though comprehensive, does have a few shortcomings which include certain types of violence not catered for, such as violence associated with sex workers and violence perpetrated by police and security forces, including torture of detained women. Nonetheless, **the Act represents a major step forward in the fight against GBV in Zambia and it is one of the most comprehensive laws on GBV in the SADC region.**

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Africa Re-Commits to Gender Equality and Women's Rights: Moving from Policies to Practice

By Dinah Musindarwezo*

The African Union has done it again.

From dedicating 2015 to women's empowerment through its theme *"Year of Women Empowerment and Development towards Africa's Agenda 2063"*, it has dedicated 2016 to *"Human Rights, with Special Focus on Rights of Women"*. This, combined with numerous progressive AU human rights frameworks reaffirms its political commitment towards realizing and fulfilling women's rights, gender equality and women's empowerment. This comes at an opportune moment, following the adoption of the 2030 Agenda for Sustainable Development in September 2015 where world leaders including African Governments renewed their commitments towards realizing gender equality and empowerment of all women and girls everywhere. Although with emphasis that Africa's development will be driven and guided by its own development vision, Africa Agenda 2063, the AU and its member states played a critical role during the consultations and negotiations of the 2030 Agenda for Sustainable Development, also popularly known as SDGs.

Reflecting on 2015, one might ask, what difference does it make, especially to the African women and girls, when the AU dedicates two years to women's empowerment and rights consecutively. By focusing on women's empowerment in 2015, for example, the 25th Ordinary Session of the Assembly of AU held in June in 2015 in Johannesburg South Africa adopted a declaration recommitting to women's empowerment, promising to:

- Enhance women's contribution and benefit from formal agriculture/agribusiness value chains including calling on AU members states to im-

plement women's right to access, control and ownership of resources and increasing women's financial inclusion that grows women from micro-financing to macro-financing.

- Enhance women's access to health with a focus on understanding the gendered impact of Ebola, support to survivors of sexual and gender based violence, ensuring that sexual and reproductive health and reproductive rights of African women are implemented in line with the Maputo Protocol and the Maputo Plan of Action, and ending the AIDS epidemic using a human rights approach.
- Enhance the agenda on women, peace and security in line with UNSCR 1325 and Africa's plan of silencing the guns by 2020.
- Enhance women's political participation in governance.
- Enhance women's and girls' access to education, science and technology
- Strengthen mutual accountability to actions and results.

Considering that most, if not all the above commitments essentially renew or reinforce already existing commitments made regionally and globally, accountability in actual implementation is critical. Recently, the 20 years review of the Beijing Declaration and Platform for Action, noted that the lack of implementation mainly as a result of limited resources (technical and financial) allocated to advancing gender equality remains a persistent challenge. As a result UN member states including African Governments made a commitment during the 59th Session of the UN Commission on the Status of Women (CSW-59) to significantly increase financing for gender equality. Although research shows that all gender machineries in all sectors are unac-



Photo credit: Brian Emmanuel Inganga

ceptably underfunded, there is even greater lack of funding for women's rights organizations and yet for a very long time these have been the main vehicle for advancing gender equality and women's rights. Accountability to women's rights therefore must address the resource gap faced by all machineries working on women's rights including the Ministries of Gender, the AU Directorate of Gender, Women and Development, UN Women and most importantly national and regional women's rights organizations. If indeed women's rights are a priority to the AU and its member states, this must be demonstrated by the amount of resources they are allocating towards achievement of gender equality. The resource allocation must go beyond women funds to allocating resources that address structural and systemic gender inequalities.

FEMNET welcomes the AU's decision to dedicate 2016 to women's human rights. As an African woman and a women's rights activist, I am proud of the achievements in the area of women's rights thus far. Indeed, Africa has strong and progressive policy frameworks on women's rights including the gender equality principle in the AU's Constitutive Act of 2002, the AU Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2003 (Maputo Protocol), the Solemn Declaration on Gender Equality in Africa of 2004 and the Maputo Plan of Action on Sexual and Reproductive Health and Rights. AU member states are signatories or party to almost all the international frameworks on women's rights including CEDAW and Beijing Declaration and Platform for Action.

Apart from having progressive policy frameworks, specific African countries have made headways when it comes to women's rights. Rwanda, a country I am proud to call my motherland, despite its limited resources and its recent horrible history is now leading the world with the highest number of women in parliament with majority of women (64%) in the parliament. Namibia and Kenya can be said to have the most progressive constitutions that guarantee human rights generally and women's rights in particular. We have countries such as Cape Verde, South Africa and Tunisia with progressive laws on Sexual and Reproductive Health and Rights (SRHR) including access to safe abortion. Across Africa, the under-five mortality rate has decreased by 37% since 1990, and maternal mortality has fallen by 42 percent. Almost all African countries have laws prohibiting violence against women.

Despite the progress made on the continent, the recent policy negotiations including UN Commission on Status of Women (CSW), Cairo Agenda on Population and Development (CPD) and the just concluded Post-2015 negotiations have left many with a wrong impression of Africa. This is mainly because of the conservative positions that African negotiators have often taken on women's rights that do not reflect the progress and commitment their own countries have made towards women's rights and gender equality. The question I often ask is what informs the negotiators, if it is not the laws, policies and the voices from the ground.

I hope that the AU's year of human rights, with a focus on women's rights will indeed reinforce the importance of upholding women's rights not just in laws on the continent but in practice and align global positions on women's rights and gender equality with realities on the ground as opposed to personal beliefs often informed by one's cultural or traditional background. It must be a moment for all of us to revisit our commitments and obligations to women's rights with the understanding that we cannot

use our religions, cultural beliefs or norms to abuse women's rights.

The very basis of the Universal Declaration of Human Rights (UDHR) is that all people are entitled to all human rights, equally and without discrimination. According to the Vienna Declaration and Programme of Action (VDPA), "[a]ll human rights are universal, indivisible and interdependent and interrelated." These rights are linked, mutually dependent and mutually reinforcing. General Comment 28 on Article 3 of the binding International Covenant on Civil and Political Rights (ICCPR) stresses that, "State parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality."

I end by making a call to African leaders as they mark and celebrate the Year of Human Rights with a focus on the Rights of Women, to ensure that the African Union Summits for 2016 are significantly informed by the voices and aspirations of African women and girls, in all their diversities. An open platform must be created that allows ordinary women and girls to speak to their Heads of State and Government and other policy makers, particularly on how they perceive their human rights and what that means to them. I believe as the policy makers listen to the African women explain what their rights mean to them, their discussions and outcomes before, during and after the Summits will not only be comprehensive and rich in nature, but will also be responsive to the real needs and interests of women and girls.

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Beyond Declarations: Ensuring the Rights of Women in Peace and in Conflict

By Paschal Chem-Langhee*

In 2009, *The Economist* declared that there was no better time in history to be a woman than in the 21st century. In Africa, the increasing numbers of educated girls and women, continued improvement of their socio-economic conditions, improved maternal health and the rising presence and influence of African women in business, politics and civil society are testament to this. African Union Member States have enhanced constitutional protections for women – particularly in regards to women’s rights, equality and access. African states have also demonstrated their commitment to the protection of women in conflict and their inclusion in peacebuilding.

Solidifying this commitment in 2014, the Chairperson of the African Union Commission (AUC), H.E Dr. Nkosazana Dlamini-Zuma, appointed the Special Envoy for Women Peace and Security, to “ensure that the voices of women and the vulnerable are represented clearly in peacebuilding and in conflict resolution.” She entrusted Mme Bineta Diop, a long-standing civil society women’s advocate, with the role, and a clear mandate to promote the protection and advancement of the rights of women and children in conflict. Anchored on the priority pillars of the landmark United Nations Security Council Resolution 1325, following UN related resolutions and African Union instruments and policies, her mandate includes: ensuring the prevention of violence against women and girls in conflict and other situations of insecurity; protecting women and girls from sexual and gender-based violence, including in humanitarian situations; and enabling the participation of women at all levels of decision-making in peace-building.

In dispensing her duties, the Special Envoy has recurrently noted that, “Africa has sufficient and progressive normative instruments like the Protocol to

the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.” Beyond declarations, she has stressed that what Africa needs now is implementation. Indeed, Africa needs to walk the talk. The AUC Chairperson often called for women to “transform and not conform”.

So how is the Office of the Special Envoy on Women, Peace and Security (OSE) leading this transformation for women’s rights?

In the Central African Republic (CAR), in May 2014, together with UN Women and the Economic Community of Central African States (ECCAS), the OSE engaged with political leaders, met with internally displaced persons (IDPs) living in camps, and with Civil Society Organisations (CSOs), where they agreed to launch a long-term project, known as “Wali Tisiriri”, Women for Peace, to support women in CAR to participate in peace-making, peacebuilding and the reconstruction of the country. The OSE also supported the women of CAR in their preparations for the National Reconciliation Forum that took place in Bangui from 4 to 11 May 2015.

In Somalia, the Special Envoy relayed the women’s call for more participation in political processes and for increased participation in elections. Their demands for all-female police contingents and for more female officers in order to ensure better safety were also met. On Women’s Day 2016, the Special Envoy met with African heads of police in Algeria, where she encouraged them to share best practices in combatting sexual and gender-based violence. She highlighted the need for police forces to be more gender sensitive, equally ensuring the recruitment and promotion of more women within their ranks.

In Nigeria, the OSE supported the networks led by women for peace which came together to demand for the release of the abducted Chibok school girls. It also raised concerns on the conditions of IDPs, and of women in refugee camps.

In addition to supporting local women's networks in their engagements nationally, the OSE has supported the creation of women's networks for peace at the sub-regional levels. The Regional Platform of Women of the Sahel which comprises of women's groups from Burkina Faso, Chad, Mali, Mauritania

and Niger to address the deterioration of the security and humanitarian situation in the region; the IGAD Women and Peace Forum; and the Women's Platform for Peace in the Great Lakes. These networks are important vehicles for women from across parliaments, civil society, and government to engage in actions to advance the women, peace and security (WPS) agenda.

The OSE's action-oriented approach includes promoting the AU's zero-tolerance policy on sexual and gender-based violence within its own peace sup-



During a solidarity mission with the people of Nigeria, Bring Back Our Girls campaign

port operations. We have seen an increase in gender officers and gender focal points in AU missions, and concerted efforts to train peace enforcement officers on gender issues before and during deployment. Indeed, this constituted an area of extensive engagement during her visit to Somalia.

A central part of the work of the OSE is the formulation of a “Continental Results Framework to monitor the implementation by AU Member States and other relevant stakeholders of the various instruments and other commitments on WPS, including women’s rights, in Africa”.

The OSE also engages in high-level advocacy activities. During the June 2015 AU Summit, the OSE hosted the Former Secretary of State for Foreign Affairs of the United Kingdom, William Hague and American Actress Angelina Jolie-Pitt, co-founders of the Preventing Sexual Violence Initiative (PSVI), to amplify calls for an end to sexual and gender-based violence (SGBV), to highlight the importance of strengthening the capacities of women as well as the need to create centres of excellence on WPS.

With a keen understanding that conflict cannot be resolved without addressing the structural causes of conflict, the OSE is also engaged in issues of governance. In line with efforts to enhance the participation of women in election observation and mediation, the OSE has embarked on the training of women in election observation and dispute resolution in partnership with regional centres of excellence including the Kofi Annan International Peacekeeping Training Centre in Ghana and the Pan-African Centre on Gender, Peace and Development in Senegal. To date, the OSE has undertaken two rounds of training, which will form the basis of a roster of qualified women for senior-level mediation and election observation roles. Ultimately, OSE aims to establish partnerships with a number of centres of excellence in each region of the continent to ensure continuity and sus-

tainability of the endeavour to build capacity for women who will champion a rights-based women, peace and security agenda.

In a bid to influence policy, the OSE has also convened and participated in high-level discussions on women’s rights. On the 17th of March 2016, the Office of the Special Envoy co-organized a high-level panel discussion on, *Africa’s Year of Human Rights with a particular focus on the Rights of Women: Opportunities and Challenges*, during the 60th Session of the Commission on the Status of Women (CSW60). On that occasion, Mme Diop stated that, “The prevention of violence, in all its forms, against women, their protection and their participation in decision-making at all levels are rights, not privileges.” From April 1st to 5th 2016, Mme Diop attended the 17th Regional Coordination Mechanism (RCM) between the AU and the UN and participated in a panel on, *Human Rights, with particular focus on Women’s Rights*. She called on all African countries to ratify the Maputo Protocol and for more men to support and champion greater participation of women in governance and peace.

The OSE’s work is guided by the principle that, “Women’s rights are human rights”. It continues to deliver on its agenda to secure women and sustain peace, thus leading to transformation in Africa. It has brought a unique combination of focus and a determination that, “Now is the time for solemn action”.

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Participation sociale et promotion de la femme en Côte d'Ivoire: une lecture des organisations féminines

Pacôme Cyrille Guiraud

La lutte pour l'égalité des chances et l'équité sociale dans le processus de développement s'inscrit dans une double action, celle des gouvernants et de la mobilisation sociale des femmes. Les femmes africaines en général, et les ivoiriennes, en particulier, se regroupent pour participer au débat de leur intégration et leur participation effective à la réduction des inégalités sociales.

Prenant appui sur les formes d'émancipation dans le monde contemporain, les femmes ivoiriennes ont créé des associations autour de la défense et de l'amélioration de leur participation à la vie publique. Ainsi, s'engagent-elles à rendre visible les inégalités sociales entre les hommes et les femmes dans l'accès aux ressources nationales de base.

Cette nouvelle dynamique sociale qui remet en cause l'ordre patriarcal de la distribution des rôles sociaux prend forme à l'aune des indépendances de la Côte d'Ivoire. Elle est favorisée par l'engagement des gouvernants ivoiriens à mettre en pratique les exigences des instruments internationaux et sous régionaux ratifiés en matière de Genre.

Cet article se propose (i) de présenter le contexte de la création des organisations féminines et (ii) leurs contributions inédites à l'avancée des questions de Genre.

I – La genèse sociale de l'émergence des organisations féminines en Côte d'Ivoire

Elles saisissent les enjeux de l'évolution de l'environnement social pour se positionner comme des sujets, actrices d'émancipation et de développement.

• **La participation politique**

Bien que l'environnement politique d'avant l'indépendance de la Côte d'Ivoire en 1960 ne leur fût pas propice, les femmes ivoiriennes ont marqué le coup par une marche historique sur la ville de Grand Bassam (1949) pour la libération des prisonniers politiques. Cet engagement va impulser la création de branches féminines au sein des partis politiques, l'Association Ivoirienne des Femmes qui deviendra l'UFPDCI (PDCI RDA). Nous avons eu, de ce fait, l'entrée des femmes au bureau politique de ce parti et à l'Assemblée Nationale (1981-1986) et la création du Ministère de la Condition féminine (1976). A partir des années 1990, les femmes intègrent librement des partis politiques et y dirigent les branches féminines : OFFPI (FPI), RFR (RDR).

Ainsi, avons-nous eu, pour la première fois, des femmes issues d'autres partis politiques se présenter aux élections législatives et municipales en Côte d'Ivoire. Mieux, l'on a enregistré une femme candidate aux élections présidentielles (2010) et deux femmes à celles de 2015 dont une présidente de parti politique. Cependant, l'épineuse question de l'intégration effective des femmes au système politique est d'actualité avec 8,7% (2000) malgré le Réseau des Femmes Parlementaires et Ministres de Côte d'Ivoire (2000) et le Réseau des Femmes Parlementaires Francophones (2011). En conséquence, les femmes travaillent, en amont, par des formations et activités de sensibilisation pour renforcer leur leadership politique en vue des élections et un lobbying auprès des acteurs politiques.

• **La participation sociale**

Cette situation a pris forme avec la déconstruction de l'univers politique et économique des années 1990 par l'avènement du multipartisme et l'autorisa-

tion officielle de regroupement en associations en matière de gouvernance politique. Les associations se sont inscrites dans un discours et des pratiques en rupture avec l'AFI, avec l'AIDF et le MIFED, l'AFJ-CI, la PROSAF. Par des systèmes de revendication, les femmes exigèrent de meilleures conditions et une révision des lois discriminatoires. Ce fut une période déterminante pour l'accès des femmes à tous les niveaux de la vie sociale. Les organisations féminines sont créées au plan local, rural, urbain et interviennent dans tous les domaines pour améliorer les conditions de vie des femmes : alphabétisation, éducation, amélioration du statut juridique et leadership féminin.

- **La participation au développement post-crise**
Pendant les périodes de crises successives (1999 et 2002), les femmes ont mis en place des mécanismes nationaux pour contribuer à la recherche de la paix en se mobilisant notamment pour le dialogue national et la lutte contre la pauvreté. Elles ont joué un rôle déterminant à travers, la CFELCI, l'OFEP, la COFEMCI et le FIFEM. Dans cette dynamique, elles ont intégré tous les processus en s'appuyant sur la Résolution 1325 de l'ONU relative à l'implication des femmes dans la résolution des conflits, de la réconciliation et de la paix.

II - Les modes opératoires de participation sociale des femmes en Côte d'Ivoire

Depuis le début des crises successives en Côte d'Ivoire, les femmes militent pour une réorientation de leurs actions dans le sens de la relance de la vie économique, politique et sociale.

1. L'entrepreneuriat économique

La place des femmes comme agent économique dynamique est appuyée financièrement en vue de soutenir la sécurité alimentaire. Il convient de citer l'exemple de la Coopérative COCOVICO, qui, par le biais de OIKOCREDIT, a obtenu un prêt pour la construction d'un marché africain moderne qui intègre

un centre de santé communautaire, un institut d'alphabétisation, des toilettes et une école maternelle.

2. L'entrepreneuriat politique

Les femmes ont initié des projets novateurs : cinq organisations ont organisé un forum dénommé "*Présidentielle 2015 : les femmes s'engagent et veulent se faire entendre*" et la campagne *INTERPELL'ACTION* des ONG GPALEF et Leadafricaines pour inciter les candidat(e)s à prendre en compte le Genre dans leurs projets de société.

A travers trois plateformes (PEACE-CI, POECI et Plateforme de veille des femmes et des jeunes), les femmes se sont inscrites au cœur du processus électoral pour faire de la veille avec des missions d'observation pendant la présidentielle.

3. L'entrepreneuriat social

Toutefois, face à la non représentativité des femmes dans les instances de décision, la conseillère spéciale du président de la République chargée du Genre et des Affaires sociales, en collaboration avec la Chaire Unesco « Eau, Femmes et Pouvoir de Décisions », a mis en place le Compendium des Compétences féminines de Côte d'Ivoire (2011). C'est un programme de valorisation des femmes ivoiriennes à trois niveaux (i) les femmes cadres de haut niveau, (ii) les jeunes filles diplômées sans emploi et (iii) les femmes de tout niveau. Il a à son actif une base de données de plus douze mille (12 000) inscrites et la production d'un Annuaire de femmes cadres (2013). Présenté comme un outil de décision qui vient rendre visibles les compétences féminines dans tous les secteurs d'activités professionnelles, il a été remis aux décideurs politiques et économiques.

Par ces actions, les dirigeantes d'associations féminines offrent aux décideurs politiques de la matière pour rendre effective leur volonté de réduire les inégalités sociales. Car les statistiques et la position de la Côte d'Ivoire, au niveau du classement en matière de Genre, ne témoignent toujours pas des efforts fournis par les femmes et autres partenaires

institutionnels à l'exception de réformes institutionnelles : *nouvelle loi sur le mariage, admission des filles à l'EMPT et à l'école de la gendarmerie, création de l'Observatoire Nationale de l'Équité et du Genre, la loi sur l'école obligatoire, l'existence de Fonds pour financer les AGR des femmes.*

Les femmes ont acquis une visibilité et une participation inédite qui induisent des transformations sociales dans la société ivoirienne. Ce travail de conscientisation ponctué d'actions opératoires mérite un engagement des dirigeants politiques et une synergie d'actions des organisations féminines pour une inclusion du Genre et Développement en Côte d'Ivoire.

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Etre une femme africaine aujourd'hui

Nisrine Eba Nguema

Parler des droits de la femme revient à souligner les efforts de l'ONU et des organisations régionales des droits de l'homme pour faire respecter les femmes et leur reconnaître les mêmes droits qu'aux hommes, indépendamment des spécificités de chaque région. Ce travail mené depuis de longues années a pour but d'instaurer l'égalité entre les hommes et les femmes. Ce projet ne sera atteint qu'une fois que les femmes seront complètement autonomes et que leurs choix ne remettront plus en cause leurs droits.

L'adoption de la *Convention internationale sur l'élimination de toutes les formes de discrimination à l'égard des femmes* et du Protocole à la Charte africaine des droits de l'homme et des peuples relatifs aux droits des femmes servent de fondements à cet objectif. Ces deux instruments juridiques interdisent toutes les discriminations à l'égard des femmes. A ce titre, l'instrument africain adopté en 2003 s'inscrit dans la lignée de son prédécesseur onusien de 1979 et souligne le devoir de tous les Etats africains d'éliminer toutes les formes de discriminations. Sa particularité est de mettre en évidence les maux des femmes africaines : logement, répartition des biens, traitement des veuves et de prévoir certaines garanties pour y mettre fin.

Toutefois, il n'est contraignant que dans trente-six Etats africains¹. La ratification de cet instrument n'est pas encore complète au niveau régional. C'est d'ailleurs l'une des missions principales du Rappor-

teur spécial sur les droits de la femme en Afrique². Nommé en 1999, le Rapporteur spécial veille à améliorer la situation des femmes en Afrique et à cet égard, il a entrepris de nombreuses missions pour collecter les informations relatives à leur statut et à leur place en Afrique³. Mais son travail rencontre un grand obstacle : celui des mœurs. La réussite de sa mission implique à long termes, le changement des mœurs.

Ce changement est-t-il possible ? Une rétrospection sur ces dernières années peut nous éclairer...

Aujourd'hui, la femme africaine impose du respect. Son courage, son endurance, sa capacité d'adaptation en font un être exceptionnel. Qui pourrait dire que la femme africaine n'est pas la femme la plus occupée (à la maison et au travail) ? Pourtant, elle a su prendre le train en marche et s'inscrire dans les questions sociales, politiques, économiques de son pays... La femme n'a plus de limites que celles qui sont indépendantes de sa volonté. Même dans les sociétés les plus reculées, la femme apparaît être un moteur de changement à travers ses activités génératrices de ressources⁴.

Ce revirement est lié à généralisation du droit à l'éducation. Plus les femmes ont accès à une bonne éducation et plus elles sont conscientes de leurs droits

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¹ Commission africaine des droits de l'homme et des peuples, *Instruments juridiques*, [en ligne], disponible sur <<http://www.achpr.org/fr/instruments>>, (consulté le 25.10.2015).

² Résolution ACHPR/res.38 (XXV), 25e session ordinaire de la Commission africaine des droits de l'homme et des peuples, Bujumbura au Burundi, du 26 avril au 5 mai 1999.

³ Voir Commission africaine des droits de l'homme et des peuples, Rapports annuels d'activités 15-17, disponible sur <<http://www.achpr.org>>, (consulté le 21.02.2014).

⁴ Elles effectuent la majorité des activités agricoles, détiennent le tiers des entreprises et représentent dans certains pays, jusqu'à 70 % des employés. Voir Groupe de la banque africaine de développement, *Autonomiser les femmes africaines : Plan d'action*, [en ligne], mai 2015, p.5, disponible sur <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/African_Gender_Equality_Index_2015-FR.pdf>, (consulté le 14/11/2015).

et de leurs potentiels. Dénoncer des violences, demander le divorce, exiger un travail, prendre des décisions ; plus largement revendiquer des droits est l'apanage de la femme instruite⁵. Le droit à l'éducation est sans doute l'un des droits qui a le plus fait évoluer l'image de la femme et casser les stéréotypes. Ce droit a permis à la femme de se hisser au plan intellectuel et de concurrencer les hommes dans les postes de responsabilités, notamment à travers le principe de discrimination positive.

Aujourd'hui, la femme africaine est un leader.

L'Union africaine (UA) a encouragé le leadership féminin⁶. Elle a donné l'exemple en matière de promotion politique de la femme. De nombreuses femmes font partie de son équipe et certaines occupent des postes clés. En 2003, cinq femmes ont été élus commissaires de l'UA ; en 2004, une femme a été nommée à la direction du Parlement panafricain de l'UA. Le mécanisme d'évaluation intra-africaine, qui fixe des critères de bonne gouvernance a aussi été mis sous la direction d'une femme⁷. En 2012, une femme a été nommée à la tête de la Commission de l'UA⁸ et une femme au poste de Secrétaire général.

Les retombées de cette politique de l'UA sont importantes sur le continent.

La proportion des femmes ministres est passée de 4% à 20%, avec l'Afrique du Sud (45 %), le Cap-Vert (36 %) et le Lesotho (32 %) en tête. Au niveau parle-

mentaire, le Rwanda compte près de 60% de femmes et en Afrique du Sud près de 50% des représentants sont des femmes, d'autres pays comme la Namibie, le Burkina Faso, la Tanzanie, le Burundi, l'Ouganda ont près de 30% de femmes¹⁰. Cette place est déterminante car, c'est là que se joue le changement politique. En Afrique du Sud, les femmes parlementaires ont réussi à faire légaliser l'avortement et pénaliser la violence familiale. En Ouganda, elles ont contribué à l'adoption d'une loi faisant du viol un crime passible de la peine capitale. Même l'investiture suprême a été conquise : au Libéria, au Malawi, les chefs d'Etat sont des femmes¹¹.

Toutefois...

Les défis pour réaliser les droits de la femme sont encore immenses.

La scolarisation ? Dans près de 10 Etats africains, 52 à 95% des filles n'ont pas accès à l'éducation du fait de la pauvreté¹².

La propriété ? Les femmes ne représentent que 15% des détenteurs des terres¹³.

Au niveau politique ? Il reste encore beaucoup à faire. La femme responsable est encore un exemple et non une généralité. Certains Etats comptent moins de 5% de femmes parlementaires comme la Mauritanie, Madagascar ou le Niger¹⁴.

Encore de nombreux défis C'est pour cela que « Nous ne cherchons plus à obtenir des promesses, mais nous exigeons des actes¹⁵ ».

⁵ Pour plus de détails voir UNESCO, *L'éducation des filles-les faits*. Rapport mondial de suivi sur l'EPT. Fiche d'information, [en ligne], octobre 2013, p.2-3, disponible sur <<http://fr.unesco.org/gem-report/sites/gem-report/files/girls-factsheet-fr.pdf>>, (consulté le 16/11/2015).

⁶ Adoption en 2008 de la *Politique de l'Union Africaine en matière de genre*.

⁷ AfriqueRenouveau, « La lutte des femmes pour l'égalité », disponible sur <<http://www.un.org/africarenewal/fr/magazine/july-2005/la-lutte-des-africaines-pour-légalité>>, (consulté le 20/10/2015).

⁸ Pambazuka News, « Afrique : l'élection de Mme Zumasoulage l'UA mais laissera des traces », [en ligne], juillet 2012, n°250, disponible sur <<http://www.pambazuka.net/fr/category.php/aumonitor/83794>>, (consulté le 16/11/2015).

⁹ CEA, *Participation des femmes à la prise des décisions publiques et politiques*, [en ligne], disponible sur <<http://www1.uneca.org/Portals/awro/Publications/33Participation%20of%20Women%20in%20Public%20and%20Political%20Decision-making.pdf>>; Africa Progress Panel, *Rapport 2010 sur les progrès en Afrique*, [en ligne], Genève, 2010,

p.10, disponible sur <<http://www.africaprogresspanel.org>>, (consulté le 22.10.2015).

¹⁰ Groupe de la banque africaine de développement, op. cit., p.24-25.

¹¹ *Ibid.*, p.26.

¹² UNESCO, op cit., p.4.

¹³ Groupe de la banque africaine de développement, *Autonomiser les femmes africaines*, op.cit., p. 13.

¹⁴ AfriqueRenouveau, op. cit.

¹⁵ Paroles de Mme Farkhonda Hassan de la Commission économique de l'ONU pour l'Afrique.

African Women's Rights through the Blue Economy

By Andrea Royeppen

Introduction

Africa has a coastline of approximately 26 000 nautical miles with 90% of its trade conducted at sea.¹ The importance of the oceans allows Africa the space to sustainably use its marine resources to shift the paradigms of power in an increasingly unequal global sphere. In viewing the ocean as an historical space of exchange, diplomacy and development, the importance of human rights finds relevance here as this is fundamental to ensuring the success of the above mentioned activities. Central to this is the protection of society's most vulnerable – women and children. In the year 2015, the African Union (AU) paid special tribute to this by supporting the first ever conference for women in Africa's maritime sector in Angola in keeping with the theme of the 25th AU summit, *'Women's Empowerment and Development Towards Agenda 2063'*. This piece considers the progress that the AU has made in protecting and promoting the rights of women in the maritime sector and blue economy while also paying close attention to how this translates into positive developmental outcomes that are in line with Agenda 2063.

Historical links of African women to the sea: A snapshot into West Africa

African women and maritime is an age old theme in African history although it has recently been invigorated through talks on the blue economy and overcoming what some refer to as 'sea blindness'. Zoning in on a specific case of the West African experience which exemplifies this, women were socialised to understand their environments and eco-

systems through their own systems of indigenous knowledge. This meant that they knew how to address the challenges and sustainability of the ocean. In fact, sometimes referred to as the people of the riverine, women were already employing "rich harvesting techniques of the marine resources"². Here, women were not only linked to the ocean in terms of survival but also displayed a strong spiritual connection to the ocean. If a woman was considered 'unstable' in society, she was thought to be troubled by a "marine spirit".³ The rights of African women in maritime therefore need to be understood in their historical context, which represented a deep rooted connection to the ocean. Unfortunately, there is a major gap in the scholarship and knowledge on African women and their historical experience and engagement in maritime. This historical experience needs to be invoked in the memory of Africans in order to merge historical experience and ownership with the current context and landscape in order to formulate a relevant and rights based maritime policy framework.

Women in maritime today

In today's context, the participation of women in maritime activity has been encouraged and well endorsed by the African Union (AU). Inspired by calls made by the Chairperson of the African Union, Dr Nkosazana Dlamini Zuma to maritime associations for women, the Women in Maritime Association – Angola hosted the first seminar for women in African maritime in Luanda, Angola. The theme *'African Maritime Women: Towards Africa's Blue Economy 2050 AIM strategy and Agenda 2063'* was in line with

¹ African Union., 2012. *2050 Africa's Integrated Maritime Strategy (2050 AIM Strategy)*. Available at: <http://pages.au.int/maritime/documents/2050-aim-strategy-0> . Access date : 12 November 2015.

² Obeng P., 2006. 'Religious Interactions in Pre Twentieth Century West Africa' in (ed) Akyeampong EK, *Themes in West Africa's History*. 175.

³ Ibid 174.

the focus of the 2015 ordinary sessions of the AU assembly. While reflecting the ongoing continental conversation of women's empowerment, the seminar in Angola focussed on how to integrate women into offshore mining, fishing, shipping and maritime transport – activities which feed into Africa's blue economy.⁴ The significance of this conference is that the AU priorities also reflect the international commitment to increase the participation and protection of women in maritime and promotion of gender equality, according to the International Maritime Organisation.⁵ The AU has done well to draw attention to the need for more women in the African maritime sector by facilitating spaces of dialogue and information sharing as well as promoting a blue economy that is based on gender equitable human capital.

However, in reality, only two percent of the world's maritime workforce is made up of women.⁶ This is viewed in contrast to the previous discussion on the robust involvement of women in maritime. This low representation of women in the sector is partly attributed to the misogynist and sexualised nature of the industry in which the discrimination and harassment of women is rampant.⁷ In discussing her experience as a female marine pilot in Cape Town, Yolisa Tshange-la explained that, *"It's very much a man's world. You need to handle their shock and prejudice..."*⁸ The urgency of this was highlighted when 19-year old South African cadet, Akhona Geveza, reported a rape to her

captain and was found drowned the day after. Her death was reported as a suicide.⁹ Maintaining the physical security of women at sea is paramount to the empowerment of women in the maritime sector. **The vision of women unlocking the potential of the oceans as articulated by Dr Nkosazana Dlamini-Zuma can only be realised if the fundamental rights of women are protected.** Gender barriers to women in the maritime sector in Africa need to be urgently addressed if women are to play a meaningful role in harnessing the potential of the blue economy.

The protection of women's rights in the maritime sector needs more exposure in both regional maritime frameworks and the AIMS 2050. The regional maritime frameworks present a largely securitised approach which places the state as the referent object of security and therefore lacks an important 'people-to-people' component that would advocate for more of a human security element. The existing frameworks and ongoing initiatives which AIMS 2050¹⁰ draws on, such as the AU Ouagadougou Action Plan (2007) and the AUC Initiative against Trafficking (AUCOMM) Campaign 2009 only relate to women's rights in terms of trafficking. In other words, in the central plan which articulates Africa's maritime interests, women are only mentioned very briefly and in relation to trafficking. This needs to be addressed if the vision of a more equitable African maritime sector is to be realised.

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⁴ Dudman, J., 2015. 'Blue economy: why African women must ride the wave of Africa's maritime sector', *The Guardian*. Available at: <http://www.theguardian.com/global-development/2015/apr/03/blue-economy-women-africa-maritime-sector-nkosazana-dlamini-zuma>. Access date: 12 November 2015.

⁵ African Union., 2015. 1st Continental Conference on the Empowerment of African Women in Maritime. *African Union*. Available at: <http://agenda2063.au.int/en/events/1st-continental-conference-empowerment-african-women-maritime-luanda-angola>. Accessed on: 14 November 2015.

⁶ Walker, T., 2015. Women in Maritime : 2015 is Africa's year for change. *The Institute for Security Studies*. Available at: <https://www.issafrica.org/iss-today/women-in-maritime-2015-is-africas-year-for-change>. Access date: 14 November 2015.

⁷ Ibid.

⁸ No author available., 2014. Women chart a new course at the ports. *Transport World Africa*. Available at: <http://www.transportworldafrica.co.za/2014/08/11/women-chart-a-new-course-at-the-ports/>. Access date: 11 November 2015.

⁹ Dolley C., 2010. Parents believe cadet was raped and murdered. *IOL News*. Available at: <http://www.iol.co.za/news/crime-courts/parents-believe-cadet-was-raped-and-murdered-1.722429#.VvkzUN7crLIU>. Access date: 12 November 2015.

¹⁰ African Union., 2012. *2050 Africa's Integrated Maritime Strategy (2050 AIM Strategy)*. Available at: <http://pages.au.int/maritime/documents/2050-aim-strategy-0>. Access date : 12 November 2015.

Conclusion

The rights of women in the maritime sector ultimately start with the rights of women on land, as maritime activity is essentially an extension of land based activity. The sustained attention of the AU collaborating with the regional economic communities (RECS) and global maritime structures will go a long way to protecting the rights of women at sea. African women have a historically organic and important link to the ocean, the memory of which needs to be in-

voked when harnessing the potential prospects and marine endowments of the African blue economy. The AU has done well to profile the importance of women in the blue economy and the realisation of Agenda 2063. However, this will only be effective if women's rights are protected in this space.

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Maternal Mortality: the unfinished business of the MDG era

By Dunia Tegegn*

No Woman should die while giving life¹

Maternal mortality is one of the shocking failures of development and a dreadful social injustice. According to recent UN official figures, **536,000** women die every year during pregnancy and birth. This is one death every minute. Out of the **536,000** maternal deaths, 99% are experienced by women in developing countries. The highest maternal mortality rates are in Africa; with a lifetime risk of 1 in 16. Maternal death is often the result of policy decisions that directly or indirectly discriminate against women. Maternal death is often indicative of inequalities between men and women and their right to the highest attainable standard of health.

Violation of the right to life

A woman's right to life is a fundamental right violated by avoidable death in pregnancy or childbirth. The right to life is usually referred to as 'the right to due process of law before someone is subjected to capital punishment.'² However it is important that the right to life is understood broadly as it constitutes protection from arbitrary and preventable loss of life.

Violation of the right to liberty

The right to liberty and security are essential guarantees to an individual's integrity and also to the right of maternity. In its historical context, this right is related to the prevention of arbitrary arrest or deten-

tion. However, the Beijing Platform for action³ recognizes that women's right to liberty also includes the right to abortion and the right to freedom of choices in terms of reproductive health. In addition to this, criminalization of contraception, voluntary sterilization and abortion also constitute a violation of women's right to liberty and security. When a state denies women access to means of birth control, the result is unintended pregnancies, which in turn have an adverse effect in increasing maternal mortality.

Violation of the right to family

The right to family is not a right that only applies to women during pregnancy and childbirth. This right extends to the right of women to enjoy the highest standard of health throughout their lifespan. Furthermore, it should be stressed here that maternal death is not only a problem for women whose lives are cut short but also for the children and dependents they leave behind, who are also impacted. Additionally, the right to family also includes obligations of states to ensure that girls are mature enough for marriage and childbearing by prohibiting child, early and forced marriage through the formulation and strengthening of laws where they do not exist or are weak, and by taking relevant measures when these laws are violated. In the event of complications prior to and during childbirth, states have a duty to make certain that women are able to get the proper care so that they can enjoy their right to family and life.

¹ Tagline for CARMMA (Campaign for Accelerated Reduction of Maternal Mortality in Africa)

² See the definition of the right to life provided under article 6 of the ICCPR and the recommendations of the Human rights Committee on article 6 of the ICCPR.

³ The Fourth World Conference on Women, Sept.4-15, 1995, Beijing Declaration and Platform for Action,U.N.Doc A/CONF.177/20/Rev.1 (1996)available at <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>.

Violation of the right to the highest attainable standard of health

Effective and equitable health systems have been essential conditions for facilitating the implementation of the Millennium Development Goals (MDGs) as well as Agenda 2063 and Agenda 2030. The intrinsic value of the right to health to the implementation of the Sustainable Development Goals (SDGs) has also been underscored during the various deliberations that led to the endorsement of the sustainable development goals. The highest attainable standard of health entitles women to health services prior to, during and post pregnancy and to information and services pertaining to sexual and reproductive health. Policies that are informed by the right to health are likely to be more equitable, sustainable and effective.

Pregnant women should be able to access essential health services at an affordable or even no cost if possible. One of the reasons women particularly in Africa and living in the rural areas are not accessing health services is the cost of health care. Many women who cannot afford such services opt to give birth at home particularly through traditional and unsafe procedures. Many women die as a result of such procedures. This also includes the duty of states to ensure women's right to safe motherhood by providing emergency obstetric care services.

Violation of the right to equality and non-discrimination

Women are the victims of human rights violations at a much higher rate than men. International human rights law confers women with equal rights independent of motherhood. Article 1 of the Convention on the Elimination of Discrimination against Women (CEDAW)⁴ entitles women protection against discrimination in both the public and private domains. The realization of the right to equality requires that

we treat the same interests with no discrimination. It also implies that we treat different interests in ways that adequately respect those differences. In the context of women's right to reproductive health, women should be treated in a special manner compared to men. Women's inability to exercise their right to reproductive health is a threat that is only shared by women. Therefore, maternal mortality is not only a violation of women's right to health but also a manifestation of the systematic inequality and discrimination women face daily.

Violation of rights relating to benefits of scientific progress

The right to seek, receive and impart information is fundamental to the realization of reproductive health. There is also a direct relationship between girls' access to comprehensive sexuality education and the reduction of maternal mortality. CEDAW is explicit in its various recommendations and provisions that women have the right to information and counselling on health and family planning. CEDAW also promotes women's right to abortion and to family planning. Particularly under Article 2 of the CEDAW, states are obliged to address the specific needs of (adolescent) girls by providing education on sexual and reproductive health and by undertaking programmes that are focused on the prevention of teenage pregnancy.

Many view the right to information and counselling on health to only be limited to preventing states from directly interfering in the exercise of this right. However, this right extends to taking what we call affirmative measures including preventing third party interference in the exercise of the right. The CEDAW committee also underscores that governments also have an obligation to facilitate the fulfilment of the right. This includes government's provision of essential information relevant to the reproductive cycle.

Maternal health is not a charity for women but an entitlement they can claim for from their govern-

⁴ Convention on the Elimination of All Forms of Discrimination against Women, art.1, G.A. res.34/180, U.N. GARO Supp. (No. 46) at 193, U.N. Doc A/34/180, entered in to force September 3, 1981, Available at <http://www.un.org/womenwatch/daw/cedaw/> (hereinafter CEDAW).

ments who have acceded to the international and regional human rights frameworks that promote, respect, protect and fulfil the right to health in general and maternal health in particular. Despite efforts towards reducing maternal mortality all over the world and particularly in Africa, there is a lot to be done to ensure that no woman is dying from preventable death. Framing maternal mortality as a human rights violation is a central aspect for how the issues can be addressed for the years to come.

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No woman should die while giving life

Photo credit: World Bank

Ending Child, Early and Forced Marriage in Africa: a Human Rights-based Approach

by Romola Adeola*

Introduction

The practice of child, early and forced marriage (CEFM) has emerged on the global scene as a pressing challenge that requires urgent attention. Daily, it is estimated that 39,000 children are married off worldwide. While the practice of CEFM involves boys and girls, girls are usually the ones most disproportionately affected. It is estimated that over 140 million girls will be married between 2011 and 2020.

Next to South Asia, Africa has the highest prevalence of CEFM. Fourteen out of twenty countries with the highest prevalence of CEFM in the world are in sub-Saharan Africa. Recent projections show that if current trends are not reversed, Africa will surpass South-east Asia in CEFM by 2050.

In recognition of the grim reality, African Union Heads of States and Government (HOSG) expressed grave concern over the prevalence of this form of marriage.¹ In June 2015, the HOSG adopted a Common Position in which they emphasised the fact that this practice not only prevents girls from enjoying their childhood, but that it also leaves long-lasting negative effects on their mental and physical health.² The HOSG further stressed the need for a rights-based solution to the problem taking into account international and regional norms on the rights of women and children.

While the Common Position emphasises human

rights as a solution, the operational implications of utilising a human rights-based approach (HRBA) is not clarified. This article considers how a rights-based approach can be utilised in addressing this issue of regional concern in Africa. However, before this is considered, it is relevant to discuss the causes and consequences of CEFM in Africa.

Causes and Consequences

Two significant root causes of CEFM in Africa are culture and religion. Another root cause of CEFM in Africa is poverty. With the hindsight that poverty affects 35.2 percent of Sub-Saharan Africa's population,³ its impact and the need to address it in ending CEFM resonates. Due to the perceived economic prospects of CEFM, many families in communities engaged in the practice of CEFM consider it futile to educate the girl-child. However, this decision in many instances only tends to fuel poverty and result in the loss of socio-economic opportunities for the girl-child.

Aside from loss of socio-economic opportunities, there are health risks associated with CEFM. Medically, it has been established that young girls are particularly vulnerable during pregnancies due to the developmental state of their reproductive organs.⁴ The UNFPA notes that females within the age range of 15 and 19 are 'twice as likely to die in childbirth' as opposed to females in their 20s.⁵ Also, females younger than age 15 are 'five times as likely to die' as opposed to females in their 20s.⁶ As child preg-

¹ See African Common Position on the AU Campaign to End Child Marriage in Africa (2015) (Common Position) http://pages.au.int/sites/default/files/CAP%20on%20Ending%20Child%20Marriage%20-English_0.pdf (April 2016); In the Agenda 2063 policy document, the need for a 'concerted drive towards immediately ending child marriages' was expressed as one of the blueprints for a prosperous, peaceful and united Africa. See African Union *Agenda 2063: The Africa we want* (2014) 17.

² Common Position (n 1 above).

³ MH Ngom 'World Bank predicts single digits below global poverty line' *The Borgen Project* 21 October 2015.

⁴ See NM Nour 'Child marriage: a silent health and human rights issue' (2009) 2(1) *Reviews in Obstetrics & Gynecology* 51-56;

⁵ UNFPA *Maternal mortality update 2004: delivering in good hands* (2004) 11.

⁶ As above.

nancy is most likely to occur in CEFM, maternal and infant mortality are likely consequences.⁷ In 2013, World Vision observed that '[a] girl growing up in Chad ... [was] more likely to die in childbirth than she was to attend school.'⁸ Other health risks associated with CEFM include cervical cancer, HIV epidemic and obstetrics fistula.⁹

Applying the Approach

Although the discourse on a human rights-based approach (HRBA) crystallised in the context of development, its application has extended beyond this field. Over the years, the HRBA has gained recognition as a persuasive rhetoric in advancing the discourse on various issues including migration, health, food security and climate change. The HRBA, which places human rights as the normative and operational tool for addressing issues, has become a central policy theme at global and regional levels through the initiatives of various agencies within the United Nations and regional organisations. Central to this approach is the need to place human rights at the centre of all actions, programmes, interventions, policies and plans on issues touching on human welfare. The HRBA resonates from normative frameworks, which in the context of the African human rights regional system, include treaties such as the African Charter on Human and Peoples' Rights and theme specific instruments on women, children, refugees and internally displaced persons. In the context of CEFM, the provisions of article 21(2) of the African Charter on the Rights and Welfare of the Child (Children's Charter)¹⁰ and 6(b) of the

⁷ International Center for Research on Women *Solutions to end child marriage: what the evidence shows* (2011) 4

⁸ World Vision *Untying the knot: exploring early marriage in fragile states* (2013) 28.

⁹ These risks have been observed in countries such as Malawi, Nigeria, Mali, Burundi and Chad. See United Nations Population Fund *Obstetric fistula: needs assessment report: findings from nine African countries* (2003) 18; JC Kamwenubusa 'Forced marriage in Burundi puts young girls at risk of HIV infection' *Girls Not Brides* 22 July 2014; S Spooner 'Sex initiation camps, child marriages and polygamy, the lesser-known side of cervical cancer in Africa' *Mail & Guardian Africa* 23 August 2015.

¹⁰ Article 21(2) provides that 'Child marriage and the betrothal of girls

CHILD MARRIAGE
A Violation of Human Rights

- Every 2 seconds, a girl is married before 18.
- She is deprived of her rights to health, to education and to a life free from violence.
- Marriage is an abrupt end to her childhood.

Child marriage denies a girl's right to:

- HEALTH**: CHILD BRIDES ARE OFTEN PRESSURED INTO MOTHERHOOD putting them at risk of death or injury in childbirth. Girls who give birth before 15 are **5 TIMES MORE LIKELY TO DIE IN CHILDBIRTH** than women aged 20-24.
- CHOICE**: CHILD BRIDES HAVE LITTLE OR NO SAY IN IF, WHEN AND WHOM THEY MARRY. "Marriage shall be entered into only with the free and full consent of the intending spouses" Universal Declaration of Human Rights, 1948.
- LIFE FREE FROM VIOLENCE**: A girl who marries before 18 is more likely to experience **PHYSICAL, SEXUAL AND PSYCHOLOGICAL VIOLENCE THROUGHOUT HER LIFE**.
- EDUCATION**: After marriage child brides **USUALLY DROP OUT OF SCHOOL** if they were in school at all.

Child marriage violates treaties and conventions that governments around the world are bound by, including:

- The Convention on the **RIGHTS OF THE CHILD**
- The Convention on the Elimination of All Forms of **DISCRIMINATION AGAINST WOMEN**
- The Protocol to the African Charter on Human and Peoples' Rights on the **RIGHTS OF WOMEN IN AFRICA**

WE ALL HAVE A ROLE IN PROTECTING GIRLS' RIGHTS

- PARENTS** refuse to engage in dowry or bride price and choose not to marry off their children.
- COMMUNITY LEADERS** support alternative roles for girls beyond marriage.
- MEN AND BOYS** choose not to marry girls who are still children and speak up against the practice.
- GIRLS** are able to support one another through peer groups and collective action.
- TEACHERS** are trained to identify and report child marriages.
- LAW ENFORCEMENT OFFICIALS** register children at birth and check the ages of the bride and groom before marriage.
- GOVERNMENTS** adopt and implement strong laws and policies to prevent child marriage and support married girls.
- HUMAN RIGHTS BODIES** hold governments accountable for setting and implementing laws to end child marriage and promote gender equality.

END CHILD MARRIAGE AND WE WILL BUILD A SAFER, HEALTHIER AND MORE EQUAL FUTURE FOR ALL.

www.GirlsNotBrides.org #EndChildMarriage

GIRLS NOT BRIDES The Global Partnership to End Child Marriage

Protocol on the Rights of Women in Africa (Maputo Protocol)¹¹ are relevant normative standards.

and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.' African Charter on the Rights and Welfare of the Child, adopted by the Organisation of African Unity, OAU Doc CAB/LEG/153/Rev. 2 (11 July 1990).

¹¹ The Maputo Protocol requires states to ensure that 'the minimum age of marriage for women shall be 18 years.' Protocol to the African Charter

While the normative tools of the HRBA are the treaty obligations of states enshrined in various instruments, there are four main operational tools of the HRBA, namely; participation, accountability, non-discrimination and empowerment. Applying the HRBA to ending CEFM necessarily requires that these four principles inform policies and programmes geared towards this goal.

Central to participation is the need to ensure that key stakeholders including children, their care givers, civil society and civil society organisations actively engage in proffering solutions to address the root causes of the problem. Policy interventions must not solely reflect the decisions of states but must be done with the meaningful engagement of relevant actors. The emphasis on a bottom-up as opposed to a top-down approach is a way of ensuring that policy interventions adequately respond to the root causes of the problem.

In line with the principle of accountability, duty-bearers must be identified and their obligations emphasised. In the context of the Children's Charter, states have a significant obligation to ensure that the rights of children are realised. Articles 19 and 20 of the Children's Charter recognise parents and those responsible for children (caregivers) as primary duty-bearers. Article 20(3) emphasises the obligation of states to assist parents and caregivers in the realisation of these duties. Although parents and caregivers have the primary responsibility to ensure the protection of children, states have a duty to provide assistance. The relevance of assistance resonates significantly in the context of tackling poverty and providing education.

In accordance with the principle of non-discrimination, states must ensure that specific groups are protected including children with disabilities. In the context of CEFM, this principle further requires states to

ensure that boys and girls are afforded equal protection under the law. This will necessarily require that laws and policies that lower the age of marriage for girls are revisited. In view of the principle of empowerment, states must ensure that children and their care-givers are empowered through advocacy, education and income-generating activities in order to combat issues of poverty, lack of education and harmful cultural practices that trigger CEFM.

Conclusion

As the ultimate test of human rights is at the national level, states have the ultimate duty in ending CEFM. It is important for states to develop and implement laws and policies that adequately respond to the issue. In the formulation and implementation process, states must ensure that the HRBA is a central theme not only in view of their obligations but also to ensure durable solutions. In the formulation process, it is important that human rights obligations are emphasised. In the implementation, the principle of participation, accountability, non-discrimination and empowerment must be ensured. While this paper has discussed some of the practical ramifications of adopting this approach, it is essential to note that ending CEFM must be guided by the conscious effort of states to adhere to human rights obligations and ensure adherence at all levels to such obligations.

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on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the Organisation of African Unity, OAU Doc CAB/LEG/66.6/Rev 1 (11 July 2003).

The African Union Human Rights Agenda Post 2015: A Reflection on the Common African Position

By Salah S. Hammad

Introduction

In July 2012, the African Union Summit through its Decision (Assembly/AU/Dec. 423 (XIX)), mandated the African Union Commission, in close consultation with the AU Member States and the Regional Economic Communities, to identify Africa's priorities for the post-2015 Development Agenda. This was followed by the Summit Decision (Assembly/AU/Dec.475(XXI)), of May 2013, which decided to establish a High-Level Committee (HLC) of Heads of State and Government to sensitize and coordinate the activities of African leaders and build regional and inter-continental alliances on the Common African Position (CAP) on the post-2015 Development Agenda.

The CAP highlights substantive issues of importance to Africa and arrives at a consensus on Africa's key priorities, concerns and strategies to be reflected in the outcomes of the post-2015 negotiation process. The CAP identifies Africa's development priorities as grouped into six pillars: (i) structural economic transformation and inclusive growth; (ii) science, technology and innovation; (iii) people-centred development; (iv) environmental sustainability natural resources management, and disaster risk management; (v) peace and security; and (vi) finance and partnerships. Indeed, the post-2015 Development Agenda presents a unique opportunity for Africa to articulate its common priorities, opportunities and challenges

Going beyond the MDGs, it is important to tackle the necessary means and instruments required for a new set of wider goals. It is also important to bring the right of African people to development to the forefront of the negotiations as a human rights issue in order to achieve the social and economic rights stipulated in the global and continental human rights instruments.

Tackling Poverty and inequality from a Human Rights Perspective

The African Human and Peoples' Rights System with its various instruments and mechanisms paved the way for the advancement of human rights promotion and protection in Africa. It also led to the creation of strategic measures to accelerate the attainment of respect for the right to development as well as measures to assist Member States to respond to development as a human rights issue. Such instruments have an undeniable moral force and provide practical guidance to States in their conduct. The value of the African Union Human and Peoples' Rights Instruments and Mechanisms rests on their recognition and acceptance by Member States and indeed they may be seen as declaratory of broadly accepted goals and principles within the African Community.

The African continent has witnessed decades of numerous human rights challenges resulting from a diverse range of factors, which include war, poverty, corruption, autocratic governance and much more. It is against this background that Member States of the then Organization of African Unity (OAU), solemnly resolved to promote and safeguard freedom, justice, equality and human dignity in Africa by putting in place instruments to enforce these values.

In post colonial Africa, most states built on the universal and continental norms and standards and enshrined them in domestic legislations and practices as they attempted to reconcile the imperative of national independence with adherence to international law.

Challenges

The African Union has increasingly called for greater African leadership and more opportunities for internal dialogue on issues that we are confronted with at the continental and global levels. In responding to poverty and inequality, states have multiple obligations under international and continental laws to provide ways and means for their citizen to live a better life. The state's commitment to implement social justice is not a matter of choice or policy but is an obligation under domestic, continental and international law which goes beyond the adherence to the implementation of the MDGs. In fact, it is a broad process that addresses the political, legal and moral responsibility of states, individuals and institutions for the advancement of the social and economic rights of the African people.

One of the challenges to note at this point is the lack of political commitment by the development partners to take full responsibility for addressing the right to development as a human right. In fact, in many cases the debate is not on whether development is a right or not, but it aims at responding to the controversial question of whether development and economic and social rights are competitive or complementary goals. Therefore, the efforts by the AU Member States to develop an African Common Position on post 2015 development agenda, is an accurate conception, which treats the right to development as an economic and social right.

The Human Rights Strategy for Africa

The Human Rights Strategy for Africa, which was adopted by the AU Organs with a human rights mandate in Banjul in 2011, reiterated the fact that building the capacity of the African human and peoples' rights system has become a necessity in order to better promote and protect human and peoples' rights in Africa. The strategy is also meant to address current weaknesses in the human rights system in Africa and also to bring about convergence in the

workings of the human rights operatives on the continent. This will help to strengthen and facilitate the development and coordination of human rights promotion and protection.

The Human Rights Strategy for Africa is a guiding framework for collective action by AU, RECs and Member States aimed at strengthening the African Human and Peoples' Rights System. The strategy seeks to address the current challenges of the African human rights system in order to ensure effective promotion and protection of human rights on the continent, including the post 2015 Development Agenda. These challenges include:

- Inadequate coordination and collaboration among AU and RECs organs and institutions;
- Limited capacity of human rights institutions;
- Insufficient implementation and enforcement of human rights norms and decisions; and
- Limited awareness of and access to the African human rights mechanisms.

In order to effectively address these challenges, the strategy's objectives are to:

- Enhance coordination and collaboration among AU and RECs' organs and institutions and member states
- Strengthen the capacity of AU and RECs' institutions with a human rights mandate
- Accelerate ratification of human rights instruments
- Ensure effective implementation of human rights instruments and decisions
- Increase promotion and popularization of African human rights norms

Mainstreaming Human Rights into the CAP

It is against this backdrop that the AUC should initiate a consensus building process to reflect on Common African position experiences in mainstreaming

human rights, with the aim of establishing an African linkage of the right to development to the social and economic rights. The objective of this proposed exercise is to develop a consensus on how the AUC can complement and enhance the capacity of its Member States to implement wider elements of social justice.

The process is also to address challenges that slowed down or prevented the implementation of the MDGs or might become obstacles for the implementation of the post 2015 Agenda. These include responses to poverty and inequality broadly and holistically; limited conceptualization of the potential opportunities and interrelationships between the right to development and social and economic rights with broader governance and development agendas; inadequate follow-up and monitoring of implementation of the negotiated agenda, as well as the role of development partners to advance the post 2015 Agenda in Africa.

The Role of the AU in ensuring mainstreaming of human rights in the post 2015 Agenda

The social justice element and the human rights concept in the CAP should be understood broadly. Therefore, social justice is an ideal accountability and fairness mechanism in the protection and vindication of rights and the prevention and punishment of wrongs, aiming at eradicating poverty by restoring or even reconstructing the community. Thus, social justice is a justice of exception, which aims at changing the lives of the African people by offering them

new opportunities to attain social and economic rights enshrined in the global and continental instruments.

Whilst a collective but differentiated approach to interpret the CAP is desirable, it is important to also emphasize at this stage that the primary responsibility for conceptualization, implementation and monitoring of these processes rests with our Member States. The central mandate of the AU relative to CAP is to support its Member States' efforts, initiatives and processes and in this regard, Member States must remain at the forefront of this process.

Conclusion

The realization of our common vision of a united and prosperous Africa as well as in the building of the culture of human and peoples' rights promotion and protection remains a great task, which requires our common resolve. It is indeed an imperative to analyse and understand the global challenges that we are currently facing and find home-grown solutions to them. In this regard, it is important to emphasize that, the CAP will contribute to the alleviation of poverty and the maintenance of peace and security on the continent thereby accelerating its development as well as the realization of its vision of a peaceful, prosperous, fully integrated and united Africa.

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African Court on Human and Peoples' Rights Clocks 10 Years

Submitted by the registry of the African Court on Human and Peoples' Rights

About the Court

The African Court on Human and Peoples' Rights (Af-CHPR) this year marks its 10th Anniversary since its operationalization in 2006.

The Court, established by Member States of the African Union (AU) to enhance the protection of human and peoples' rights in Africa, came into being by virtue of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol).

The Protocol was adopted on 9 June 1998 in Burkina Faso and came into force on 25 January 2004. The Court officially started its operations in November 2006 in Addis Ababa, Ethiopia, but moved to its seat in Arusha, Tanzania in August 2007.

The Mission of the Court is to enhance, through judicial decisions, the protective mandate of the African Commission on Human and Peoples' Rights (the Commission) by strengthening the human rights protection system in Africa and ensuring respect for and compliance with the African Charter on Human and Peoples' Rights (the Charter), as well as other international human rights instruments. The Court has both contentious and advisory jurisdiction over human rights disputes and the interpretation of human rights instruments.

Composition of the Court

The Court is composed of eleven Judges, nationals of Member States of the African Union. The Judges are elected by the Executive Council and appointed by the Assembly of Heads of State and Government

of the African Union for a period of six years, and may be re-elected only once. The Judges are elected after nomination by their respective States, in their individual capacities, from among African jurists of proven integrity and of recognized practical, judicial or academic competence and experience in the field of human and peoples' rights.

The Judges elect a President and a Vice-President from among themselves who serve a two-year term. They can be re-elected only once. The President of the Court resides and works on a full-time basis at the seat of the Court, while the other 10 judges work on a part-time basis.

Achievements of the Court

Between 2006 and 2008, the Court dealt principally with operational and administrative issues, including the development of the structure of the Court's Registry, preparation of its budget and drafting of its Interim Rules of Procedure. As at June 2016, the Court had received 101 applications and finalized 27. Four applications have been transferred to the Commission in accordance with Article 6(3) of the Protocol.

In the 10 year history of the Court, some notable milestones include the holding of its first public hearing in March 2012, the convening of the biennial Continental Judicial Dialogue with national judiciaries in November 2013 and 2015 respectively and the delivery of its first decision on reparations in June 2014. The Court's jurisprudence has upheld the right of independent candidates to vie for political office, supported the granting of legal aid to persons accused of serious criminal offences and found that imprisonment for defamation inhibits the right to freedom of expression.

The current situation regarding the ratification of the Protocol and deposit of the Declaration

30 of the 54 Member States of the AU have ratified it as at December 2015. These States are: Algeria; Benin; Burkina Faso; Burundi; Cameroon, Chad, Côte d'Ivoire; Comoros; Congo; Gabon; The Gambia; Ghana; Kenya; Libya; Lesotho; Malawi; Mali; Mauritania; Mauritius; Mozambique; Nigeria; Niger; Uganda; Rwanda; Sahrawi Arab Democratic Republic; Senegal; South Africa; Tanzania; Togo; and Tunisia.

In addition to the ratification of the Protocol, States have to make a declaration, required under Article 34(6) of the Protocol, to allow individuals and NGOs to bring cases directly to the Court. Without such a declaration, the Court would have no jurisdiction over cases brought by individuals and NGOs.

As at June 2016, only eight (8) of the 30 States Parties to the Protocol had made the declaration recognizing the competence of the Court to receive cases from NGOs and individuals. The 8 States are Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Rwanda and Tanzania.

Member States are encouraged to ratify the Court Protocol as well as deposit declarations allowing individuals and NGOs to directly access the Court.

Extension of jurisdiction of the Court to deal with criminal matters

In February 2009, the Assembly of Heads of State and Government of the African Union requested the AU Commission, in consultation with the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, to assess the implications of extending the jurisdiction of the Court to try international crimes, such as genocide, crimes against humanity and war crimes and to submit a report thereon to the Assembly.

The Protocol to extend the mandate of the Court to deal with criminal matters was adopted in June 2014 in Malabo, Equatorial Guinea. The Protocol grants the Court jurisdiction to try international crimes as well as other crime of serious concern to African states including corruption, illegal exploitation of natural resources and trafficking in drugs, persons and hazardous wastes. The Protocol also grants the Court jurisdiction over corporations that commit crimes under its jurisdiction making it the first international court to do so.

The Protocol requires 15 ratifications to come into force. As at 31 January 2016, five states had signed the Protocol but no ratifications have been received to date.

The African Commission on Human and Peoples' Rights: At the Forefront of Advancing Human Rights

The African Commission on Human and Peoples' Rights (ACHPR) commits to the principles and values of the African Charter and relies on State Parties and other stakeholders in the effective execution of its mandate, because human right is our collective responsibility!

ESTABLISHMENT

The African Commission on Human and Peoples' Rights (the ACHPR) is a quasi-judicial body established under Article 30 of the African Charter on Human and Peoples' Rights (the African Charter or Charter) to promote human and people's rights and ensure their protection throughout Africa. The ACHPR became operational in 1987, and is supported by a secretariat which is based at the ACHPR's seat in Banjul, the Gambia. It was inaugurated on 12 June 1989.

MEMBERS

The ACHPR has 11 commissioners, who are elected by secret ballot by the African Union Assembly of Heads of State and Government (HOSG) from a list nominated by State Parties to the Charter. The Commissioners are elected for a renewable term of 6 years. The ACHPR elects its own bureau, the Chairperson and Deputy-Chairperson, from among the Commissioners for a two-year term.

MANDATE, FUNCTIONS AND PROCEDURES OF THE ACHPR

The mandate of the ACHPR is spelled out in Articles 45 and 46 of the African Charter: the promotion of human and peoples' rights; the protection of human and peoples' rights; the interpretation of the African

Charter; and any other tasks which may be entrusted to it by the Assembly of HOSG.

Within the framework of its promotional mandate, the functions of the ACHPR are to collect documents, undertake studies and research on African problems in the field of human and peoples' rights, organize seminars, and consider periodic reports submitted by State Parties under Article 62 of the African Charter. The ACHPR also undertakes fact-finding missions to State Parties on its own initiative or at the request of AU Policy Organs.

The ACHPR collaborates with African and International Institutions through Resolution (ACHPR / Res.30 (XXIV)98: Resolution on the Co-operation between the ACHPR and non-governmental organisations (NGO)s having observer status with the ACHPR, and Resolution ACHPR/31(XXIV) 98 on the Granting of Affiliate Status to NHRIs in Africa, adopted in 1998, respectively (485 NGOs, 24 NHRIs).

In accordance with Rule 25, read together with Rules 26 and 27 of the ACHPR's Rules, the ACHPR holds two Ordinary Sessions a year and may also hold extra-ordinary sessions.

Under Article 62 of the African Charter, read together with Rule 73 of the ACHPR's Rules, State Parties are required to submit reports to the ACHPR every two years on the legislative or other measures they have taken to give effect to the Charter-guaranteed rights.

Subsidiary Mechanisms (Special Rapporteurs, Committees and Working Groups)

To facilitate implementation of its mandate, the ACHPR has established special mechanisms to focus on different thematic areas that are of special concern to the ACHPR's work. This is in line with Rules 23 and 24 of the ACHPR's Rules of Procedure. This strategy has proved to be an excellent working tool, which also enables the ACHPR to have a better understanding of the human rights situation on the continent. Since its inception, the ACHPR has established fifteen (15) Special Mechanisms: (5 Special Rapporteurs; 7 Working Groups and 3 Committees) as follows:

1. Special Rapporteur on the Rights of Women in Africa (1999);
2. Special Rapporteur on Prisons and Places of Detention in Africa (1996); revised to Special Rapporteur on Prisons and Places of Detention and Policing in Africa (2015);
3. Special Rapporteur on Human Rights Defenders in Africa (2004);
4. Special Rapporteur on Freedom of Expression and Access to Information in Africa (2004);
5. Special Rapporteur for Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa (2004);
6. Working Group on Indigenous Populations/Communities in Africa (2000);
7. Working Group on Economic, Social and Cultural Rights in Africa (2004);
8. Working Group on Specific Issues (2004);
9. Working Group on Death Penalty (2005), revised to Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary killings in Africa (2012);
10. Working Group on Older Persons and People with Disabilities in Africa (2007);
11. Working Group on Extractive Industries and Human Rights Violations in Africa (2009);
12. Working Group on Communications (2011);
13. Committee for the Prevention of Torture in Af-

rica, previously Robben Island Guidelines Committee (2004);

14. Committee for the Protection of the Rights of People Living with HIV(PLHIV) and those at Risk (2010);
15. Advisory Committee on Budget and Staff Matters (2009).

OVERARCHING ACHIEVEMENTS OF THE ACHPR

The Protection Mandate

The protection mandate of the ACHPR is largely composed of complaints of violations of human and peoples' rights contained in the Charter. These complaints, which are generally referred to as Communications, can be brought by individuals and NGOs against State Parties to the Charter or by a State Party against another. The Communications Procedure has three progressive stages: Seizure, Admissibility and Merits. To date, the ACHPR has received five hundred and eighty-one (581) Communications, out of which it has finalised three hundred and ninety-two (392), and transferred three (3) to the African Court on Human and Peoples' Rights (the Court). There are currently one hundred and seventy-six (176) Communications pending before the ACHPR. Most of these cases have been brought by individuals and NGOs, while there have been three (3) Inter-State Communications since inception.

Within the framework of its role of interpreting the provisions of the African Charter, the ACHPR has adopted principles, declarations, guidelines, and soft laws, amongst others: Grand Bay (Mauritius) Declaration and Plan of Action (Grand Bay Declaration); Kigali Declaration; Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa (Ouagadougou Declaration), and Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa ('the Luanda Guidelines').

Within its broad mandate of promoting and protecting human rights, the ACHPR has also adopted Resolutions on specific country situations, thematic issues or specific human rights violations. See <http://www.achpr.org/search/?q=Resolutions>

Other overarching achievements of the ACHPR include:

- i. Interpreting the provisions of the Charter;
- ii. Creation of a constructive and strategic partnership between human rights stakeholders;
- iii. Key strides in the development of the human rights jurisprudence e.g. SERAC Case on Socio economic rights, Endorois Case on Indigenous Peoples Rights;
- iv. Human rights now a common discourse in Africa;
- v. Key to the creation of the African Court;
- vi. Holding State Parties accountable to their obligations under the Charter;
- vii. Resolutions, Letters of Appeal, Concluding observations issued and published have positively increased the level of engagement between State Parties and the ACHPR as well as its processes, procedures and sessions;
- viii. Increase in the number of State Parties that attend the Sessions of the Commission;
- ix. Increase in the submission of State Reports by Member States.

Challenges to the working of the Court include budgetary and human resource constraints, inadequate implementation of ACHPR recommendations, non-ratification of key human rights instruments and the need for authorization by State Parties before undertaking missions.

HUMAN RIGHTS - OUR COLLECTIVE RESPONSIBILITY!

The ACHPR commits to the principles and values of the African Charter and relies on State Parties and other stakeholders in the effective execution of its mandate, because human rights is our collective responsibility!

Human Rights With a Focus on Women in Rural Economy

*By Julius Kagamba Singoma**

Human rights are rights for all of us and not for some of us; rights to having and enjoying life, rights to owning property, rights to association, rights to assembly and others. It behoves all of us to do everything possible to promote the rights of all and not to suppress the rights of some. Scripture tells us to do unto others what you would like them to do unto you (Luke 6:31 and Matthew 7:12); and as the common English saying goes: what is good for the goose is good for the gander.

If we agree the right to life is a human right, then improving health in rural areas where majority of people live is a great contribution to the rights of the people. Such an intervention can reduce the number of women who die trying to give birth. In many cases even the children die in the process. If we agree that the right to owning property is a human right then women should be allowed to own productive forces like land and not make it a preserve of men. The same goes for all the other rights.

It therefore, unpleasantly surprises to see that women who constitute the majority of African citizens tend to enjoy less of their rights than men do. And yet, women work so hard to sustain households, communities and nations, let alone giving birth to humanity. As Dr. Nkosazana Dlamini Zuma often says: not only do women constitute half of humanity but they are also responsible for the birth of the other half.

The majority of African citizens live in rural areas. It is women who constitute the bulk of the labour force that engages in the predominant activity upon which life in African Union Member States is based; that is agriculture. In most cases, those toiling women are not supported but are left to endure the drudgery.

And when the product of their sweat is harvested, they barely take the credit nor share the revenues accruing. And yet, more is expected of women; to continue working hard to sustain our lives.

If we enjoy the product of their sweat, why don't we support them to produce more with less drudgery? And why don't we want them to enjoy the product of their sweat the way we do enjoy the same? Why should the rural woman be the only worker; to look after the children, to tender for the shamba, to look after the home and so on? Why don't we share the burdens and want only the rewards?

Why is the labour of this rural woman not as recognised as the work done by the men? And yet, while one can live without a white collar job, no one can live without food. And, indeed, the right to food is a human right. Food sustains life which is the primary right of a human being. Women are the ones who produce food, cook it and serve it.

Why are women so important because of their numbers as voters but when it comes to decision making positions, men come first, if not solely?

It is, therefore, high time our rural women were given due attention in terms of addressing the challenges they encounter as they work hard to sustain humanity; in terms of recognising the high value they bring into our lives; in terms of ensuring they take a fair share of the fruits of their labour; in terms of fair treatment as that accorded to their menfolk.

Human rights are not abstract. Human rights are real. Women need, deserve and must have their rights. Experience has shown, though, that human rights do not come on their own. We have to struggle for our



*Why is the labour of the rural women not as recognised as the work done by men
Photo credit: Yohannes Zirotti*

rights. While counting on men of good will, women must also rise up and fight for their rights. Associations of women can help build the capacity of women, to build their consciousness of their rights and their awareness of their capacity to promote and preserve their own rights; and also to galvanise the men of good will to support their cause.

Support to the education of the girl child is critical because as the the African adage goes: 'If you educate a boy, you train a man. If you educate a girl, you train a village'. If more and more girls receive education, they will help assert the rights of both women and men so that we all enjoy our rights together.

Empowering women through credit to acquire modern implements plus seeds and fertiliser, would go a long way to making them less vulnerable to the pressures of rural life and enable them to produce more from their efforts; and further bring to them more rewards. Exposing women to the entire agricultural value chain heightens their propensity to access fuller benefits unlike would be the case if they got

restricted to only production while leaving processing and marketing to men.

Gender and agribusiness is a cardinal tenet of Africa's Agenda 2063 on inclusive growth, sustainable development and shared prosperity and, indeed, the AU Malabo Declaration on Accelerated Africa Agriculture Growth and Transformation on improved livelihoods and shared prosperity. Let us all promote and protect the rights of women in the spirit of Pan Africanism and African Renaissance.

**Julius Kagamba Singoma is the Special Assistant to the Commissioner for Rural Economy and Agriculture: African Union Commission*

Discriminations à l'égard des femmes et développement durable à la lumière du Protocole de Maputo relatif aux droits de la femme en Afrique

Par Dr. Martial JEUGUE DOUNGUE

Résumé : Dans un contexte de crise mondiale et dix ans après l'adoption du Protocole à la Charte africaine relatif aux droits de la femme en Afrique, on constate que les droits des femmes reculent dans les faits comme dans les préoccupations politiques et sociales. A cet égard, le constat qui transparait est l'affirmation par le Protocole de Maputo de la protection de la dignité des femmes, comme condition première du développement durable en Afrique. Ensuite, la discrimination entre les hommes et les femmes est la négation même de certaines valeurs du développement durable. Le Protocole de Maputo pourra-t-il enfin « civiliser durablement » les coutumes et les valeurs africaines ?

Dans un contexte de crise mondiale, on constate que les droits des femmes reculent dans les faits comme dans les préoccupations politiques et sociales. Comment, dans ce contexte, trouver les ressources politiques, humaines et financières pour continuer de promouvoir l'émancipation des femmes ? Quels leviers activer en dehors des seules solidarités des femmes entre elles ? Au moment où la communauté internationale engage un combat sans précédent dans la lutte contre l'impunité et pour l'instauration d'un Etat de droit dans de nombreux pays d'Afrique, l'adoption rapide et l'entrée en vigueur du Protocole à la Charte africaine relatif aux droits de la femme en Afrique¹ et l'opérationnalisation depuis 2009² du Protocole portant création de la Cour africaine des droits de l'homme et des peuples renforcent le cadre normatif et institutionnel de la promotion et de la protection des droits de l'homme en Afrique.

Le Protocole à la Charte africaine des droits de l'homme et des peuples relatif aux droits des femmes dit « *Protocole de Maputo* »³ adopté le 11 juillet 2003 par la Conférence de l'Union africaine (UA) complète utilement la Charte africaine des droits de l'homme et des peuples (CADHP) sur les aspects dont il traite et confirme l'ouverture de l'Afrique à des champs nouveaux des droits de l'homme déjà perceptibles à travers l'adoption en 1990 de la Charte africaine des droits et du bien-être de l'enfant et la multiplication des gages de l'attachement aux droits de l'homme. Le Protocole de Maputo est un traité qui impose des contraintes sur les pays qui l'ont ratifié. 43 États l'ont signé⁴ et le traité est entré en vigueur le 26 octobre 2005 quand le nombre minimum de ratifications est arrivé à 15 sur les 53 Etats membres de l'Union Africaine (UA)⁵.

Ce protocole est un instrument régional pour la protection des droits fondamentaux des femmes et se considère lui-même comme étant le premier instrument législatif visant à protéger la femme africaine de toutes les formes de discrimination. Ses 31 articles formulent une série de dispositions pour la protection des droits spécifiques des femmes et des filles en Afrique, en tenant compte de l'environnement socioculturel. Ainsi, le Protocole condamne et interdit les mutilations génitales féminines et proc-

³ Ci-après Protocole.

⁴ Au 1er septembre 2013, le Protocole a été signé par les États suivants : Afrique du Sud, Algérie, Bénin, Burkina Faso, Burundi, Cameroun, République démocratique du Congo, Côte d'Ivoire, Éthiopie, Gabon, Gambie, Ghana, Guinée-Bissau, Guinée équatoriale, Guinée, Cap-Vert, Comores, Congo, Kenya, Lesotho, Liberia, Libye, Madagascar, Malawi, Mali, Maurice, Mozambique, Namibie, Niger, Nigeria, Rwanda, Sénégal, Seychelles, Sierra Leone, Swaziland, Somalie, Tanzanie, Togo, Tchad, Ouganda, Zambie, Zimbabwe.

⁵ Au 1er septembre 2013, 36 des 54 États membres de l'Union africaine (UA) sont désormais parties au Protocole, un taux de ratification qui constitue une véritable victoire pour celles et ceux qui n'ont eu cesse de se mobiliser dans ce sens.

¹ Ce Protocole est une émanation de la recommandation de la Commission africaine des droits de l'homme et des peuples, formalisée par la Résolution AHG/Res.240 (XXXI) de la Conférence des chefs d'Etat de l'OUA prise en juin 1995.

² Cour africaine des droits de l'homme et des peuples (CourADHP), Affaire Michelot Yogogombaye c. Sénégal, arrêt, 15/12/2009.

lame le droit à l'autodétermination sexuelle, renforce les droits des femmes dans le mariage et reconnaît aux femmes et aux hommes des droits égaux de posséder et d'acquérir des biens.

Selon une conception assez largement partagée, le développement durable est la condition indispensable à la préservation de la biosphère⁶. Il est défini comme la recherche d'un équilibre entre les trois dimensions interdépendantes de la société humaine : environnementale, économique et sociale, qu'il est nécessaire d'atteindre sous peine d'une régression globale de l'humanité sur une planète exsangue⁷. En effet, le développement durable replace l'Homme au centre des préoccupations⁸. La condition première, c'est que la dignité humaine soit respectée. Ensuite, la discrimination entre les hommes et les femmes est la négation même de certaines valeurs du développement durable.

La notion de développement durable faisant appel à la participation des femmes est relativement récente. Elle s'est construite graduellement au fil des trente dernières années. Dans les pays du Nord, la fin des années soixante voit naître le mouvement actuel des femmes. Les femmes du Nord commencent à se battre pour des droits juridiques, contre la discrimination au travail et les obstacles à l'éducation. Elles font leur entrée sur le marché du travail. Devant les rapports d'inégalité entre hommes et femmes auxquelles elles sont confrontées⁹, les femmes nord-américaines ont cherché à comprendre les raisons de leur exclusion sociale. L'héritage laissé par le mouvement des *suffragettes* et l'idéologie libérale dominante a poussé les femmes à vouloir obtenir l'égalité ju-

ridique. À cette époque, les femmes travaillant dans le domaine du développement prennent conscience que le développement tel qu'entrepris au cours de cette période n'est pas profitable pour les femmes du Sud. La fin de cette décennie voit le début de la vague actuelle du mouvement des femmes qui réclame un changement des rapports de pouvoir, à la racine de la subordination des femmes¹⁰.

Le développement commence à être envisagé sous un angle féminin lorsque les grandes agences de développement s'inquiètent des impacts de l'importante croissance démographique. Durant les années soixante-dix, la théorie et la pratique du développement commencent à changer, avec l'abandon par les Nations unies de leurs stratégies basées sur la modernisation des économies du tiers-monde. Ils réalisent que « l'oubli » des femmes pourrait être à l'origine de leur échec. Ils voient dans l'engagement des femmes une façon de mettre en œuvre de nouvelles stratégies de développement. L'amélioration de la productivité des femmes devient alors un des buts du développement traditionnel.

Les années quatre-vingt ont été pour plusieurs acteurs dans le domaine du développement une période de réflexion et de remise en question. Face à la crise de la dette cumulée par plusieurs pays en développement, ainsi qu'à la dégradation de l'environnement à l'échelle planétaire, on commence à considérer qu'il serait important d'envisager le développement d'une toute autre manière. On assiste alors à l'intégration du terme « développement durable », mais aussi, au niveau du mouvement féministe du Sud, on s'allie autour de problèmes sociaux et politiques (accès à la terre, eau, défense des droits humains). Les femmes du monde réclament de plus en plus de ressources et de bénéfices puisque les coupures dans les services offerts par les États affectent durement leurs conditions de vie et celles de leur famille. Elles poursuivent leur lutte pour l'obten-

⁶ Voir Michel VIRALLY, « Vers un droit international du développement », AFDI, 1965, p. 3-12.

⁷ Voir Bruno BOIDIN, Bertrand ZUINDEAU, « Socio-économie de l'environnement et du développement durable : état des lieux et perspectives », in Mondes en développement, 2006/3 no 135, p. 7-37, p. 8.

⁸ Voir Marc ARBOUCHE, « Le développement durable : des enjeux renouvelés pour le management des ressources humaines », in Vie et sciences de l'entreprise, 2008/2, n° 179-180, p. 94-110.

⁹ Voir Truong THANH-DAM, « Gouvernance et pauvreté en Afrique subsaharienne : repenser les bonnes pratiques en matière de gestion de la migration », Revue internationale des sciences sociales, 2006/4 n° 190, p. 751-771, p. 752 et s.

¹⁰ Voir par exemple, Béatrice QUENAULT, « Le développement durable comme pierre d'achoppement des relations Nord/Sud au sein des négociations commerciales multilatérales à l'Organisation mondiale du commerce », Mondes en développement, 2004/3 n°127, p. 11-27.

tion de plus d'équité et d'égalité¹¹. La Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, ratifiée par plusieurs pays à travers le monde, entre en vigueur en 1981.

En revanche, la Charte africaine n'avait pas pris en considération les spécificités de la situation des droits de la femme en Afrique, et avait adossé la protection des femmes en Afrique sur les textes internationaux (article 18 § 3 de la Charte). L'écho du tumulte progressiste et féministe qui a connu son apogée à la conférence de Beijing de septembre 1995 est finalement parvenu au législateur africain des droits de l'homme. A travers le Protocole de Maputo, il a en effet tenu compte de ce qu'en dehors des problèmes généraux rencontrés par toutes les femmes du monde, la femme africaine est particulièrement en butte à d'autres problèmes et qui ont notamment trait à des pratiques discriminatoires attentatoires au principe universel d'égalité entre l'homme et la femme (lévirat, polygamie, incapacité en matière successorale, etc.) ; aux violences liées à des traditions ancestrales (mariages forcés, scarifications, mutilations sexuelles, etc.). Si donc le Protocole de Maputo est en substance ordonné autour de l'élimination de toute forme de discrimination et de violence à l'égard des femmes, cela doit logiquement conduire à l'institution d'une égalité réelle entre hommes et femmes en Afrique¹². Cependant, depuis la *Décennie internationale des femmes*¹³, on considère, face à la pauvreté des femmes, que l'exclusion de celles-ci du processus de développement durable constitue un véritable problème en Afrique.

Les conditions de vie et les obligations et empêchements opposés aux femmes dans la sphère privée comme dans la sphère publique, ne sont-elles pas contradictoires avec le sens même du développement durable en Afrique ? Comment peut-on envisager un développement durable quand une immense partie des femmes de cette sous-région ne parvient pas à obtenir de faire respecter ses droits les plus élémentaires : droits à la protection de l'intégrité physique et psychique, droits civils et politiques mais aussi économiques, sociaux et culturels ? Les inégalités sont criantes, et pas seulement en Afrique. Comment le Protocole de Maputo, y compris les autres conventions internationales, ratifiées et signées par de nombreux Etats africains¹⁴ agissent ou non sur la situation des femmes ? Quelles alliances peuvent s'exercer entre les pays « du Nord » et les pays « du Sud » pour avancer sur la question universelle des droits des femmes ?¹⁵

Une réponse à ces interrogations, au-delà de la propagande militante, mérite qu'un regard rigoureux et méthodique soit jeté sur la place accordée par la société africaine à la femme. A cet égard, le constat qui transparait est l'affirmation par le Protocole de Maputo de l'égalité entre les hommes et les femmes qui vise non seulement à garantir, mais aussi à rendre effective la protection de la dignité des femmes, comme condition première du développement durable **(I)**. Toutefois, à l'épreuve des faits, des obstacles se dressent à l'effectivité de cette protection, qui ouvrent en définitive la voie aux discriminations à l'égard des femmes **(II)**.

¹¹ Voir Anne VERSAILLES, « L'éducation comme levier de compréhension et de contagion du développement durable », *Vertigo, Revue électronique en sciences de l'environnement*, Vol. 3 n°3, décembre 2002, <http://vertigo.revues.org/4183> (consulté le 25 août 2013)

¹² Voir Jean de Noël ATEMENGUE, « La Charte africaine des droits de l'homme et des peuples et ses enrichissements ultérieurs », in Alain Didier OLINGA (Dir.), *La protection internationale des droits de l'homme en Afrique. Dynamiques, enjeux et perspectives trente ans après l'adoption de la Charte africaine des droits de l'homme et des peuples*, Yaoundé : éd. Clé, septembre 2012, 321 p, p. 39-61, p. 46.

¹³ Voir ONU. *Décennie des Nations Unies pour la femme : égalité, développement et paix*, in *Les Cahiers du GRIF, Mères femmes*, n° 17-18, 1977, p. 91.

¹⁴ Voir Martial JEUGUE DOUNGUE, *L'intégration des conventions internationales relatives aux droits de l'homme dans les Etats africains francophones*, Thèse de doctorat en Droits de l'Homme/Droit public, Université de Nantes et Université Catholique d'Afrique centrale (co-tutelle), mai 2013, 584 p.

¹⁵ Ces préoccupations ont fait l'objet d'échanges à l'occasion du 5^e Forum mondial des droits de l'homme (FMDH) qui s'est tenu à Nantes du 22 au 25 mai 2013 dont la thématique générale était intitulée : « *Développement durable/Droits de l'homme : même combat ?* ».

I. La protection de la dignité des femmes par le Protocole de Maputo, comme condition à la réalisation du développement durable en Afrique

Le Protocole de Maputo est le fruit des efforts déployés par un grand nombre d'organisations non-gouvernementales (ONG) en vue de protéger explicitement et de manière spécifique les droits des femmes par un Protocole additionnel à la Charte africaine des droits de l'homme. Certaines clauses de la CADHP avaient été critiquées parce qu'elles étaient formulées en des termes si vagues, notamment ce qui concerne les droits des femmes, qu'il n'était guère possible d'en dégager des revendications pour des modifications législatives ou des actions politiques concrètes, en dépit des discriminations massives dont les femmes et les filles font l'objet en Afrique. Après de nombreux cycles de consultation menés au niveau national et régional entre des acteurs gouvernementaux et civils, un document commun, élaboré sous la direction de la Commission africaine des droits de l'homme et des peuples, a été adopté pour servir de base au Protocole de Maputo.

Dans son préambule, le Protocole fait référence aux nombreuses résolutions, déclarations, recommandations, décisions, conventions, plates-formes d'action, décisions et autres instruments internationaux, régionaux et sous-régionaux relatifs aux droits de la femme et visant l'élimination de toutes les formes de discrimination et de violence à l'égard des femmes ainsi que la promotion de l'égalité entre les hommes et les femmes. Référence est enfin faite au rôle crucial des femmes dans la préservation des valeurs africaines basées sur les principes d'égalité, de liberté, de paix, de justice, de démocratie, de solidarité et de dignité¹⁶. Ces références expriment la *structure dualiste* du dispositif du Protocole, qui comporte des

dispositions protectrices (ou prohibitives) et promotionnelles (ou incitatives).

L'objectif du Protocole est de compléter les dispositions de la CADHP dont il tire son fondement et d'assurer la défense, la protection et la promotion des droits des femmes en définissant la discrimination (article 1) par référence à la CADHP et aux déclarations et conventions internationales. Il se fonde sur les acquis de l'acte constitutif de l'UA en mettant l'accent sur la promotion du genre. Se fondant sur les principes corrélatifs de l'égalité et de la non-discrimination, le Protocole de Maputo prescrit des garanties tant prohibitive **(A)** qu'incitative **(B)**.

A. La garantie prohibitive

Les Etats réunis à Beijing lors de la quatrième Conférence mondiale des Nations unies sur les femmes en 1995, déclaraient : « *Les droits des femmes sont des droits humains* » et se donnaient pour but de « *réaliser l'égalité des droits et la dignité intrinsèque des hommes et des femmes* ».

Le Protocole de Maputo engage les Etats africains à garantir aux femmes leurs droits fondamentaux¹⁷, parmi lesquels un large éventail de droits civils et politiques et de droits économiques, sociaux et culturels (droit à la vie, à l'intégrité et à la sécurité de la personne, l'interdiction de la discrimination, le droit à la justice, le droit de participation à la chose publique, le droit à l'éducation, la protection sociale, le droit à la santé, le droit à la sécurité alimentaire, le droit à un logement adéquat, etc.) ; la prohibition des

¹⁶ Voir Maurice KAMTO, « Introduction générale : La Charte africaine des droits de l'homme et des peuples et les perspectives de la protection des droits de l'homme en Afrique », M. KAMTO (dir.), *La Charte africaine des droits de l'Homme et des peuples et le Protocole y relatif portant création de la Cour africaine des droits de l'homme*, coll. de droit international, n° 67, Bruxelles : Bruylant, 2011, 1628 p, p. 1-59, p. 31 et s.

¹⁷ La garantie institutionnelle est ainsi articulée : « *Le Protocole consacre suffisamment de droits en faveur des femmes et prévoit une garantie offerte par les Etats pour réparer toute violation des droits et libertés des femmes énoncés dans le Protocole (article 26). La Cour africaine des droits de l'homme et des peuples est compétente pour connaître des litiges relatifs à l'interprétation du Protocole, découlant de son application ou de sa mise en œuvre (article 27) ; La Commission africaine des droits de l'homme et des peuples quant à elle est compétente pour connaître des litiges relatifs à l'interprétation du Protocole et découlant de son application ou de sa mise en œuvre (article 32)* ».

pratiques traditionnelles néfastes (excision, lévirat, sororat, mariage précoce, forcé, etc.) ; l'obligation d'apporter une protection spécifique aux femmes dans les conflits armés. Ce protocole représente par ailleurs une avancée importante en matière de droits reproductifs. C'est ce qui ressort de l'article 3 alinéa 2 du Protocole de Maputo qui dispose : « *Toute femme a droit au respect de sa personne et au libre développement de sa personnalité* ». Il s'agit *in fine*, au delà de la typologie doctrinale classique¹⁸, des droits liés à la dignité intrinsèque de la femme **(1)** et ceux liés à sa personnalité **(2)**.

1. La garantie absolue des droits liés à la dignité intrinsèque de la femme

Bien que le droit à la dignité soit un droit fondamental de toutes les personnes humaines, il implique dans le cas de la femme, « *sa protection contre toutes formes de violence, notamment la violence sexuelle et verbale* » (article 3 du Protocole). En effet, la notion de « dignité »¹⁹ apparaît en droit international pour la première fois dans la DUDH qui reconnaît que tous les membres de la famille humaine possèdent une « *dignité inhérente* » (Préambule) et dispose que : « *Tous les êtres humains naissent libres et égaux en dignité et en droits* » (article 1). Certaines normes de la DUDH s'inspirent aussi directement du principe de respect de la dignité humaine, notamment celles relatives au droit à la vie (article 2), à l'intégrité de la personne (article 3), à l'interdiction de la torture et des traitements dégradants ou inhumains (article 4), etc.

Toute femme a droit au respect de sa vie, de son intégrité physique et à la sécurité de sa personne. Toutes formes d'exploitation, de punition et de traitement inhumain ou dégradant doivent être interdites (article 4 alinéa 1 du Protocole). Ce droit em-

porte interdiction de toutes formes de violence, y compris les rapports sexuels non désirés ou forcés, qu'elles aient eu lieu en privé ou en public (article 4 alinéa (a)). Il implique davantage l'interdiction et la condamnation de toutes les formes de pratiques néfastes qui affectent négativement les droits humains des femmes et qui sont contraires aux normes internationales (article 5). Ces pratiques peuvent être comprises comme des traitements inhumains et dégradants ; c'est la raison pour laquelle le point b de l'article 5 interdit par des mesures législatives assorties de sanctions, toutes formes de mutilation génitale féminine, la scarification, la médicalisation et la para-médicalisation des mutilations génitales féminines et toutes les autres pratiques néfastes.

La dignité marche donc de pair avec le droit à la vie, l'intégrité de la personne, l'interdiction de la torture et des traitements dégradants ou inhumains, etc. Pour respecter la dignité intrinsèque de la femme, tout doit être fait pour ne pas porter atteinte à ces droits, car en tout état de cause, le respect inconditionnel de la femme doit prévaloir. Le Protocole de Maputo demande aux Etats d'adopter et mettre en œuvre les mesures appropriées afin d'assurer la protection des droits de la femme au respect de sa dignité et sa protection contre toutes formes de violence.

2. La garantie substantielle des droits liés à la personnalité de la femme

Le Protocole de Maputo garantit à toute femme le droit au respect de sa personne et au libre développement de sa personnalité, l'interdiction de toute exploitation ou de tout traitement dégradant, l'accès à la justice et l'égale protection devant la loi, ainsi que la participation au processus politique et à la prise de décision.

Le Protocole consacre une disposition substantielle et singulière au « *droit à la santé et au contrôle des fonctions de reproduction* » (article 14). Ces droits comprennent : Le droit d'exercer un contrôle sur leur fécondité ; le droit de décider de leur maternité, du nombre d'enfants et de l'espacement des naissances

¹⁸ Voir Alessandro PIZZORUSSO, « Les générations de droits », in Constance GREWE, Florence BENOÎT-ROHMER (dir.), *Les droits sociaux ou la démolition de quelques poncifs*, PU Strasbourg, 2003, p. 17, Karel VASAK, « Les différentes typologies des droits de l'Homme », in Emmanuelle BRIBOSIA, Ludovic HENNEBEL, *Classer les droits de l'Homme*, Bruxelles : Bruylant, 2004, p. 11-12.

¹⁹ Voir Marie-Luce PAVIA, Thierry REVET (dir.), *La dignité de la personne humaine*, Paris : Economica, 1999, 181 p.

; le libre choix des méthodes de contraception ; le droit de se protéger et d'être protégées contre les infections sexuellement transmissibles, y compris le VIH-SIDA ; le droit d'être informé de leur état de santé et de l'état de santé de leur partenaire, en particulier en cas d'infections sexuellement transmissibles, y compris le VIH-SIDA, conformément aux normes et aux pratiques internationalement reconnues ; le droit à l'éducation sur la planification familiale. Les Etats prennent toutes les mesures appropriées pour : assurer l'accès des femmes aux services de santé adéquats, à des coûts abordables et à des distances raisonnables, y compris les programmes d'information, d'éducation et de communication pour les femmes, en particulier celles vivant en milieu rural ; fournir aux femmes des services pré et post-nataux et nutritionnels pendant la grossesse et la période d'allaitement et améliorer les services existants ; protéger les droits reproductifs des femmes, particulièrement en autorisant l'avortement médicalisé, en cas d'agression sexuelle, de viol, d'inceste et lorsque la grossesse met en danger la santé mentale et physique de la mère ou la vie de la mère ou du fœtus.

Le Protocole protège aussi le droit des femmes à la sécurité alimentaire, leurs droits en matière de procréation et leur droit à un logement adéquat²⁰. En effet, le droit d'accès à une alimentation saine et adéquate doit être garanti aux femmes. C'est dans cette optique qu'à travers le Protocole, en son article 15, les Etats prennent les mesures nécessaires pour assurer aux femmes l'accès à l'eau potable, aux sources d'énergie domestique, à la terre et aux moyens de production alimentaire, l'établissement des systèmes d'approvisionnement et de stockage adéquats ; le droit à un habitat adéquat (article 16) qui implique l'accès à un logement et des conditions d'habitation acceptable ; le droit à un environnement culturel positif (article 17) ; et le droit à un environnement sain et viable (article 18) ; pour assurer aux femmes la sécurité alimentaire.

²⁰ Les articles 6 et 7 prévoient des droits égaux dans un partenariat des époux à la sauvegarde des intérêts de la famille. Ils constituent en cela une avancée notoire par rapport au droit en vigueur dans certains Etats africains.

Le Protocole innove, dans la prise en compte du droit à la paix (article 10), visant son ancrage dans les réalités du continent africain, qui comprend non seulement le droit des femmes « à une existence pacifique », mais aussi leur droit « de participer à la promotion et au maintien de la paix ». A cet effet, les Etats parties doivent prendre toutes les mesures appropriées pour assurer une participation accrue des femmes : aux programmes d'éducation à la paix et à la culture de la paix ; aux mécanismes et aux processus de prévention, de gestion et de règlement des conflits aux niveaux local, national, régional, continental et international ; aux mécanismes locaux, nationaux, régionaux, continentaux et internationaux de prise de décisions pour garantir la protection physique, psychologique, sociale et juridique des requérants d'asile, réfugiés, rapatriés et personnes déplacées, en particulier les femmes, à tous les niveaux des mécanismes de gestion des camps et autres lieux d'asile pour les requérants d'asile, réfugiés, rapatriés et personnes déplacées. Le Protocole de Maputo garantit aussi la sécurité des femmes en cas de conflit armé. L'Etat partie doit respecter et faire respecter dans ces situations les règles du droit international humanitaire, particulièrement lorsqu'elles touchent les femmes, et prendre toutes les mesures nécessaires pour qu'aucune fille de moins de 18 ans, ne prenne part aux hostilités ou soient enrôlée dans l'armée²¹. Les femmes ont enfin le droit de jouir pleinement de leur droit à un développement durable.

B. La garantie incitative

Pour prendre la mesure du traitement égalitaire entre l'homme et la femme, l'égalité *de jure* à elle seule est insuffisante. En effet, face à l'infériorité de la femme résultant en partie du poids des traditions, pratiques et préjugés, seules des mesures spécifiques peuvent être prises pour corriger la situation²². On comprend

²¹ Voir Medina HAERI, Nadine PUECHGUIRBAL, « From helplessness to agency: examining the plurality of women's experiences in armed conflict », in *International Review of the Red Cross*, vol. 92, n° 877, mars, 2010, p. 103-122.

²² Voir Angéline-Florence NGOMO, « Commentaire de l'article 18 alinéa 3 de la Charte africaine des droits de l'homme et des peuples », in KAMTO Maurice (dir.), *La Charte africaine des droits de l'Homme et des peuples et le Protocole y relatif portant création de la Cour africaine des*

dès lors, que le Protocole ne se soit pas contenté d'affirmer la nécessité d'un traitement égalitaire des hommes et des femmes (1), mais qu'il ait aussi et surtout prévu des prérogatives particulières au profit de certaines catégories de femmes (2).

1. La subtilité des droits inhérents à l'égalité entre les hommes et les femmes

Le Protocole de Maputo met l'accent sur la jouissance par la femme des droits égaux à ceux de l'homme dans le mariage et les deux sont considérés comme des partenaires égaux dans cette institution. Ceci signifie notamment qu'aucun mariage n'est conclu sans le plein et libre consentement des deux, que la femme mariée a le droit de conserver son nom, de l'utiliser à sa guise conjointement ou avec celui de son mari, qu'elle a le droit, pendant la durée du mariage, d'acquérir des biens propres, de les administrer et de les gérer librement ; et pour éviter le mariage forcé des filles mineures, l'âge minimum de mariage de la jeune fille est de 18 ans (article 6). En cas de séparation de corps, divorce et annulation du mariage, les femmes jouissent des mêmes droits que les hommes.

Les Etats doivent, par des mesures appropriées, garantir l'égalité des chances et d'accès à l'éducation et à la formation aux femmes. Cela passe par l'élimination de tous les stéréotypes qui perpétuent la discrimination dans les manuels scolaires et les programmes d'enseignement et des médias, la protection de la femme, en particulier la jeune fille, contre toutes les formes d'abus, y compris le harcèlement sexuel, dans les écoles et autres établissements. De manière plus singulière, les Etats parties doivent promouvoir l'alphabétisation des femmes, leur accès aux domaines de la science et de la technologie, et le maintien dans le circuit scolaire ou de formation des filles qui quittent l'école prématurément (article 12). L'article 13 du Protocole énumère quant à lui un catalogue de mesures à adopter et à mettre en œuvre par les Etats parties afin de garantir aux femmes

l'égalité des chances en matière d'emploi, d'avancement dans la carrière et d'accès à d'autres activités économiques. Il s'agit pour l'essentiel des mesures déjà consacrées par les normes internationales relatives au droit du travail.

Le Protocole garantit en outre le droit d'accès à la justice et à l'égalité de protection devant la loi (article 8) qui impose aux Etats parties d'assurer l'accès effectif des femmes à l'assistance et aux services juridiques et judiciaires, l'appui aux initiatives locales, nationales, régionales, continentales visant cet objectif, la sensibilisation de toutes les couches de la société aux droits de la femme et la formation des organes chargés de l'application de la loi à tous les niveaux pour qu'ils puissent interpréter et appliquer effectivement l'égalité des droits entre l'homme et la femme, une représentation équitable des femmes dans les institutions judiciaires et celles chargées de l'application de la loi. Ensuite, le droit de participation au processus politique et à la prise de décisions : revendiqué par une frange des femmes africaines diplômées de l'enseignement supérieur, d'une manière qui fait penser à un mimétisme des appels à la parité à la mode dans la plupart des pays occidentaux, ce droit est consacré par l'article 9 du Protocole. A travers cet article, le Protocole établit comment les Etats doivent prendre des actions positives spécifiques pour « promouvoir la gouvernance participative et la participation paritaire²³ des femmes dans la vie politique de leurs pays, à travers une action affirmative et une législation nationale »²⁴. Pour garantir cette participation sans discrimination à la vie politique aux femmes, le système de quota serait un atout. L'introduction de quotas pour les femmes permet un bond qualitatif vers une politique dont les

²³ Voir Françoise GASPARD, « De la parité : Genèse d'un concept, naissance d'un mouvement », in *Nouvelles Questions Féministes*, vol. 15, n°4, 1994, p. 31.

²⁴ Ils doivent prendre des mesures de nature à garantir : La participation des femmes à toutes les élections sans aucune discrimination ; leur représentation, en parité avec les hommes et à tous les niveaux, dans les processus électoraux ainsi que l'égalité de partenariat à tous les niveaux de l'élaboration et de la mise en œuvre des politiques et des programmes de développement de l'Etat. Les Etats assurent enfin une représentation et une participation accrues, significatives et efficaces des femmes à tous les niveaux de la prise des décisions.

visées et les moyens sont équitables. C'est un moyen efficace qui permet d'envisager un accroissement substantiel de la représentation des femmes.

2. La novation des droits inhérents à certaines catégories de femmes

Le Protocole de Maputo apporte une protection novatrice à certaines catégories de femmes particulièrement vulnérables, en occurrence les femmes en situation de détresse (il s'agit ici des femmes incarcérées en état de grossesse ou d'allaitement, celles issues des populations marginales, "les femmes chefs de famille", les femmes pauvres)²⁵, les femmes handicapées, les femmes âgées, les veuves et les femmes rapatriées ou réfugiées. La finalité étant la jouissance par ces dernières de leur droit au développement durable.

Les femmes handicapées et les femmes âgées bénéficient des mesures prévues dans le Protocole aux articles 22 (protection spéciale des femmes âgées) et 23 (protection spéciale des femmes handicapées). Tout comme dans la CADHP, il n'est pas précisé dans le Protocole si le handicap visé est mental et/ou physique. Au contraire, dans la Charte africaine des droits et du bien être de l'enfant, la protection de l'article 13 bénéficie à « *tout enfant qui est mentalement ou physiquement handicapé* ». L'expression « *femmes âgées* » peut être inspirée de celle de « *personnes âgées* » utilisée par l'Assemblée générale des Nations unies²⁶ et le Comité des droits économiques, sociaux et culturels²⁷, pour désigner le groupe des personnes âgées de 60 ans et plus, conformément aux modèles des services statistiques des Nations unies²⁸. En l'absence de précision, l'interprétation

la plus protectrice peut prévaloir de sorte que les femmes âgées de 60 ans et plus et handicapées physiquement ou mentalement bénéficient de la protection offerte aux articles 22 et 23.

La logique de ces articles est une logique d'« *égalité des chances* ». Suivant la conception générale du Protocole, l'Etat est tenu non seulement de s'abstenir de toute forme de discrimination *de jure* (article 1), mais également de prendre des mesures de traitement préférentielles de manière à supprimer les discriminations *de facto* et à réaliser la pleine participation et l'égalité au sein de la société (article 8), et ce, notamment à l'égard des femmes handicapées et/ou âgées. Ils posent une obligation positive et on peut parler de discrimination positive si l'on considère qu'il s'agit de mesures bénéficiant à une catégorie de personnes traditionnellement désavantagées de manière à compenser une inégalité de fait. L'Etat a l'obligation de prendre des mesures en faveur des groupes vulnérables de manière à les mettre en position de jouir des mêmes droits que les autres : droit à l'éducation et à la culture, droit à un niveau de vie suffisant, droit à la sécurité sociale, droit à la santé physique et mentale, droits liés au travail²⁹. Au regard du Protocole, il est possible de considérer que les « *besoins physiques* » des « *femmes âgées ou handicapées* » couvrent au minimum les soins nécessaires à leur état de santé physique et mentale. Les besoins moraux peuvent se définir comme « *le droit à être traitée avec dignité* » (articles 22 alinéa b et 23 alinéa b). Il est prévu, en plus des besoins physiques et moraux, les besoins économiques et sociaux pour faciliter l'accès à l'emploi, à la formation professionnelle et leur participation à la prise de décision.

Une protection spéciale est assurée aux femmes en situation de détresse (article 24). Le Protocole exige l'engagement des Etats parties à assurer à ces femmes, un cadre adapté à leur condition et en rap-

²⁵ Cette catégorie n'était pas visée dans l'article 18 § 4 de la CADHP.

²⁶ Voir Résolutions 47/5 et 48/98.

²⁷ Voir *Observation générale n°6*, U.N. Doc.HRI/GEN/1/Rev.7 (2004).

²⁸ Il est cependant à relever qu'Eurostat, le service statistique de l'Union européenne, retient 65 ans comme âge d'entrée dans le groupe des « *personnes âgées* », 65 ans étant l'âge de départ à la retraite le plus retenu. Le problème se trouve de savoir si 60 ans constitue un âge palier en deçà duquel on ne peut pas descendre et si l'âge à partir duquel une personne sera considérée comme âgée est le même en Europe et en Afrique ou en Angola et en Algérie. Voir Hélène BOUSSARD, « *Commentaire de l'article 18 alinéa 4 de la Charte africaine des droits de l'homme et des peuples* », in KAMTO Maurice (dir.), *La Charte africaine des droits de*

l'Homme et des peuples et le Protocole y relatif portant création de la Cour africaine des droits de l'homme, coll. de droit international, n° 67, Bruxelles : Bruylant, 2011, 1628 p, p. 430-443, p. 433.

²⁹ Voir *Observation générale n°5 (11^e session, 1994)* et *Observation générale n°6 (13^e session, 1995)*, U.N. Doc.HRI/GEN/1/Rev.7 (2004).

port avec leurs besoins physiques, économiques et sociaux, et à assurer la protection des femmes incarcérées en état de grossesse ou allaitant en leur garantissant un cadre adapté à leur condition et le droit d'être traitées avec dignité. Les veuves quant à elles ne doivent être soumises à aucun traitement inhumain, humiliant ou dégradant. Elles ont le droit de se remarier à l'homme de leur choix, et, après le décès du mari, elles deviennent d'office la tutrice de leurs enfants, sauf si cela est contraire aux intérêts et au bien-être de ces derniers (article 20). En cas de succession, les veuves ont droit à une part équitable des biens de leurs conjoints, ainsi que le droit, quel que soit le régime matrimonial, de continuer d'habiter dans le domicile conjugal ; elles conservent ce droit en cas de remariage si le domicile leur appartient en propre ou leur a été dévolu en héritage³⁰. Par ailleurs, les Etats parties s'engagent à protéger les femmes demandeurs d'asile, réfugiées, rapatriées ou déplacées, contre le viol, toutes les formes de violence et autres formes d'exploitation sexuelle ; ils doivent s'assurer que de telles violences sont considérées comme des crimes de guerre, de génocide ou comme des crimes contre l'humanité, et que les auteurs de tels crimes sont poursuivis devant les juridictions compétentes (article 11).

Dans plusieurs pays, des mesures législatives ou institutionnelles, telles que des lois réprimant les auteurs de violences sexuelles (Kenya, Liberia), criminalisant les violences domestiques (Ghana, Mozambique), interdisant les mutilations génitales féminines (Ouganda, Zimbabwe) ou encore instituant des mécanismes de promotion des droits des femmes (Côte d'Ivoire, Sénégal), ont accompagné les ratifications du Protocole de Maputo. Malgré ces quelques avancées notoires, plusieurs obstacles à la pleine réalisation des

droits des femmes persistent sur le continent. 18 États ne sont toujours pas parties au Protocole, alors même que dans plusieurs d'entre eux dont le Soudan, la République centrafricaine ou encore l'Égypte, qui sont encore aujourd'hui en proie à des situations de crises politiques graves ou de conflits armés, les femmes continuent d'être les principales cibles de violences, de discriminations et de stigmatisations.

II. La violation du Protocole de Maputo par les discriminations à l'égard des femmes, comme négation à la consolidation du développement durable en Afrique

Majoritairement actrices du développement de leur pays, dans les domaines de la protection de l'enfance, du handicap, de la lutte contre la violence conjugale et contre toutes les formes d'exclusion, les femmes ne sont pourtant pas ou peu représentées dans les instances décisionnelles sur le plan politique et économique. Les combats qu'elles mènent peinent à s'inscrire de façon durable dans les politiques de leurs pays. Pourtant depuis toujours, les femmes sont engagées dans les processus de changements.

En période de grandes incertitudes et de crises majeures, comme celles que traverse actuellement le monde, une réflexion sur les hypothèses politico-juridiques **(A)** aux droits des femmes peut aider les décideurs africains à rompre avec la pensée juridique traditionnelle et les hypothèses les plus routinières, pour favoriser la prise en considération d'un plus large éventail de possibilités reconnues à la femme. Enfin, il s'agit aussi de contribuer de manière indirecte à la réalisation des objectifs du développement durable en Afrique, quelles que soient la légitimité et la pertinence de tels objectifs³¹. C'est également l'occasion de rechercher les facteurs socio-culturels qui favorisent encore ou au contraire

³⁰ Ces dispositions de l'article 20 § 1 relatives au droit successoral constituent une avancée significative et fort positive au regard de la législation et du droit coutumier de la famille de plusieurs Etats africains. Elles sont complétées et renforcées par celles du paragraphe 2 qui confèrent aux femmes un droit réservé dans certains ordres juridiques nationaux aux seuls hommes : le droit d'hériter des biens de leurs parents, en parts équitables. Voir Maurice KAMTO, « Introduction générale : La Charte africaine des droits de l'homme et des peuples et les perspectives de la protection des droits de l'homme en Afrique », op. cit, p. 33.

³¹ Voir Jean Didier BOUKONGOU, « Cinquantenaire des droits de l'homme en Afrique centrale », in *Droits de l'homme, libertés et justice sociale en Afrique centrale, Cahier africain des droits de l'homme, Etudes et documents de l'APDHAC*, Yaoundé : PUCAC, mars 2011, n°11, p. 12-44, p. 43.

retardent l'éclosion de l'idée d'une protection efficace des droits de la femme en Afrique **(B)**.

A. Les pesanteurs politico-juridiques

La majorité des législations nationales africaines présentent un large déficit en ce qui concerne la protection des droits de la femme **(2)**. L'analyse du Protocole de Maputo suscite par ailleurs des oppositions dans les milieux politique, religieux et social, en occurrence ses dispositions touchant au contrôle de la fécondité de la femme **(1)**.

1. Les controverses autour du Protocole de Maputo

Les droits de la femme relatifs aux méthodes de contraception, à l'espacement des naissances, à la détermination du nombre d'enfants et à la maternité se heurtent non seulement aux pesanteurs des traditions africaines toujours vivaces, mais également à certaines intransigeances religieuses qui ne laissent souvent que très peu de place à l'exaltation du bien-être de l'individu face aux dogmes inspirés par la foi³².

Le Pape Benoît XVI, dans un discours au Corps diplomatique accrédité auprès du Saint Siège le 8 janvier 2007, affirmait :

Comment ne pas se préoccuper des continues atteintes à la vie, de la conception jusqu'à la mort naturelle ? De telles atteintes n'épargnent même pas des régions où la culture du respect de la vie est traditionnelle, comme en Afrique, où l'on tente de banaliser subrepticement l'avortement, par le Protocole de Maputo, ainsi que par le Plan d'action adopté par les Ministres de la santé de l'Union africaine³³.

Dans le même sens, un communiqué des évêques africains fut divulgué le 19 avril 2007, qui attire l'at-

tention des chefs politiques d'Afrique sur les fortes réserves concernant des aspects de l'article 14 du Protocole de Maputo. Ils observent

que les droits des femmes de protéger et promouvoir leur santé sexuelle et reproductive dans cet article ont exclu les droits du couple, de la famille et de la société (civile, traditionnelle, culturelle et religieuse) de précisément prendre part à la promotion des droits de la femme aux soins de santé. Par exemple, l'autorisation d'avorter et le choix de toutes les méthodes de contraception pour les femmes (cf. article 14 alinéa 1 (c) et 2 (c)) sont particulièrement incompatibles avec les enseignements de l'Église catholique, sa tradition et ses pratiques³⁴.

Plus loin, la Conférence épiscopale de l'Ouganda publie un message le 19 janvier 2006 en ces termes :

Jamais dans l'histoire un Protocole n'est allé aussi loin ! Nous croyons fermement que les peuples d'Afrique n'ont aucun désir de voir ce Protocole introduit dans leurs lois. Nous sommes certains que le peuple de l'Ouganda ne le désirait jamais. Les situations de forte détresse mentionnées dans le texte du Protocole (viol, inceste, agression sexuelle) ne peuvent créer un droit de supprimer une vie innocente. Ceci s'applique encore moins dans les cas mal définis d'un « danger pour la santé mentale ou physique de la mère ou d'un danger pour la vie de la mère ou du fœtus ». En fait ceci est une porte ouverte pour l'avortement libre³⁵.

La société civile africaine n'est pas en marge de cette croisade contre le Protocole de Maputo. Les femmes congolaises par exemple ont estimé que

³² Voir Maurice KAMTO, « Introduction générale : La Charte africaine des droits de l'homme et des peuples et les perspectives de la protection des droits de l'homme en Afrique », op. cit, p. 36.

³³ Voir : « Quels sont les dangers du Protocole de Maputo ? Les dirigeants catholiques et africains s'opposent au Protocole de Maputo », in http://www.leprotocoledeMaputo.org/opposition_catholique_africaine.html (consulté le 10 septembre 2013)

³⁴ Ce message fut signé par le Cardinal Polycarpe PENGU, Président du Symposium des Conférences Episcopales d'Afrique et de Madagascar (SCEAM) et Archevêque de Dar Es-Salaam, Tanzanie, ainsi que par beaucoup d'autres cardinaux et évêques africains.

³⁵ Voir « Quels sont les dangers du Protocole de Maputo ? Les dirigeants catholiques et africains s'opposent au Protocole de Maputo », op. cit, *ibid.*

porter atteinte à la vie en dépénalisant l'avortement est une violation grave ; par conséquent, plusieurs associations ont lutté pour la non-ratification du dit Protocole par la République Démocratique du Congo (RDC). Pour ce faire, celles-ci ont organisé des réunions visant à faire comprendre à toutes les femmes congolaises tous les dangers et pièges que contient ce Protocole³⁶.

Nonobstant toutes ces réactions, l'extrême gauche française guidée par Emma BONINO³⁷ est entrain de promouvoir le Protocole de Maputo en dénonçant l'immixtion du Vatican dans les affaires internes des Etats. La campagne pour la ratification du Protocole de Maputo estime que la CEDEF, ainsi que le Protocole de Maputo offrent un cadre légal pour lutter contre les violations des droits humains des femmes. En ratifiant ces instruments, les Etats s'engagent à prendre toutes les mesures nécessaires pour mettre fin aux discriminations et faire respecter les droits humains des femmes.

2. Les déficits autour des législations nationales

Les textes nationaux recèlent le plus souvent de limites aux sources diverses. En effet, elles tiennent tantôt à un vide juridique qui laisse la place à tous les abus, tantôt à une ambiguïté des textes, sources d'extrême dérapages ou tout simplement à des dispositions iniques, sinon cyniques délibérément votées par le législateur³⁸. Au Cameroun, en Guinée-Bissau, en Guinée-Conakry ou au Mali par exemple, le mari peut s'opposer à l'exercice par son épouse, d'une profession et peut également mettre fin à ses activités commerciales. Il faut comprendre à travers cet article que la femme mariée peut exercer une profession séparée de son époux, mais

que ce dernier peut s'opposer à l'exercice d'une telle profession dans l'intérêt du mariage et des enfants. Cette disposition constitue une atteinte au droit du travail de la femme, surtout lorsque l'on sait que dans le contexte africain, certains hommes ont tendance à confiner leurs femmes à la maison pour des raisons inavouées. La propriété n'est pas garantie aux femmes mariées (cas du Libéria, du Nigéria, etc.). En Côte d'Ivoire et en Mauritanie, l'administration des biens de la communauté est confiée au mari qui peut les vendre, les hypothéquer, sans l'accord de son épouse. Le mari a la mainmise sur l'administration de tous les biens de la femme (article 81 du Code civil). En cas d'interdiction judiciaire de la femme, le mari devient, de droit, le tuteur de cette dernière.

De nombreuses dispositions du Code pénal congolais, camerounais, ivoirien, kenyan³⁹ ou de la Guinée-Conakry demeurent discriminatoires, notamment celles relatives au crime d'adultère. Ainsi, s'il est commis par l'homme il ne fera l'objet que d'une amende alors que la femme coupable d'adultère risque une peine de prison. Son infidélité peut être dénoncée en tous lieux. Par contre, l'adultère du mari n'est reconnu que s'il a été commis au domicile conjugal, ce qui rend l'obtention de la preuve aléatoire⁴⁰. Toutes ces discriminations sont renforcées par des pratiques coutumières et traditionnelles qui considèrent la femme comme une propriété et par conséquent, un bien de succession. Ceci en raison du fait qu'elle n'a pas droit à la succession (Cas de l'Ouganda, du Zimbabwe, etc.), ni dans sa famille, ni dans celle de son mari. Peut-on encore soutenir que « *les textes juridiques camerounais contiennent peu de mesures discriminatoires à l'égard de la femme* »⁴¹ ?

³⁶ Voir « Les femmes congolaises disent non à la ratification du Protocole de Maputo », in <http://www.cooperation.net> (consulté le 11 septembre 2013)

³⁷ Membre du Parlement européen et fondatrice du groupe « Pas de Paix sans Justice », Bonino est membre du Parti Radical en Italie.

³⁸ Voir Cécile Aimée SIM BOUMA, « Regard sur la protection des droits de la femme en Afrique à la lumière du Protocole de la Charte africaine des droits de l'homme et des peuples relatif aux droits de la femme », *Droits de l'homme, libertés et justice sociale en Afrique centrale, Cahier africain des droits de l'homme, Etudes et documents de l'APDHAC*, Yaoundé : PUCAC, mars 2011, n°11, p. 75-95, p. 84.

³⁹ D'après l'article 11 de la *Matrimonial Causes Ordinance* (décret sur les causes matrimoniales), « la femme peut faire l'objet de poursuites pour adultère mais pas le mari ».

⁴⁰ Article 361 du Code pénal camerounais du 19 septembre 2000, articles 336 et 337 du Code pénal congolais du 13 janvier 1963, article 391 du Code pénal ivoirien du 7 octobre 1964.

⁴¹ Voir Marie Thérèse MENGUE, « Regard sur la situation de la femme au Cameroun », in *Droits de l'homme, libertés et justice sociale en Afrique centrale, Cahier africain des droits de l'homme, Etudes et documents de l'APDHAC*, Yaoundé : PUCAC, mars 2011, n°11, p. 45-74, p. 56.

Au Bénin et en Ouganda, malgré les dispositions de la Constitution et du Code des personnes et de la famille qui prévoient l'égalité de l'homme et de la femme en matière de succession, celles-ci sont souvent ignorées et l'héritage de la terre continue d'être refusé aux femmes dans certaines localités⁴². Au Botswana⁴³, au Kenya et en Sierra Leone, bien que les constitutions comportent des dispositions de non-discrimination, elles prévoient une liste de domaines dans lesquels cette disposition ne s'applique pas : adoption, mariage, divorce, veuvage, succession suite à un décès, ou toute autre question relevant du statut personnel. Le droit coutumier reconnu par les autorités burundaises a des répercussions néfastes sur les droits des femmes, notamment en matière de succession, de régimes matrimoniaux et de libéralités. L'incessant problème de la polygamie ne connaît pas d'avancée significative et de ce fait, certaines législations africaines, notamment celles de la Guinée-Bissau, du Kenya, de la Mauritanie, du Mozambique, du Niger, du Nigéria, de l'Ouganda, du Sénégal, de la Sierra Leone, de la Tanzanie, du Tchad et du Togo, loin d'être "rétrogrades"⁴⁴ méritent d'être reformées.

Malgré la criminalisation de l'esclavage, des pratiques esclavagistes et l'interdiction du travail forcé par le Cameroun⁴⁵, la Mauritanie, le Nigéria, l'exploitation domestique, l'esclavage et la prostitution des filles et des femmes continuent à se développer, souvent par nécessité "vivrière". Afin de garantir la jouissance par les femmes des droits prévus dans le Protocole,

⁴² Ainsi par exemple, lors du décès de son père, les oncles d'Ayaba, fille unique, se sont accaparés toute la propriété du défunt, sous prétexte que leur nièce, en tant que fille, ne doit pas hériter des biens. Cas documenté par l'organisation WILDAF Bénin. Voir FIDH, « L'Afrique pour les droits des femmes : Ratifier et respecter », *Cahier d'exigences*, mars 2010, 148 p, p. 11.

⁴³ Voir article 15 (4) (c) de la Constitution du 30 Septembre 1966, amendée en 1969, 1970, 1982 et 1997.

⁴⁴ Cécile Aimée SIM BOUMA, « Regard sur la protection des droits de la femme en Afrique à la lumière du Protocole de la Charte africaine des droits de l'homme et des peuples relatif aux droits de la femme », *op. cit.*, p. 84.

⁴⁵ Loi n°2005/015 de décembre 2005 relative à la traite et au trafic des enfants et à l'esclavage ainsi que la ratification de la Convention des Nations unies contre la criminalité transnationale organisée et de ses deux Protocoles facultatifs.

les Etats africains doivent procéder à l'élimination des pratiques néfastes, c'est-à-dire tout comportement, attitude ou pratique qui affecte négativement les droits fondamentaux des femmes. L'élimination de telles pratiques passe par leur interdiction et leur condamnation par l'Etat et la prise de toutes les mesures nécessaires, notamment celles énumérées à l'article 5 du Protocole, afin de les éradiquer. Toutefois, garantir l'effectivité et l'efficacité des droits en question suppose la libération par les Etats africains des ressources nécessaires à cette fin. C'est pourquoi les Etats parties sont appelés à prendre les mesures adéquates pour « *réduire sensiblement les dépenses militaires au profit du développement social en général, et de la promotion des femmes en particulier* » (article 10 § 3 du Protocole)⁴⁶.

B. Les pesanteurs socio-culturelles

Le contraste entre la consécration formelle des droits et libertés des femmes et le sort qui leur est réservé est trop important pour ne pas être mentionné ici. Il n'est toutefois pas question de répertorier la pratique des Etats africains dans ce domaine. Il suffit de dire que la situation de la femme africaine est contrastée. Elle jouissait dans la société ancestrale d'une plus grande reconnaissance du fait qu'elle était consultée sur certains points. Pourtant, son statut social actuel est réduit la plupart du temps à sa portion congrue, révélant ainsi la persistance de certaines pratiques discriminatoires à son égard **(1)**. Par ailleurs, la CADHP accorde une place de choix aux coutumes et valeurs traditionnelles⁴⁷. Seul l'article 29 alinéa 7 reconnaît que toutes les valeurs culturelles africaines ne sont pas positives. Le droit coutumier, les valeurs traditionnelles ou ancestrales et les coutumes constituent encore des facteurs qui contribuent au déni de leurs droits aux femmes africaines **(2)**.

1. La persistance des pratiques discriminatoires Malgré l'existence d'instruments juridiques posant

⁴⁶ Voir Maurice KAMTO, « Introduction générale : La Charte africaine des droits de l'homme et des peuples et les perspectives de la protection des droits de l'homme en Afrique », *op. cit.*, p. 38.

⁴⁷ Voir les articles 18, 22, 27, 29 § 7 et 61 de la CADHP.

le principe d'égalité entre hommes et femmes, les discriminations à l'égard des femmes demeurent une réalité vivace en Afrique. Le professeur Amsatou SOW SIDIBÉ se demande d'ailleurs si ce phénomène n'est pas l'une des causes du sous-développement et des conflits en Afrique⁴⁸. Les pratiques discriminatoires sont complexes et peuvent revêtir diverses formes. Leurs causes sont multiples et peuvent être directes, indirectes, légales, de fait, liées aux violences, etc. Elles peuvent être d'origine socio-culturelle, économique, structurelle, judiciaire et à l'ignorance par les femmes de leurs droits ou liées à la diversité et à la différence, etc.

Bien que l'homme et la femme soient tous les deux des êtres humains, il y a des différences entre eux. La différence est manifestement physique, physiologique. Mais, elle peut se traduire par des manifestations autres que physiques, par le comportement, les goûts, etc. Or, il y a comme une tendance naturelle à minimiser ou à rejeter l'autre qui est différent de soi. Les discriminations à l'égard des femmes sont des discriminations sexistes. Elles sont fondées sur la différence de sexe entre les deux catégories de personnes. La femme est victime de stéréotypes sexistes qui favorisent l'homme. Aujourd'hui, les femmes sénégalaises réclament une réforme du droit de la famille, non pas dans le sens d'une substitution du droit islamique au droit laïc, mais plutôt dans le sens d'une abolition des discriminations persistantes.

Depuis de nombreuses années, la République Démocratique du Congo (RDC), la Côte d'Ivoire (De 2002 à 2007), l'Ouganda (A partir de 1986), la Sierra Leone (guerre civile qui s'est achevée en 2002) sont le terrain de conflits armés au cours desquels le viol a été utilisé comme une arme de guerre de manière massive et systématique. Banalisé sur l'ensemble du territoire, ce crime est désormais commis dans les zones de relative stabilité. Ainsi, malgré l'adoption

en 2006 en RDC de deux lois particulièrement répressives, les cas de violences sexuelles continuent d'être quotidiennement rapportés, l'impunité quasi généralisée des auteurs en constituant l'une des principales causes⁴⁹.

Une autre cause des discriminations est l'ignorance par les femmes de leurs droits et le manque d'une véritable culture des droits. Ceci est caractérisé par la faible prise de conscience d'une grande partie de la population de l'existence de droits fondamentaux de la personne humaine et donc de la poursuite de pratiques sociales qui bafouent les droits, les femmes étant souvent considérées plus comme des objets de droit que comme des sujets de droit. Quant aux règles de droit, les populations qui les ignorent pour l'essentiel, ne se les approprient pas. De surcroît, il y a peu de structures sociales, peu d'organisations, peu de personnes qui interviennent en faveur d'un respect des droits de la femme, en tant que partie intégrante des droits de la personne humaine. Les personnes n'ont pas le réflexe d'exiger la reconnaissance et l'application de leurs droits à travers le dialogue social, encore moins sur le plan juridique.

En outre, les populations ne sont pas toujours capables de s'indigner lorsque les droits des personnes ne sont pas respectés, le résultat étant que l'impunité est très importante⁵⁰. Les discriminations à l'égard des femmes prennent parfois leurs origines dans la pratique judiciaire. D'abord l'accès à la justice est difficile pour les femmes. La justice coûte cher et les procédures sont complexes⁵¹. Certaines discrimi-

⁴⁸ Voir Amsatou SOW SIDIBÉ, « Les discriminations à l'égard des femmes », *Communication au Forum mondial des droits de l'homme*, Nantes, 2006, p. 1-9, p. 1.

⁴⁹ Selon la Rapporteuse spéciale des Nations unies sur les violences contre les femmes, qui s'est rendue en RDC en juillet 2007, les allégations de viols de la part des membres des Forces armées de RDC (FARDC) et de la Police nationale congolaise (PNC) sont nombreuses. L'impunité dont bénéficient les auteurs est entre autres la conséquence de nombreux obstacles qui entravent la capacité ou la volonté des femmes à porter plainte.

⁵⁰ Cependant, des associations de défense des droits de la personne ainsi que la presse élèvent la voix de plus en plus face aux atteintes aux droits de la femme, avec des déclarations publiques, des marches de protestation, avec plus ou moins de succès.

⁵¹ Voir René DEGNI SEGUI, « L'accès à la justice et ses obstacles », *Colloques sur l'effectivité des droits fondamentaux dans les pays de la communauté Francophone à Port Louis les 29, 30 septembre et 1er octobre 1993*, AUFELF-UREF, Montréal, 1994, p. 241-254.

nations sont des questions taboues (par exemple, les abus sexuels). Enfin, la société réproouve le fait qu'une femme se présente devant la justice pour réclamer certains droits. Enfin, les facteurs structurels de discriminations sont essentiellement la faiblesse des politiques et le manque d'actions efficaces pour renforcer les capacités des femmes et changer positivement les mentalités. De nombreuses discriminations sont héritées de certaines pratiques coutumières ou d'une mauvaise interprétation des religions.

2. La survivance des coutumes et des valeurs traditionnelles

Le Protocole de Maputo est appelé à produire des effets dans un contexte socio-culturel où le poids des coutumes et des religions rend extrêmement complexe la protection effective des droits de la femme. Contrairement à la CADHP qui s'inspire des valeurs africaines, le Protocole de Maputo les présente comme un obstacle à l'émancipation de la femme africaine. Il y a lieu de s'interroger sur le rôle que peuvent jouer certaines coutumes et l'interprétation des religions dans les discriminations faites aux femmes.

En Afrique du Sud et au Zimbabwe, l'application continue de lois coutumières discriminatoires et de traditions patriarcales persiste et est la cause de violations étendues des droits des femmes. Au Bénin, les femmes continuent de subir les rites de veuvage qui les privent de certaines libertés. Par exemple, dans certaines communautés rurales, pendant plusieurs mois, les veuves sont contraintes de ne pas sortir, de ne pas se laver pendant plusieurs jours, de ne pas se coiffer, etc. Ainsi, ces femmes, ne pouvant pas travailler, se retrouvent isolées dans une situation d'extrême pauvreté. De façon plus générale, certains cultes traditionnels privent les femmes de leur liberté de circulation et les cantonnent à l'intérieur. A Djibouti, la loi coutumière basée sur la Sharia, et qui continue de s'appliquer dans de nombreux cas, prévoit que les femmes n'ont pas le droit de voyager à l'extérieur du pays sans l'autorisation d'un parent adulte de sexe masculin.

Favorisées par le déficit législatif camerounais en matière de criminalisation des pratiques traditionnelles néfastes, les mutilations génitales féminines (MGF) et le repassage des seins persistent toujours dans certaines parties de l'Extrême-Nord et du Sud-Ouest du pays : il est estimé qu'environ 20 % des femmes en sont victimes. On estime que 70 à 80 % de femmes en Gambie ont été soumises à une forme ou une autre de MGF bien que leur pratique varie d'un groupe ethnique à l'autre. Les MGF ne sont pas interdites et demeurent répandues en Gambie, en Guinée-Bissau, au Mali, en Mauritanie, au Niger, au Nigéria, en Ouganda, au Sénégal, en Tanzanie, au Tchad et au Togo. Toutefois, le Ghana a été le premier pays africain à criminaliser les MGF mais la pratique persiste.

La pratique de l'esclavage rituel (trokosi) persiste au Ghana, dans la région de la Volta. Selon cette pratique, lorsqu'un membre de la famille commet un crime, la famille doit offrir au lieu de culte local une fille vierge, âgée de 8 à 15 ans, qui deviendra une "esclave des dieux". Le prêtre local peut exercer sur elle "ses pleins droits de propriété", il a le droit de la battre, d'exiger des relations sexuelles avec elle et de la faire travailler, tout en lui refusant nourriture, éducation et droits élémentaires à la santé. Le Gouvernement n'a encore adopté aucune disposition législative visant l'interdiction de la servitude involontaire. Au Kenya, la pratique traditionnelle de la "purification des veuves", qui les force à avoir des rapports sexuels, le plus souvent non protégés, avec un paria, perdure dans certaines communautés. Dans l'ensemble du pays, les femmes vivant dans des camps de personnes déplacées sont particulièrement exposées aux viols et autres crimes sexuels. Concernant les veuves au Mali, en Mauritanie, au Nigéria, en Ouganda, au Sénégal et au Togo, certaines pratiques traditionnelles persistent, telles que le lévirat⁵² et le sororat⁵³. La pratique de *gavage*, selon laquelle les fillettes sont forcées à consommer

⁵² La pratique du lévirat impose à la veuve d'épouser un homme de la famille de son époux décédé.

⁵³ Le sororat est la pratique du remariage d'un veuf avec la sœur de son épouse, en particulier lorsque cette dernière laisse des enfants en bas âge.

d'importantes quantités de nourriture afin qu'elles prennent du poids pour les préparer au mariage, est également répandue, surtout dans les régions du Nord. Concernant la traite des femmes, un phénomène récent, le "Hadj à crédits", selon lequel les femmes sont envoyées par leur famille en Arabie Saoudite pour subvenir aux coûts du pèlerinage (Hadj), est particulièrement préoccupant au Niger.

Malgré l'interdiction des mariages précoces et forcés, ces pratiques sont très courantes au Burkina Faso⁵⁴, en Côte d'Ivoire, en Ethiopie, au Ghana, en Guinée-Conakry, au Kenya, au Libéria, en Mauritanie, au Mozambique, au Niger au Nigéria, au Sénégal, au Tchad, au Togo, en Tunisie et au Zimbabwe. La pauvreté pousse souvent les familles à marier religieusement leurs filles dès qu'elles atteignent l'âge de la puberté vers 11 ans, en échange d'une dot. Ces jeunes filles sont pour la plupart illettrées, ce qui facilite leur soumission au mari et entrave leur accès à l'emploi.

Il semble donc utile de rappeler que les droits des femmes sont pour l'essentiel des droits universels et que la diversité culturelle qui est fondamentalement un élément de mise en œuvre des droits ne peut signifier l'acceptation de traditions négatives. Il faut donc sérier et écarter toutes les pratiques négatives pour n'honorer que celles qui sont valorisantes pour les femmes. Des pratiques telles que l'excision, les viols, les abus sexuels, les harcèlements sexuels et les agressions sur des mineures sont donc à bannir car constitutives de violences atroces à l'égard des femmes.

Conclusion

Le Protocole de Maputo constitue certes un complément de la CADHP, en ce qu'il permet de donner une certaine vigueur aux droits des femmes sur le continent africain, en mettant en exergue la spécificité de la protection de ces droits. Cependant, la mise en œuvre de ses nombreuses dispositions substantielles ne peut rester « *pendant longtemps, d'une portée très relative, « ni même sa teneur » relever plus de l'incantatoire et du programmatoire, »*⁵⁵, car si certaines dispositions du Protocole « *sont juridiquement et moralement défendables, il faut bien reconnaître que d'autres ressemblent beaucoup plus à des pétitions de principe qui anticipent sur les évolutions sociales et les dynamiques économiques à venir. C'est peut-être le propre des droits de l'homme d'évoluer de la sorte »*⁵⁶.

En tout état de cause, le Protocole de Maputo demeure un texte de référence majeur. Ses dispositions en matière de droits civils et politiques, d'intégrité physique et psychologique, de santé sexuelle et reproductive, de non-marginalisation ou encore d'émancipation économique, symbolisent l'engagement des États africains à mettre un terme aux discriminations, aux violences et aux stéréotypes de genre à l'encontre des femmes. Les États parties devront assurer le suivi du Protocole au niveau national et indiquer dans leurs rapports périodiques à la Commission africaine des droits de l'homme des indications sur les mesures prises pour la réalisation des droits reconnus dans le Protocole. L'engagement des États parties à cet égard s'étend à l'obligation d'allouer les ressources budgétaires adéquates et autres pour la mise en œuvre effective des droits reconnus. Ensuite, la sanction pécuniaire étant la plus rassurante des garanties, il est prévu des réparations appropriées que les États parties s'engagent à garantir à toute femme dont les droits et libertés tels que

⁵⁴ Voir article 234 du Code des personnes et de la famille du 16 novembre 1989.

⁵⁵ Jean de Noël ATEMENGUE, « La Charte africaine des droits de l'homme et des peuples et ses enrichissements ultérieurs », *op. cit.*, p. 46 et s.

⁵⁶ Voir Maurice KAMTO, « Introduction générale : La Charte africaine des droits de l'homme et des peuples et les perspectives de la protection des droits de l'homme en Afrique », *op. cit.*, p. 39.

reconnus dans le Protocole sont violés, et à s'assurer que de telles réparations sont déterminées par les autorités judiciaires, administratives et législatives compétentes ou toute autre autorité compétente prévue par la loi.

Les exigences culturelles ou coutumières devraient enfin être édulcorées pour s'assurer que seules les valeurs positives sont appliquées. On note tout de même une avancée des nouvelles dispositions constitutionnelles africaines, à considérer de plus en plus le volet culturel, en admettant le fait qu'il comporte aussi bien des éléments positifs que négatifs⁵⁷. En tout état de cause, la garantie durable de la dignité des femmes ne doit plus souffrir de prétextes ou de considérations politiques, culturelles, coutumières et religieuses.

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⁵⁷ Voir Simon-Pierre ZOGO NKADA, « Le nouveau constitutionnalisme africain et la garantie des droits socioculturels des citoyens : cas du Cameroun et du Sénégal », *Revue française de droit constitutionnel*, 2012/4 n° 92, p. 1-17.



AU ECHO 

The Newsletter of the African Union Commission

