Second anniversary of the Protocol on the Rights of Women in Africa: Challenges ahead

Articles from Special Issue:
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Protocol on the Rights of Women in Africa: second anniversary

Faiza Jama Mohamed

What gains and what challenges do we have two years after the entry into force of the Protocol? This is the overall question that the various articles presented in this special issue of Pambazuka aim at addressing. What clearly emerges is that the challenges outweigh the gains made so far, says Faiza Mohamed.

The articles which are mostly written by members of the Solidarity for African Women’s Rights (SOAWR) coalition, for the occasion of the second anniversary of the Protocol’s entry into force, describe the situation in different countries, with emphasis on the extent to which the Protocol is embraced or not embraced by the governments of Kenya, South Africa, the Sudan and Uganda; but there is also mention of regional/continental level perspectives, looking at how far the Protocol has gained momentum as a recognised tools for action to protect the human rights of women.

The authors raise several key issues that beg closer attention if this Protocol is to make a meaningful difference in the lives of many African women.

1. Universal ratification of the Protocol – i.e. ratification by all the member states – is critical for all African women if they are to benefit equally from its implementation. The majority of African countries (30) have not ratified it and clearly this is a problem. If you consider women as representing 50 per cent of the total population [1] (in some countries they are more than 50 per cent but let us stick to 50 per cent for now) of these 30 countries, then this would approximately translate to 260.7 million women and girls being denied the chance to claim their rights as provided in the Protocol. This is more than 50 per cent of Africa’s female population and surely this should be of great concern to all of us!

2. Various stakeholders in any given country need to take ownership of the Protocol, chief among them being the state itself. Obviously, it has been left up to civil society organisations and in particular women’s organisations to be the flag bearers and the Protocol’s nurturers. Where are the states that have adopted it and pledged to carry it through? Where are the presidents who made a solemn declaration to deliver it to the women of Africa? What about mainstream human rights organisations? Should they too leave it to the women or should they also take responsibility for advocating for it and living up to it? What will it take to have these important stakeholders embrace the Protocol as their own? Ownership by all, and not just women, is a critical factor for the success of the African women’s rights Protocol.

3. Reservations entered against any article of the Protocol are obstacles aimed at defeating the objectives for which it was created. Of the 23 countries that ratified the Protocol only two (the Gambia and South Africa) have included some reservations. Recently Gambia removed its reservations, leaving only South Africa. On a closer look one could argue that South
Africa’s reservations are not harmful ones. However, the notion of a leading African state, whose standards are looked up to as a model in the Southern Africa Development Community (SADC) region, setting such a negative precedent (as reservations obviously carry that notion) is indeed worrying. Others argue that if a country, such as Kenya, Sudan and Uganda, want to ratify with reservations then let them do so because at least their women will not be totally denied the benefits of the rest of the rights provided in the Protocol. And who knows, after some further advocacy work, they could come around as Gambia did to lift such reservations. These are important points to reflect on.

4. What is the added value of the African women’s rights Protocol? Clearly there is no doubt that it complements other international human rights instruments, such as the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), and many people would add that it also further provides rights that are well situated within the realities and needs of African women. However, as the authors point out in their articles, its value has not yet been exploited to reap the benefits it offers African women. As Delphine Serumaga states in her article on the situation in South Africa, ‘Women and the girl-child remain marginalised with regards to access to basic human rights such as justice, safety and security, housing and health.’ If the situation is as such in one of the most developed countries in Africa what can we imagine would the case be in the less advantaged countries? For African women to reap the value of the women’s rights Protocol, countries must domesticate it, must invest resources into mass education, as obligated under article 26 (2) of the Protocol (on implementation and monitoring), must encourage women to seek help at designated places when their rights are violated, and must ensure that the justice system delivers free from its, often alleged, patriarchal biases. Many states can learn from countries like Djibouti. Not long ago it set up a help centre for women whose rights are abused and equipped it with a hotline service for women to immediately report violations; it then follows through their cases in the courts. In a short while the center managed several hundred cases which had a good impact on the attitudes of the public in appreciating the rights of women. This is one example of how member states could turn the Protocol into real value for women.

These and more issues are deliberated in the several articles that follow; and the critiques and ideas that are discussed to re-energise the campaign could serve as food for thought. SOAWR members are definitely going to deliberate on them, during their upcoming meeting in January 2008, so that, to borrow Pamela Mhlanga’s words, the African women’s rights Protocol is translated into ‘substantive rights’ and not allowed to remain as ‘paper rights’!

Keep on reading…

Note
1 Source of population data: US Census Bureau

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Reflections on the second anniversary of the Protocol

Pamela Mhlanga

The Protocol on the Rights of Women in Africa arguably demonstrated the maturity of the African women’s movement, showing the power of collective agenda-setting and follow-through in a systematic and coherent way, says Pamela Mhlanga.

As the second anniversary of the coming into force of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Protocol) dawns, we need to pause and reflect. The adoption and subsequent coming into force of the Protocol was a turning point in the struggle for the rights of women on the continent. Women’s rights discourse and practice was deepened and expanded, and the Protocol has proved to be a source of inspiration for keeping the momentum to achieve full equality for the women of Africa. The reflection, during this second anniversary, should thus focus on what we know, what we have learnt, and what we are carrying forward to strengthen ourselves as a women’s movement, as well as the content and practice of women’s rights, thereby solidifying the gains we have made and decisively tackling the gaps remaining.

The Protocol arguably demonstrated the maturity of the African women’s movement, showing the power of collective agenda-setting and follow-through in a systematic and coherent way. It also signalled that the experiences, voices and engagement of African women with human rights matters. Significantly, it marked the further institutionalisation and affirmation of the rights of women on the continent; there is now a ‘home-grown’ source of women’s rights to which we can refer, underpinned by universal human rights standards.

What we know, however, is that women ‘do not eat paper’, and we face the perennial issue of promise v. delivery and, by extension, ‘paper rights’ v. substantive rights. What we also know is that African governments ratify international human rights instruments all the time, and, dare it be said, often with impunity, as a number of them dance the ratification dance at international level, yet show little sign of domesticating or implementing their commitments. A case in point is that all 14 Southern African Development Community (SADC) countries have ratified CEWDAW, and only three countries have domesticated it, due in part to unique constitutional provisions providing for self-execution of ratified international obligations. Another case in point is numerous reports replete with empirical evidence of little progress in enlarging the women of Africa’s entitlements to fully engage with rights. The denial of rights is therefore still rampant, from violations of bodily integrity, sexuality, and socio-economic rights, to outright discrimination, often entrenched in national legal frameworks. The long reach of patriarchy and sexism, and increasingly a backlash and the rise of fundamentalisms, continue to coalesce and pose a fundamental challenge to the positive steps thus far taken to claim our rights.
This contradictory picture of progress and regression begs the questions: If substantive delivery on women’s rights remains such a challenge, how are we to reframe the struggle to claim our rights, and how do we continue to creatively use the women’s rights Protocol as a point of reference? Certainly for the women’s movement, the struggle for rights must not only remain deeply political, but also located and articulated within broader struggles for advancing participatory democracy, people-centred development and good governance. It must go further and be framed as nothing short of an agenda for transformation; radicalising the empowerment project in a way that fundamentally shifts gendered stratifications in structures, processes, cultures and political ethos in new ways.

This agenda for transformation implies a reconceptualisation of indicators of success in achieving women’s rights as a ‘live’ and dynamic process, defined by what is working or not working for women at any given time, not confined to occasional reports, and defining one or two acts or promises by governments as evidence of ‘political will’. The current poverty eradication and HIV/AIDS response frameworks, for example, are not working for women, otherwise these devastating conditions would not have our faces imprinted on them. Why after so many decades do we still talk about the feminisation of poverty?

It is absolutely essential that the ‘footsteps’ of women are traced, and their voices made visible in empowering ways, in order to excavate the authentic voice that will not be erased by sophisticated frameworks for advancing rights that are, at times, so complex many of us hardly recognise ourselves in them. The project, as one activist has pointed out, is as much about going back to basics in terms of raising critical consciousness amongst women about asserting our rights and dignity, as it is about sitting on high tables negotiating complex legal instruments based on our agenda and demands. The establishment of the Solidarity for African Women’s Rights (SOAWR) is a point of departure. The network is working towards harness this complex political agenda in the context of the Women’s Rights Protocol in a way that aims to bridge the dichotomy between paper rights and substantive rights.

There is an understanding within the SOAWR network, made up of continental and national based women’s empowerment organisations, that the deployment of the women’s Protocol requires a deepening and broadening of the ownership of the content of the Protocol. This can be achieved through mobilising a groundswell of support from all the places where women are found in order to create new opportunities for demanding accountability and delivery. Thus whilst some members are visible in key forums such as the AU and SADC summits, others are taking the message to places where critical engagement is also essential, such as local communities. There is a recognition also that quiet diplomacy in pushing for change may be useful up to a point, so some members are working on public interest litigation cases, and using issue-based advocacy such as gender-based violence, to place the Protocol on as many agendas as possible.

SOAWR members recognise the value of broadening the power base in order to ensure strategic influence at all levels, so they have sought to engage both state and non-state actors. In the years beyond this second anniversary, we must continue to engage with various points of influence if the continent is to move from 22 ratifications to 53, and if there is to be a fast and effective transition from ratification to domestication and implementation. This would include developing structured links with coalitions working towards an effective African Court on Human and People’s Rights, as well as groups addressing critical issues of people-centred
empowerment, closer ties with all regional economic communities, supporting the Special Rapporteur on the Rights of Women in Africa, a more pivotal role at every point of gender mainstreaming processes in institutions, structures and processes that matter to us, including stronger ties with the AU Gender Directorate and the African Centre for Gender and Social Development in the Economic Commission for Africa, amongst others. Equally important should be the refusal to continue to engage in spaces that no longer serve us, but deepening our own internal engagement on lessons we have learnt and how we can leverage this learning to be more effective as a women’s movement, including ensuring mutually supporting each other’s efforts. The struggle continues.

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Making the Protocol effective at family level

Morissanda Kouyate

It is two years since the Protocol came into force. Time has come for it to become a reality at the level of the family argues Morissanda Kouyate.

On 11 July 2003, African heads of state adopted the Protocol on the Rights of Women in Africa. This historic event was a breath of fresh air for African women’s rights. As I have stressed in a previous article, these are rights, and not privileges due to women (http://www.pambazuka.org/en/category/features/22731). In the four years since its adoption, the Protocol has been ratified by the requisite 15 countries, and has come into force as per the statutes of the African Union.

A lot has come to pass during this time: heads of state have participated in meetings of the AU, only to return home and ‘forget’ to ratify agreements signed on behalf of their people; attempts have been made to water down the Protocol by expressing reservation on certain fundamental articles. However, we have also seen a number of resolute political leaders committed to advancing the cause of African women and overcoming the paradox: Nothing without women, but everything for men.

Faced with this incomprehensible slothfulness on the part African governments, the question arises: What is the price of ratification? It requires neither a detailed plan of action, nor foreign aid. All that is required is a strong political will and a commitment to the rights of women. It is unacceptable for politicians to spout pro-feminist rhetoric while the Protocol document gathers dust in parliamentary drawers and ministerial archives.

Forget for a moment the speeches, conferences and workshops, and introduce the Protocol to African families (men, women and children). Rather than localisation, we should be talking about appropriation, as SOAWR and its global partners have endeavoured to do.

We must continue to involve all sectors of African society: political, religious and traditional leaderships, parents and youth groups, but most of all, the women and girls whose rights have been suppressed in the name of supposed cultural and traditional values.

Catchy slogans will not suffice. What is required is a door-to-door campaign to inform women that their right to protection against female genital mutilation, child-marriage, HIV/AIDS, etc, is enshrined in a document called the Protocol, signed by their own leaders.

To those who argue that the illiteracy prevents women in African villages from enjoying the full protection of the Protocol, let us make it very clear: women’s rights are acquired at birth and not in the classroom.

The work of activists is thus one of restoring innate rights that have previously been alienated. Achieving this requires the kind of innovation and assertiveness that SOAWR displayed by ‘red-carding’ countries that had not yet ratified the Protocol at regional and international conferences.
This strategy can be further fine-tuned. I would suggest, for instance, that local women in non-ratifying countries issue these red-cards to their own leaders at meetings and rallies. This would be a clear signal to them that until and unless they ratify the Protocol, they do not deserve to participate on the local political playing field.

That the Protocol has come into force, after the required 15 signatories, is thanks to the gargantuan efforts of SOAWR and its partners. Never before in the political history of the continent has a document been ratified so rapidly. The challenge, however, still lies in exposing leaders who are yet to ratify the Protocol, perhaps in the hope that it will be overtaken by events. Of equal importance is the challenge of restoring women to their rightful place in the vanguard of the continent’s development.

Future efforts must focus on the beneficiaries of the Protocol. It is only through them that the Protocol will truly come into force.

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Making the AU Protocol a continental agenda: SOAWR’s experience

Caroline Muthoni Muriithi

As we approach the second anniversary of the coming into force of the Protocol, Caroline Muthoni Muriithi takes us on a retrospective of the continental successes that SOAWR has achieved so far.

The Solidarity for African Women’s Rights (SOAWR) coalition was created in September 2004 to speed up the ratification of the African Union (AU) Protocol on the Rights of Women in Africa and subsequently push for the domestication and implementation of the Protocol at the national level. Three years after its inception, the SOAWR coalition has evolved into a 26-member coalition all working towards popularisation, ratification and domestication/implementation of the AU Protocol on the Rights of Women. As we approach the second anniversary of the coming into force of the Protocol let us look back on the continental successes that SOAWR has achieved so far as we intensify the momentum of the campaign and renew our efforts to ensure universal ratification and implementation of the Protocol.

Continental campaign: using the African Union policy space

The coalition took advantage of the new advocacy opportunities that came with the newly established African Union to engage the African Union member states. The transformation of the Organisation of African Unity (OAU) to the African Union in 2002 created room for civil society engagement (CSOs) and their contributions were welcomed through the African Citizens’ Directorate (CIDO) which is responsible for facilitating civil society engagement [1]. Although the collaboration and engagement between CSO’s and the African Union and its institutions has been limited, SOAWR managed to work with other AU departments such as the African Union Commission Legal Counsel Office, which receives the instrument of ratifications, and the Women, Gender and Development Directorate (WGDD), which has worked together with civil society to discuss African Union instrument such as the Solemn Declaration on Gender Equality in Africa and the African Union Protocol on the Rights of Women as well as strategising on promoting gender equality within the African Union Commission.

Through this fruitful collaboration with the Women, Gender and Development Directorate (WGDD) the campaign has been able to reach a wide audience both within the African Union as well as citizens across the continent. In 2005, the WGDD helped to provide a space for SOAWR to hold a press conference at the Abuja Summit in January 2005 and has continued to collaborate with SOAWR in planning and hosting various activities such as: jointly publishing the book ‘Breathing life into the African Union Protocol on the Rights of Women’, which was launched at the July 2006 African Union summit in Banjul, Gambia; organising a joint North African consultation on strategies for accelerating the ratification of the Protocol across North
Africa in Tunis, Tunisia in April 2007 and has continued to engage in various discussions on the way forward for gender equality in Africa.

SOAWR members have also utilised the advocacy and lobbying opportunities at African Union summits. The African Union hosts two summits every year: January and July. Since its creation, members have used the summits as a way to make the campaign visible among government officials, the African Union and the heads of state and government. The summits offer an opportunity to engage these leaders on the steps their governments have taken to ratify the Protocol and a chance to influence decisions made within the African Union.

During the summits, various creative strategies have been used to get the campaign message across. In January 2005, the rating cards strategy proved effective at holding governments accountable. The strategy was based on football penalty cards system: red for countries that had not signed the Protocol; yellow for those countries that had signed but not ratified it; and green for those countries that had ratified the Protocol. What made this strategy successful was the fact that country representatives where given the bright coloured cards while either sitting in the plenary room or walking towards it, making the room look colourful but at the same time arousing curiosity among the other delegates to know what the colour cards were about. The colour card also created competition among the countries while at the same time shaming those countries that had not ratified the Protocol. The strategy worked on the premise that most governments do not want to look bad before their peers and therefore would be pushed to sign and ratify the Protocol. It worked! On 25 November 2005 (a year after the formation of SOAWR) the African Union Protocol came into forces, largely due to the pressure and all the strategic lobbying and campaigning by SOAWR members. Today many of the African Union officials as well as the country delegations are aware of the campaign and the Protocol.

The publication and distribution of policy briefs during every summit which links the Protocol to the current theme of the summit has made the Protocol relevant to all the African Union discussions and debates. These policy briefs are handed out to the African member states delegations as well as to the media. The presence of local and international media at the summit has enabled members to communicate the campaign agenda to heads of states and government by holding press conferences and distributing media statements and policy briefs. This has given visibility to the campaign’s efforts in the country hosting the summit, throughout the continent and beyond while popularising the AU Protocol to the masses. To add icing to the cake, the secretariat has followed up by putting more pressure on African Union member states by writing to individual presidents, urging them to honour their commitments by ratifying and implementing the Protocol.

The campaign has linked continental efforts with national campaign efforts by actively involving national SOAWR members and women’s organisations in the host country in linking human rights violation of women in the country to the Protocol campaign and the summit theme. For example at the Accra summit in July 2007, SOAWR hosted a public forum that discussed the Protocol at length and the ongoing African Union debate on union government and tied these discussions together with ‘trokosi’, a traditional practice in parts of Ghana where girls are enslaved for life in shrines to pay for the ‘sins/crimes’ of their relatives.

Women’s organisations across Africa have been mobilised and have joined the rallying call to push for the popularisation, ratification and implementation of the Protocol in their respective countries. These groups have adopted the Protocol as a tool with which to champion their
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rights by highlighting the Protocol’s provisions in their day-to-day activities. For example Voix de Femmes, a SOAWR member in Burkina Faso, have adopted Article 5 of the Protocol as a tool to fight female genital mutilation (FGM). The Protocol is the first human rights instrument to specifically call for the elimination of FGM and has become a benchmark for the Voix de Femmes campaign against FGM.

Successes

At the time SOAWR was formed, only four African countries had ratified the Protocol (the Comoros, Libya, Namibia and Rwanda). However, due to the aggressive campaign, today there are 22 African states that have ratified the Protocol. The Protocol came into force one year after the launch of the campaign and two and a half years after the adoption by the heads of states and government, making it the fastest human rights instrument to enter into force within such a short time in Africa.

The concept of holding member states accountable has been elevated to a level never seen before at the African Union summits. It is the first time that leaders have been held to task and have been shamed for failing to honour their commitments to African women expressed in the Protocol and the Solemn Declaration for Gender Equality in Africa.

The African Union Protocol has been featured in various African Union discussions and meetings, making more government officials more aware of the AU Protocol on women’s rights. For example during the Accra summit in July 2007, the SOAWR team realised that many of the country delegations were aware of the Protocol as well as the SOAWR coalition that had been pushing for its ratification and implementation. SOAWR campaign objectives have become visible throughout the continent as well as at the African Union.

Due to the wide experiences gained in lobbying at the continental level and specifically within the African Union the SOAWR campaign has become a model to be replicated by others around the continent and beyond. SOAWR has been called upon to share its strategies with other civil society organisations around African. The secretariat has received request for organisations wanting to come and learn about the SOAWR campaign and meet with coalition members. In January 2007, an Iranian woman’s groups visited the secretariat to learn about the strategies that SOAWR was using to campaign for the ratification and implementation of the Protocol. The group picked up pointers that they intended to replicate back in Iran to develop a national Protocol on the rights of Iranian women. In April 2007, the secretariat hosted lawyers from the Zimbabwe Women Lawyers Association (ZWLA) who wanted to learn more about the campaign and meet with SOAWR members in Nairobi.

Due to the success of the continental campaign, the focus has begun to shift to those countries that have ratified the Protocol as they start the process of implementing the provisions of the Protocol at the domestic level. The campaign will continue to target the 31 countries that have not yet ratified the Protocol in order to achieve universal ratification and subsequent implementation of the Protocol in all these countries. It is a large task ahead but the campaign continues to grow in strength and in numbers, recruiting women’s organisations from across Africa to work toward a common goal and objective, to ensure that the AU Protocol on the Rights of Women becomes a reality for all women in Africa. SOAWR has earned its reputation as ‘the coalition that makes things happen’.
Note


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The challenges of ratification: Highs and lows of gender activism

Marren Akatsa-Bukachi


It was an appealing sunny day in mid-November 2005; Sarah Mukasa then of Akina Mama wa Afrika and I were geared up for a higher and more important level of gender activism. I represented the Eastern African Sub-Regional Support Initiative for Women (EASSI), and Sarah, Akina Mama. Both organisations were members of the Coalition on Solidarity on African Women’s Rights (SOAWR) and we were conducting a workshop in Grand Imperial Hotel in Kampala Uganda.

We had co-organised the workshop to unpack the outcome of a previous workshop that was organised by SOAWR in conjunction with the African Union in September 2005 in Addis Ababa. The workshop was called to discuss domestication and implementation strategies for the Protocol. Sarah and I, both energised, were eager to share the good news with a large constituency of Uganda civil society.

The Protocol was about to come into force on 25 November following the 15th ratification by Togo. The Protocol’s significance lies in the fact that it is the only regionally generated document specifically on the rights of African women and that relates to the context specific violations of African women’s human rights. Coincidentally this date would coincide with the beginning of 16 Days of Activism Against Gender Violence. I felt elated. This was prophetic. To add to the ‘high’, Uganda was on the verge of ratification. This confidence was buoyed by the revelation by the government representative that the Protocol had passed through all the necessary stages and was only awaiting cabinet approval. We were assured this would take place speedily before the matter of the general elections, scheduled to take place in February 2006, would get in the way.

With re-energised spirits, we discussed strategies for domestication and ratification as if we had already won the prize. Little did we know that dark forces were lingering in the shadows. Even as we spoke, there was a double page spread in the local dailies vilifying the Protocol. The article was sponsored by the Catholic bishops and was specifically speaking to Article 14 on health and Reproductive Rights. The article states inter alia, that ‘Protect the rights of reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.’

‘The Protocol for Women’s Rights in Africa supports Abortion,’ screamed one headline. ‘Catholic Bishops decry abortion’, shrieked another. It seemed our celebration was turning into a battle. We had already identified the ratification platform as a basis for deeper advocacy for
the passing of the stalled Domestic Relations Bill, whose content was more or less reinforced by the articles in the Protocol, when the Bishops came up with their bombshell. In an election year everyone with power to influence a significant voting constituency becomes a darling and the bishops had stirred a hornet’s nest. In Uganda where almost 50 per cent of the populations (read voters) are Catholics, this constituency cannot be ignored. The Protocol was placed into cold storage and has stayed there ever since.

Two years after coming into force, seven more countries have ratified the Protocol, bringing the total to 22; 24 countries have signed but not ratified it while seven have not signed at all.

Advocacy by SOAWR

SOAWR can be credited with contributing to the respectable level of achievement of almost 50 per cent ratification by the 53 African Union member states.

Its strategy of using the African Union summits of heads of states as a lobby platform has elicited tremendous levels of success. Since January 2005 members of the SOAWR coalition have attended the African Union (AU) summits to ensure that the Protocol to the African Charter on the Rights of Women in Africa remains on the agenda of policy makers and to urge all African leaders to safeguard the rights of women through ratification and implementation of the Protocol. Members have consistently produced policy briefs, launched books and held press conferences during the summits to keep the Protocol at the forefront of policy-makers’ concerns. Members have also directly met with at least 10-15 Ministers over the last six summits. Since January 2005, SOAWR has used the opportunity of the summits taking place in different countries to press on the host to either ratify or move to implementation.

The latest addition to the countries that have ratified the Protocol is Ghana, host of the last AU summit, which deposited its instruments of ratification in July 2007 almost two weeks after hosting the summit. This is a testimony to SOAWR’s tenacity and lobbying skills. During the summit, a team drawn from national coalitions and the steering committee met and committed to the following:

1. Prepared and circulated to ministers a short policy brief on the status of the Protocol and the implications of the continental government proposal for women’s rights and gender equality
2. Participated in CSO pre-summit activities planned with a view to raising visibility for women’s rights and gender equality issues and participating in the grand debate
3. Maintained relationships with key government delegations

Amongst other pre-summit activities carried out by SOAWR was the public forum which was titled ‘Is it possible to have a United States of Africa without women?’ and What form would be meaningful for African women? The forum provided an opportunity for governments as well as African civil society to deliberate on the grande debate on continental unity and also on issues of harmful traditional practices with special focus on the Trokozi practice in relation to the Protocol. Other activities included a press conference, SOAWR planning and evaluation meeting and direct advocacy with the Permanent Representatives Council of the different African countries in the African Union.
I was among those privileged to lobby the foreign ministers and their representatives at the summit venue. We gave out red cards to those countries that had not signed the Protocol, yellow cards to those that had signed and not yet ratified it and green cards to those that had signed and ratified it. We lobbied actively amongst the delegates during teatime and any time they stepped outside the conference hall. We congratulated those that had ratified the Protocol and exhorted those that needed to ratify it or deposit instruments of ratification to do so. We were elated to hear that Liberia only needed to deposit the instruments and expected to see it amongst the group of green cards within two weeks of leaving Accra. To date we are still waiting. It is sad but true, what is on paper is not necessarily put into practice!

Our lobbying strategies were very interesting but also revealed at times that those sent to represent their governments at these meetings are not always up to par with issues such as the Protocol. Many a time we were informed that the person dealing with this matter was left behind in the capital city and there was nothing they could do about it. I remember on one of the days when we stood outside the meeting hall, our body language must have given us away as one of the delegates asked pointedly, ‘Whom are you waiting to pounce on next?’ It elicited laughter but at the same time showed that our seriousness was visible to all. Our strategy was to demand that non-signatory countries sign up, signed-up countries move to ratification as speedily as possible, and the ratifiers domesticate and implement. We found to our surprise that there was a gap in information, with quite a large number of delegates not really aware of the Protocol, but that there was also a good number supportive and willing to take some action back in their own countries. I realised that there is an information gap here that needs to be plugged if SOAWR is to achieve 100 per cent ratification. Government officials in key ministries such as foreign affairs need to be sensitised on the Protocol.

In some countries it is considered a gender issue and embedded in the ministry of gender or women’s affairs. The coalition may need to design a programme specifically targeting policy makers to make them aware of the Protocol and its benefits to the country and to women’s rights. It should not be seen as threatening existing rights but as scaling up these rights, particularly social and cultural rights. I say this because when I was on a visit to Ethiopia and enquired from one of our partners why Ethiopia has not ratified the Protocol, the response was that the Ethiopian constitution is very gender sensitive and already touched on the very issues propounded in the articles in the Protocol. None the less, women’s organisations are fighting patriarchy and gender-based violence, amongst them female genital mutilation, which would benefit from ratification, domestication and implementation of the Protocol. As for Eritrea, it is still at the red card stage and has not signed the Protocol. However, after years of lobbying by the National Union of Eritrean Women, the government outlawed FGM in May 2007.

Even as the SOAWR coalition continues to lobby for total and unreserved ratification, it does not miss an opportunity to make demands on the member states. Using the opportunity afforded by the AU summit in Accra and the discourse around an African Union government, SOAWR came up with a number of demands. Specifically, the African heads of states and government meeting in Accra should show commitment to continental unity by embracing the following:

- Incorporation of gender equality in the values underpinning the Proposal of United States of Africa
- Instituting and making public during the next summit a performance audit of the
directorates of the African Union Commission in terms of the incorporation of gender concerns (2004-07)

- Prioritisation of the rights and entitlements of refugees and displaced populations, particularly women and girls
- Prioritisation of full citizenship status for women in terms of rights, particularly women who marry across nationalities and lose their rights
- Guarantee women the freedom to trade and work across states’ borders. Women small traders manage a high degree of non-formal cross-border trade
- Conduct analysis into the gendered implications of macroeconomic policy with respect to the ‘convergence criteria’
- Enable total factor mobility — the free movement of all factors of production (labour as well as capital) — by addressing questions of African citizenship, including African women’s equal citizenship rights and freedom of movement at the continental level
- Embedding the principle of gender parity in the election and appointment of people to the continental institutions
- Ensuring that the principle of appointing 50 per cent women commissioners at the African Union Commission continues to be honoured
- Increasing the minimum threshold for women MPs elected to the African parliament to at least two per country
- Review all recommendations (in the continental government proposal) in the light of deficiencies already noted by the African women’s movement with respect to ensuring the equal representation of African women at the AU’s highest decision-making organs— for instance, the commission’s chair could also have a deputy responsible for gender mainstreaming across her/his ‘cabinet’ and all commissioners responsible for programmes and projects under the strategic focus areas should ensure that gender implications are taken into account in their elaboration and implementation
- Publicly censuring countries that have yet to ratify the Protocol on the rights of African women
- Honour their commitment to deliver on the Solemn Declaration on Gender Equality in Africa
- Demonstrate greater commitment to the normative framework already established by the AU — particularly with respect to the promotion and protection of human rights (including women’s human rights), peace and security.

The debate on the union government is timely, but it will only be relevant in as far as it will recognise that the majority of the African people are women and girls; and that to win their confidence African leaders need to seriously take up their concerns head on.

We came back full circle in Uganda on 18 October 2007; we were back in the same venue where we had been in November 2005, once again with Akina Mama wa Afrika to again discuss the stalled ratification process in Uganda. This time the aim was to put in place a steering committee to oversee different strategies to ensure ratification and implementation of the Protocol. The
committee’s first task is to find out exactly where the Protocol is stalled. Is it in the Attorney General’s Office or the Ministry of Foreign Affairs? A video documentary made by Akina Mama to popularise the Protocol had one of the Christian bishops proposing that the Protocol should be signed with reservations on Article 14, otherwise it will be a tough battle ahead.

Is this Uganda’s desire for her future?

* Marren Akatsa-Bukachi is the executive director of the Eastern African Sub-Regional Support Initiative for the Advancement of Women (EASSI).
The ‘lost Protocol’ in Uganda: tears, struggles and hope

Solome Nakaweesi-Kimbugwe

Today, as many across the continent celebrate the second anniversary of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, the women’s movement in Uganda is struggling to find the Protocol, says Solome Nakaweesi-Kimbugwe.

Uganda, just like a number of other African states, has to date signed but not yet ratified the Protocol on the Rights of Women in Africa. Signature is a presumption of serious interest but does not guarantee ratification, domestication and implementation. The Protocol in Uganda has been stalled since 2005. It is reported that instruments of ratification had been prepared by the government but ratification ceased to be a priority for the government and the Protocol lost momentum. The Protocol in Uganda appears to have got lost and many do not know where it is or even what the process has been to date.

‘We have not seen this Protocol in Parliament. The Cabinet has also not ratified it. It has got lost somewhere and we do not know where it is.’

Rt. Hon Rebecca Kadaga, deputy speaker of Parliament of the Republic of Uganda, 6 August 2007

With the current realities, the lives of women in Uganda have been redefined by national, regional and international occurrences. For instance, globalisation has impacted on women where increasingly women are getting poorer due to unfair trade, the weaker role of the state, the war on terror, SAPs, PRSPs, etc. In addition, women’s triple roles are being increased due to the global trends such as the commercialisation of food crops and the privatisation of water.

There is also waning political will at the national level, which implies that women’s issues are taking a back seat due to the increasing feeling that women have had it all, but are being ungrateful. Yet today, government is committed to less vigorous roles a far as human rights are concerned. In addition, the rise of militarism is tending to redefine women’s rights and choices, as well as institutionalising violence against women – this is especially so in Northern and Eastern Uganda which has been affected by civil strife, displacement and political instability for last 20 years.

For the human rights and women’s movement in Uganda, the Protocol is important because it gives impetus to national laws and policies like the Domestic Relations Bill (Uganda’s family law that has not been enacted since the 1960s), the law on land ownership, the sexual offences law, domestic violence law and the law on people trafficking. The Protocol is paramount as it will help African states to exercise gender justice.

‘If anything, this Protocol should facilitate African states to pass fairer legislation.’

Stella Mukasa, feminist, AMwA, July 2007
Similarly, a survivor of three conflicts in Uganda laments that:

‘If there was law to be passed or treaty to be ratified, it should prevent soldiers from assaulting women as well as protecting women from local / community instigated forms of violence. How do we even ensure that that law applies to the rebelling forces?’

Loy Adepuit Owani, Soroti District, Eastern Uganda.

The Protocol also provides a legal framework at continental level (standardised) and the monitoring of these at continental level.

‘If we can have the Protocol, it gives us similar standards, frameworks against impunity across Africa.’

Eva Luswata Kawuma, advocate of the High Court of Uganda, 18 October 2007

The Protocol also consolidates and protects the gains so far registered in Uganda such as women’s education, political participation, affirmative action especially in political and governance sector as well as bringing to bear regional expectations for the protection and promotion of women’s rights.

The backdrop: challenges of the Protocol

One of the biggest challenges has been the rise of fundamentalism, the renegotiation of women’s basic rights as well as the waning state commitment to women’s rights. More generally globally, there are fundamentalist forces that are redefining women’s space and positions in the form of economic, religious, political, ethnic and cultural fundamentalism.

In Uganda, this has not been helped by the fundamentalist forces taking the state hostage and rolling back the achievements so far. The most vivid backlash of fundamentalism has been experienced with work on the Protocol in Uganda as well as on work with the family law (the Domestic Relations Bill). The state has been held hostage by strong religious groups especially Christian fundamentalists (the Catholic Church and Pentecostals) who are opposed to certain articles in the Protocol especially Article 14, on health and reproductive rights. In 2005, the Catholic Church came up with a two-page centre spread press release in two of the leading daily newspapers strongly opposing the Protocol, describing it as opening up un-African behaviour and rights especially abortion and the use of contraceptives, which are contrary to the doctrines of Christianity, morality, and African culture. In a similar move, in 2006–07, the Pentecostal Churches also signed nationwide petitions opposing the Protocol. In their contestation, these groups have either openly opposed the whole Protocol or have asked government, if its to ratify, to do so with reservations in certain areas such as Article 14, which has been contested within the women’s movement as seen below.

‘We do not want government to ratify with reservations … this brings about impunity where there may have reservations on many articles … Also the process of removing reservations is very tedious’.

Marren Akatsa-Bukachi, EASSI executive director, interview in the Protocol Video – As Time Ticks, AMwA / SOAWR 2007

There is also waning political will and outright hostility to women’s issues and the notion of ‘we
gave you’, which implies that rights are granted and can be withheld at leisure by the powers that be. Due to the weak political will and half-hearted reforms, gender mainstreaming has been reduced to one sentence, usually appended onto policy statements. Gender distributive policies challenge people’s cherished belief; they are often addressed as technical aspects of programming but no real commitment and action is undertaken.

Most countries shy away from economic and social rights progressively because they have to allocate budgets yet, gender budgeting is still a challenge to many developing countries, Uganda inclusive. While the women’s movement managed to register a lot of achievements in the period 1986-2000, after that period, there has been waning political support to women’s emancipation and increasing fatigue. Besides, the failure to consolidate the gains so far registered as well as become independent, free of patronage from the ruling party’s has affected the leverage and power to negotiate on a number of issues.

The problem of convincing policy makers is that social and economic rights need to be understood in terms of the development and wellbeing of women. This coupled with the increasing complacence and fatigue over women’s rights imply that advocacy on the Protocol is an uphill task.

Many actors (state and non-state) do not understand the Protocol and its provisions, hence, a lot of work has to be done to popularise and raise awareness on the Protocol. For example, on 6 August 2007, Akina Mama wa Afrika (AMwA), as part of SOAWR, commissioned and launched a documentary on the Protocol entitled ‘As Time Ticks’. The current minister of gender, labour and social development, Hon. Syda Bbumba, was interviewed by the press on 7 August 2007 and was reported to have confessed that she was unaware of any such a Protocol. She is reported to have responded:

‘I do not know anything about such a Protocol. I would be telling a lie if I commented about it.’

Hon. Syda Bbumba, interview in August 2007

Yet, it is the same ministry that prepared a cabinet paper to be discussed by cabinet in 2004/2005!

In a similar development, a number of members of the 8th parliament in Uganda indicated that they were not aware whether this particular Protocol was supposed to be ratified by parliament or cabinet and what their role should be! This is an indicator that the Protocol is not known, information is still lacking among policy makers, legislators, and relevant departments, and if it is known, it is not prioritised by government.

The depoliticising of the women’s agenda has also meant that the women’s movement in Uganda has in the last few years tended to address issues that are less controversial and leave out those that redefine women’s total liberation. Issues such as women’s bodily integrity, sexuality and sexual orientation, the private lives of women, gender-based violence, abortion rights, sexual, reproductive health and rights have tended to be left unattended or minimally addressed. Sexual and reproductive rights still remain elusive. There is also increased bureaucracy and reduced activism among human rights stakeholders, which has even led to failure to consolidate past gains. This makes them unable to seriously and consistently engage in the human rights issues such as the Protocol.
THE RIGHTS OF WOMEN IN AFRICA: CHALLENGES AHEAD

In relation to the above, one of the biggest challenges for the Protocol in Uganda has been the inconsistency in the advocacy generally within the women’s movement and mainstream human rights and the fact that many human rights actors regard women’s struggles as not being human rights struggles. In such a situation, advocating the Protocol faces stiff resistance as it pushes women’s rights to address these fundamental rights.

There are also discussions about whose struggle it is, anyway. Issues about social mobilisation, linkages and supporting each other’s work on the Protocol have been very loose and mainly left to the SOAWR Members in Uganda (Akina Mama wa Afrika and Eastern African Support Initiative for the Advancement of Women), both of which are international women’s NGOs. This suggests that most national women’s organisations are not actively engaged with the Protocol advocacy or even do not relate it to their mandates that they are dealing with on a day-to-day basis. As observed by a renowned feminist, ‘Activists identify with an issue as long as there is no struggle’ (Marjorie Mbilinyi, Tanzania).

Work on the Protocol has been an uphill struggle, some of it pitted against the core of patriarchy, which seems an added burden to many in the women’s movement in Uganda who are already battling with a heavy agenda. Major issues for internal debate are: What kind of issues do we address and how far are we willing to go? Aren’t we operating within the same patriarchal framework that redefines what is good for women and what is bad? How far are we willing to address specific rights that have hitherto been labelled no-go areas? Do we take on women in their diversity and orientation or are we still ‘playing safe’? How do we handle the controversy and differences within the movement over the Protocol?

The Protocol’s lack of impact on women’s lives in Uganda

Many should be asking why we need to ratify the Protocol in Uganda, given all the various national initiatives to uplift the status of women. One of the glaring impacts of the lack of ratification of the Protocol is that laws, administrative, social and economic indicators that states are obliged to provide are not in place. Women’s rights in Uganda remain rhetorical, mainly as rights enshrined in the 1995 constitution. This explains why to date there is reluctance to enact laws and set up policies and programmes that operationalise women’s rights such as the family law, laws on GBV, trafficking in people, etc. To date, Uganda has failed to protect women from injustice in their families and communities, in their private spaces as women are still abused in the name of cultural practices that are highly discriminatory and patriarchal.

Uganda will not be in a position to meet its PRSP (Poverty Eradication Action Plan – PEAP) and Millennium Development Goal (MDG) targets. Failure to ratify the Protocol implies that it has no measures to reach those targets. Failure to ratify also impacts on Uganda’s commitments at international level to protect and enforce women’s rights. We are concerned that these will not be met yet women are among the poorest who have very low social indicators.

A number of reviews like the Poverty Eradication Action Plan and African Peer Review Mechanism process indicated that poverty in Uganda is highly structured along gender lines and that specific interventions in terms of the legislation, policy and administrative programmes have to be undertaken to address inherent challenges that impact on women. It is therefore no wonder that irrespective of all these, women are poorer. A number of women’s rights have still not been attained like affected by conflict, poorest, sexual and reproductive rights, MDG 3, Constitutional rights of women as provided for in Chapter 4 of the Ugandan
Constitution, Pillars within the PEAP especially since gender is across cutting issue. And in terms of Uganda’s long term vision and missions of becoming a middle income country, there is also need to address the role of women in as far as attainment of economic independence as well as stimulating economic growth.

Consolidation of gains in as far as women’s rights is questionable with the failure to ratify, domesticate and implement the Protocol. For instance, there are a number of national legislative and policy concerns like: the 1995 constitution, labour laws, criminal law, National Gender Policy, National Action Plan for Women and PEAP. In addition, if we borrow some of the progressive provisions in the Protocol, it gives impetus to national level advocacy for better laws and policies.

Women’s discrimination is varied but it has at times been in the form of the absence and even existence of gender neutral / gender blind retrogressive laws and policies that are premised on patriarchal notions like citizenship rights, definition of adultery and other sexual offences, definition of a family and head of family. Access to justice continues to elude women and the administration of the law and policy has been sighted as a major hindrance to enjoyment of women’s rights. Generally in Uganda, the court system is characterised by patriarchal values upheld by legal practitioners and the institutions, generally giving more privilege to men and disadvantaging women; difficulty in physical access to magistrate courts; inability of the poor, especially women to pay court expenses; and the degree of technicalities involved, including the legal jargon. As noted,

‘Women’s rights continue to be trampled on because the current laws are inadequate’.

Rt. Hon Rebecca Kadaga, deputy speaker of Parliament of the Republic of Uganda,
6 August 2007

Therefore, without the ratification, domestication and implementation of the Protocol, we cannot quote from international and regional instruments in court cases.

The existing laws, policies and programmes in Uganda today have all failed to genuinely promote and protect the rights of women at personal level and in private spaces. This failure has down rolled the achievements made in the public lives as far as human rights are concerned. Statistics of the Uganda Demographic and Health Survey Report of 2006 indicate that, women’s bodies and sexuality is still controlled by men as such impacts on the realisation of many of the fundamental human rights by women.

Its therefore no wonder that statistics indicate that the quality of life of women is reducing and the social indicators are grim: high fertility rates of 6.9 children on average, increase in physical and sexual violence (at least 60 per cent experienced violence by partners or husband and at lest two in five women have been sexually abused by age 15); early marriages (on average at 17.8 years for women aged 20-49, 55 per cent of women aged 22-49 married by 18 years and 74 per cent married by 20 years of age); age of first sexual intercourse at 16.6 years; polygamy at 28 per cent, rape is on the increases and that 51 per cent of women prefer to use injectibles as a preferred method of contraception as it does not require them to negotiate with their partners. The case below justifies this by:

‘I stated from zero level after the death of my husband. My in-laws they took all my things, even my clothing… And when I refused to be inherited by my in-laws,
they lit a broken jerry can and burnt me all over my body.’
Nancy Oluka, widow, Lira District, Northern Uganda

So what next?

As a way of conclusion, there is need to re-strategise and relaunch the campaign as there is need to explore why the process that appeared to be very progressive all of a sudden lost steam and went off the radar of the government’s priorities. This will enable strategising and action on advocacy not only for the Protocol but other process on women’s rights that seem to have stalled to date. In addition, there is need to raise awareness about the Protocol as well as enrol allies and human rights actors to join advocacy.

Lastly, ratifying the Protocol, domestication and implementation is actually what the operationalisation of women’s rights in Africa is about. The task of eliminating gender-based discrimination is beyond the purview of Protocols, law and human rights but not beyond the people who have experienced multiple and intersecting forms of discrimination over long periods of time. We as Africans need to change our communities so that individually and collectively we are all able to enjoy living lives grounded in equality, equity, freedom, dignity, peace, mutual respect, gender justice, non-discrimination and above all respect that African women are equal in rights and dignity.

*Solome Nakaweesi-Kimbugwe is the executive director of Akina Mama wa Afrika (AMwA)*
Kenya’s ping-pong with the Protocol

Anne Amadi

The situation over Kenya’s ratification of the Protocol has become something akin to a game of ping-pong. The position remains unclear and efforts by different interested parties to obtain clarity seem to hit a dead end, writes Anna Amadi.

The African Charter on Human and Peoples’ Rights addresses African concerns, traditions and conditions. It provides for the enjoyment of rights and freedoms on the basis of equality and non-discrimination, the elimination of discrimination against women and the protection of the rights of women and children. The protections offered by the charter are not, however, adequate and in 1995, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (hereinafter the Protocol) was adopted in Maputo by the OAU to supplement the charter.

Kenya is a state party to many human rights treaties and declarations but has not ratified the Protocol. For a long time, the human rights discourse and the implementation of obligations outlined in the various human rights treaties and declarations have not been prioritised by government. The implication of this has been that the human rights discourse has not been popular within government ministries and departments. Further the human rights initiatives have not attracted adequate budgetary allocations within the government. Noteworthy, over the years, the human rights agenda has been a preserve of civil society.

Solidarity for African Women’s Rights (SOAWR) is a regional coalition of women’s and human rights organisations that came together to work for early ratification of the Protocol on the Rights of Women in Africa. SOAWR was formed in 2004, its members alarmed that one year after adoption, only one country (the Comoros) had ratified the Protocol. The group of organisations formed a coalition that would deliberately encourage governments to take swift action in bringing the Protocol into force and ensuring its subsequent domestication. Indeed it was through the efforts of SOAWR that the Protocol came into force in November 2005, just two years after its adoption. So far 22 countries have adopted the Protocol and sadly, Kenya is not one of them.

The Kenyan situation as regards the ratification of the Protocol has become something akin to a game of ping-pong. So far the position of its ratification remains unclear and efforts by different interested parties to obtain clarity on the position seem to hit a dead end. There have been myriad challenges in pushing for the ratification of the Protocol in Kenya. These range from lack of clarity on where and from whom to get information on the ratification status of not just the Protocol, but other international and regional human rights conventions as well. Communication channels remain unclear and undefined. There is also a general lack of awareness and education on human rights and hence no candid discussions on the implications, advantages and disadvantages of ratification of given human rights instruments. These challenges have hampered appropriate consultations on the Protocol with relevant players.
In May 2007 during the 41st session of the African Commission on Human and Peoples’ Rights held in Accra, Ghana, the Kenya government reported that it had ratified the Protocol. The exact words of the Minister for Justice and Constitutional Affairs, Honourable Martha Karua were ‘I can confidently say that the instrument will be deposited by the end of June.’ Up to mid-October 2007, nothing has come of the minister’s pronouncement. There is no evidence that there has been any follow up of the minister’s declaration and clearly there was no commitment behind it: an empty promise, yet again.

The Attorney General’s office indeed confirms that the Protocol was debated and received cabinet approval for its ratification and so the AG’s job has been done. The approval, however, is said to be subject to reservations particularly regarding the thorny issue of women’s reproductive health rights. (The Protocol explicitly sets forth the reproductive right of women to medical abortion when pregnancy results from rape or incest or when the continuation of pregnancy endangers the health or life of the mother).

The office of the secretary of cabinet and head of civil service also confirms that there was a cabinet approval and that this was communicated the foreign affairs ministry way back in May 2006 and the latter was expected to prepare and deposit the instrument for ratification. It is frustrating that the legal office in the ministry has been giving contradictory information, with claims that the approval was communicated but got ‘lost’, yet other sources claim no such approval has been received. The gender ministry that should take the lead in the matter appears to be in darkness over the whole issue!

In 2005 the Kenya government constituted an Advisory/Consultative Committee on International Human Rights Obligations, with the function of advising the government on measures necessary to comply with its international human right obligations. The committee works with stakeholders including relevant ministries, government departments, public bodies and civil society among others to coordinate the collection, documentation and updating of relevant information in order for the government to meet and implement its obligations under the regional and international human rights instruments to which Kenya is a state party. FIDA Kenya, which is a member of SOAWR, sits on this committee, and this offers an opportunity for SOAWR to keep pushing for the ratification of the Protocol. However, the committee only plays an advisory role, and cannot, for example, demand accountability from a government department when it fails to perform its duties.

So far, simply put, the committee is in a quagmire. Clearly it needs to continue seeking an audience with the various personalities within the government charged with the responsibility of following up on ratification. It would also be useful to build the capacity of stakeholders on the processes and usefulness of not only ratifying but also domesticating the Protocol. Women’s and human rights organisations must make use of all opportunities that present themselves in different forums to make the case for early ratification of the Protocol. Regular and sustained strategy meetings amongst coalition partners need to be held to keep the agenda alive, with a vibrant communication strategy that ensures all interested parties are on the same wavelength. Media should be an integral campaign partner so that the activities around advocating for the ratification of the Protocol are well covered for the attention of the concerned government bodies.

* Mrs Anne Amadi is deputy executive director of FIDA Kenya
Ratification of the Protocol in Sudan is crucial for ending violence and discrimination

Manal Abdelhalim

As the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa emphasises women in conflict, women refugees, displaced, women under severe poverty and harmful practices, its ratification is crucial for Sudanese women, reflects Manal Abdelhalim.

An equal opportunity for education

While Article 12 of the Protocol requires all states to ‘eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training’ educational opportunities for women and girls are very limited in Sudan. The rate of enrolment ranges between 86 per cent in Khartoum state and between 21 per cent and 30 per cent in other states, particularly Darfur state. Dropout rates amongst girls in primary school are high. The curriculum is gender biased and does not consider cultural diversity; it perpetrates stereotyping roles of women. The illiteracy rate amongst women is also very high.

Female genital mutilation (FGM)

Sudan is among 28 African countries which widely practises female circumcision/FGM. The most severe form of female circumcision, infibulations, was prohibited by penal code from 1946 (during colonial era) until 1983. The offence was punishable by imprisonment of maximum five years and / or a fine. The law was initially enacted under British colonial rule and was ratified again in 1957 and 1974; this provision was apparently repealed with the promulgation of the 1983 penal code, which included no provision on infibulations. The 1991 penal code also contains no provisions explicitly prohibiting female circumcision.

In 1981, a national workshop was held on female circumcision [1] issues and firm strategies were agreed. The major achievement of the 1981 conference was the establishment of the Sudanese National Committee for the Eradication of Female Circumcision (SNCEFC); it was established by decree of the minister of the interior and social welfare in 1984. The committee was eventually replaced by Eradication of Traditional Harmful Practices Affecting the Health of Women and Children (ETHP). However, the state has taken backward steps from its commitment Information on female circumcision it was meant to be added to the curriculum at primary school level (8th class), and secondary school (1st and 2nd class). But the idea was widely resisted by General Assembly members, so the textbook was withdrawn in 1999, and then reintroduced in 2000.
FGM: the wrong end of the rope

In May 2002, a large conference was held by the Women’s College of Omdurman Islamic University and sponsored by the ministry of guidance and endowment. It was attended by physicians, scientists, religious leaders and NGO representatives. The main outcome of the conference was an official change of attitude towards ‘legalisations’ of FGM as part of ‘Islamic practice’ and it was concluded that ‘the state [has] to encourage such a recommendation’.

Civil society and women’s organisations and some human rights organisations have to reorganise themselves to reshape an effective advocacy plan and to lobby the government bodies responsible for initiating laws. The Protocol articles on harmful traditional practices can be used as strong instruments in their advocacy plan.

Political participation

Women’s participation in politics is minimal and limited. Up to date the rate of women ministers at federal levels is only 6.8 per cent compared to the male rate at states level, which stands at 8.6 per cent.[2] The rate of women in parliament is 19.7 per cent and until 2003 the participation of women in the higher ranks of public service in different government bodies did not exceed 11 per cent. The number of women in senior civil service posts in Khartoum was 343 out of a total of 1,642 posts. In the states, the number is 3,241 posts out of 10,448 posts. There were only 67 female judges in Sudan, two ambassadors and 17 diplomats. In the public sector, women’s participation is 35 per cent and in the private sector it is 10 per cent in the state of Khartoum. Although women participate by 80 per cent in agricultural operations, their calculated contribution to the national economy is only 26 per cent. This is as well as and despite the effort they exert in performing household duties, which are not considered as work [3].

The signing of the Comprehensive Peace Agreement (CPA), development partnership agreement (DPA) and economic partnership agreement (EPA) are providing a solid base for women to lobby the states parties for the effective representation and participation of women at all levels of decision making. The rights bottleneck for Sudanese women is access to justice and the law. The promotion of women’s legal rights is affected by the lack of legal awareness, inaccessibility and unavailability of legal services for women. Legislation is drenched in technical language to the point that it excludes laypersons from understanding and exercising their rights. Furthermore, prevalence of discriminatory laws and acts restricts women, cripples their status and restricts their freedom and mobility.[4] Examples of these laws include the Labour Law, Nationality Law, Criminal Act, the Public Orders Law, land ownership, Personal Status Law and customary laws, amongst others.

According to the Nationality Act, Sudanese women who have children born to a non-Sudanese father have no right to claim Sudanese nationality for their children.[5] The Public Orders Law for Khartoum state (1996) raised controversial debates about its articles that control the freedom and mobility of women. Each state has its own law and there are no great differences in their contents. Article 7 forbids mixed dance and does not allow women to dance in front of men. Article 9 specifies one door and ten seats allocated for women on public transport. Article 16 sets the age at which a woman may manage her own hairdressing shop at 35 years of age. Article 18 prohibits men from practising tailor work for women unless they have obtained approval from local authorities. Although Sharia law should only apply to Muslim citizens,
women belonging to other religions have to adopt an Islamic dress code. This includes the requirement for women to cover their heads with veils and prosecutions for those found brewing alcohol. Women are often convicted and their business merchandise confiscated.

**Women in conflict: ending all forms of sexual violence**

Sudan has been tested by long civil wars and conflicts, so women’s situations have had to change to cope with the conflict situation. They are the most affected by armed conflicts; they always end up shouldering the burden of loss of family members, displacement, fragmentation, identity crisis, insecurity and end up heading households. Also, their access to food, shelter, resources, markets and income becomes increasingly limited. Sudanese women’s efforts to contribute to the Sudan peace talks and negotiations have been largely sidelined. The prevailing situation (atrocities committed against women and girls) resulted from the latest conflict in Darfur and has created a wide spectrum of issues; yet, women are not powerless or victims to their circumstance. On the contrary, they are heads of households and community keepers; they struggle to keep their families, communities and their identity intact and overcome any armed struggle.

It is a great opportunity and high time for Sudanese women to take the privileges and opportunities created by the existence of a new peace settlement by the AU and the UN, particularly in Darfur, to advocate for the Protocol’s ratification.

**More orientation is needed**

Since the adoption of the Protocol in 2003, there have been few efforts to diffuse the Protocol’s content and lobby for its ratification. An initial orientation session was held by the Mutawinat women’s group following the adoption of the Protocol. Its objective was to alert the civil society groups in Sudan to the existence of the Protocol as well as reveal the government’s attitudes towards the Protocol.

Zienab Abbas (a Sudanese women’s rights activist who participated in stages of the negotiations that the Protocol has passed). According to Mrs Zienab:

- the Protocol exhausted extensive consultations, discussions and brainstorming, before its formulation so this is why the Protocol is considered as a comprehensive human rights document for African women … Unlike CEDAW the Protocol emphasised harmful practices and for the first time FGM is to be singled out as one of the most harmful practices in Africa. One of the most important areas of the Protocol is its consideration of women during war and conflicts, women refugees, displaced women, women living under severe poverty.

Mrs Aisha Abuelgasim (Ministry of Social Planning advisor) revealed the preliminary official reactions to the Protocol; the government tends to make some reservations on the following articles:

- Article 20-(b) (a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children). The reason for the reservation is that the item contradicts with personal status matters law, 1991.
• Article 7-(a) (Separation, divorce or annulment of a marriage shall…).
• Article 14 (State parties shall ensure that the right to health of women including sexual and reproductive health is respected and promoted…)
• Article no. 6 (State parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage.)

According to Aisha the government did not submit a detailed justifications for such reservations but in general the reason given is that these items either contradict with the prevailing laws or with Shari’a principles.

One step forward

SOAWR has played a major role in pushing the ratification issue in Sudan during the January 2006 summit. In collaboration with the Strategic Initiative for Women in the Horn of Africa (SIHA) and several Sudanese organisations, SOAWR hosted a well-attended symposium on the Protocol, addressing the Protocol’s various articles from an Islamic perspective. As an immediate outcome of the meeting, Sudan was red-carded, with the minister of health receiving the card for President Bashir. Sudanese organisations also circulated a petition calling on the government to deposit its instrument of ratification. SIHA also became a member of SOAWR and committed to expanding the campaign’s reach to its members in Djibouti, Eritrea, Ethiopia, Somalia, Somaliland and the Sudan. More recently, SIHA has participated in a joint SOAWR/Oxfam GB workshop to review the governance and transparency funding bid. As a result a country strategy (2008-12) has been developed as one step towards advocating for ratification and making the Protocol widely popular in the Sudan. The main aim of the strategic plan is to take advantage of the new political and supportive atmosphere of the first general election, by 2008, following the signing of the CPA, and to secure ratification by 2009.

* Manal Abdelhalim is programme director of the Strategic Initiative for Women in the Horn of Africa (SIHA)

Notes
1 The conference was supported by WHO and the Ministry of Health.
5 Granting of Sudanese nationality is based on conditions stated by the Article No. 4 (A person shall be considered as Sudanese by birth under the following conditions (a) if he obtained Sudanese nationality by birth (b) first shall have been born in Sudan or his father was born in Sudan, second shall be at the time of the coming into force of this act a resident in Sudan and he was or his parental descendants were resident in Sudan since first day of January 1956).
South Africa’s reservations and the Protocol

Delphine Serumaga

Given the consideration that the South African state gives to human rights, an outsider would assume that all South Africans would enjoy fundamental human rights and that South Africa would be a model to follow, writes Delphine Serumaga.

South Africa signed, ratified, and deposited the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Protocol) by 14 January 2005. The commitment is with reservations on Article 4, specifically referring to the protection of pregnant women from execution until their child is born, a provision that exists in South African law. This commitment adds to numerous agreements, protocols, and legislation for the protection of human rights in South Africa. The policy framework labyrinth that exists within South Africa can be perceived as laudable. Looking from the outside, one would assume that with numerous considerations for human rights by the state, the social environment is ideal for the enjoyment of at least one’s fundamental human rights, making South Africa’s response to human rights a model to follow.

In fact, within the SADC region, on occasion, civil society organisations look at the South African framework and advocacy approaches for law reform as possible best practices to adopt. The general view of South Africa’s role on the continent is that this nation can play a significant role as an arbitrator or a peace negotiator. Thus implying, to an extent, that the national situation is well cared for and managed.

It is true that South Africa has a good and comprehensive constitution, well-planned legislative framework and impressive record of regional and international commitments. Since the state participates greatly on a wide scale in human rights discourse and commits to the protection of human rights in various arenas such as the United Nations Security Council and the DRC peace agreements, one must look closer to see if what looks good on paper or on record is a true reflection of the internal state of affairs.

From a women’s rights organisation perspective, it is clear that despite the expansive human rights acknowledgements the state makes, women’s rights remain wanting. Women and the girl child remain marginalised with regards to access to basic human rights such as justice, safety and security, housing and health. All these are social aspects that impact on a woman’s vulnerability to violence, a core matter of the Protocol.

The state’s commitments and engagements in human rights promotion are widely acknowledged therefore, the inevitable questions are: Why sign another protocol? What internal value does the Protocol bring to the people? Is the state and the civil society taking full advantage of the Protocol that they have ratified?

The Protocol has limited popularity as a human rights instrument in South Africa; currently there are only eight civil society organisations that have observer status in South Africa. Out
of the eight organisations, only two actively participate in the deliberations of the African Commission. One could safely deduce that the Protocol is not widely engaged with at the civil society level and possibly within the judicial system at this juncture.

The articulation and domestication of the Protocol has not been fully realised as with other regional and international policies due to civil society and the judicial system only working with a 13-year-old progressive legislation and judicial framework that has been and is still in development, since the birth of the new dispensation. Reference to the provisions of the Protocol in court judgements is not commonplace, advocacy campaigns focusing on the benefits of the Protocol by both government or civil society are non-existent, and rights education does not include reference to the African Protocol at this stage. The irony, therefore, is that government could hold civil society accountable for not engaging with a tool they have provided in order to actively pursue the rights for their target groups.

The responsibility for drawing down the relevant aspects of the African Protocol to local levels is twofold. The state should make budgetary considerations for the domestication of the Protocol. Equally important and should ensure that the judicial framework is aware of the commitments and state responsibilities that exist within the Protocol. The second aspect of promoting the Protocol is the responsibility of civil society. Mobilisation through joint ventures of interest groups to campaign and advocate for the accountability of government is an untapped priority. The current climate civil society is operating under is the provision of community-strengthening initiatives that include rights education based on the South African constitution and legislation responding to the reduction of poverty and vulnerability to violence.

At the continental level, civil society should take responsibility for promoting a collective African human rights response to the violations that are rampant in countries such as Sudan and the DRC as a parallel process to South Africa’s role in the deliberations. This would promote the utilisation of the Protocol in substantive ways.

South African civil society has to critically challenge itself on the current levels of engagement and lack of mobilisation in national and regional arenas. We rightfully cite lack of sufficient funding or human capacity to participate fully. However, the true irony is that South African civil society’s failure to effectively engage with the Protocol highlights that the state has played its role in setting up the arena for the fight for human rights and we can be accused of letting ourselves down in our fight for human rights.

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