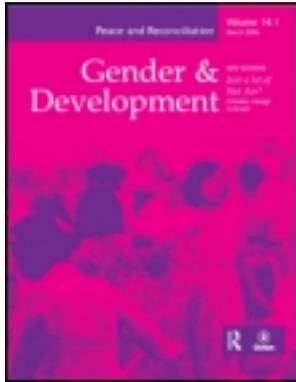


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# The African Women's Protocol: a new dimension for women's rights in Africa

Rose Gaway and Rosemary Semafumu Mukasa

*This article discusses the development and agreement of the African Women's Protocol, adopted by African Heads of State in 2003. The authors consider the experience of Oxfam GB in supporting the development and ratification of the Protocol. They make particular reference to the southern African countries of Mozambique, South Africa, and Zambia.*

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (known as 'The African Women's Protocol') was adopted by African Heads of State in July 2003, at the Maputo Summit of the African Union, held in Mozambique. The Protocol is significant in three ways. It reinforces the status of women's rights that have been established and elaborated in other international and regional instruments. But it is also the first instrument in international law explicitly to enshrine women's sexual and reproductive rights to medical abortion when pregnancy results from rape or incest, or when the continuation of pregnancy endangers the health of a mother. It is the first instrument in international law to call for the legal prohibition of female genital mutilation. And it is the first instrument of its kind developed by Africans, for Africans.

This article discusses the experience of Oxfam GB (hereafter referred to as 'Oxfam')

in supporting the development and ratification of the African Women's Protocol. Oxfam sees the Protocol as a tool for integrating gender-equality perspectives within its own programmes in the region, and as a means of influencing policy at national and local levels. Oxfam is part of a 19-member coalition of organisations in Africa, working to popularise the notion of the African Women's Protocol and lobby for its ratification and use by all African countries. The coalition has engaged in a number of activities, including launching a text-message campaign, attending African Union summits for lobbying purposes, and producing publications to raise awareness of the Protocol and the issues that it aims to address. Although it is not easy to assess the impact of these activities accurately, the coalition considers that its activities have contributed significantly to increasing the number of countries that have ratified the Protocol.

Oxfam's membership of the coalition forms part of the organisation's Pan African

Programme (PAPP), which is an advocacy initiative that aims to amplify African voices on issues affecting the continent. The programme focuses on three broad themes: governance, trade, and capacity building. Oxfam regards the PAPP as complementary to its work with grassroots communities. In its southern Africa programme, Oxfam works with partner organisations in six countries. The programme focuses, in particular, on supporting the livelihoods of women and men in poverty, and on helping them to find ways to reduce the impact of HIV/AIDS on their households and communities. Experience of working with women in poverty demonstrates clearly the need for laws and policies which are non-discriminatory and which support women to realise their full rights and entitlements as citizens. Oxfam believes that its PAPP activities complement the organisation's other advocacy activities, directed at international and Northern targets. In this way, it seeks to create a truly global call for change.

### **Research on the African Women's Protocol and its significance for women's rights**

The July 2004 Heads of State Summit Declaration on gender equality noted with concern the many obstacles faced by African women which prevent them exercising and enjoying their full human rights. The obstacles include conflict, poverty, and the impact of the HIV/AIDS pandemic. Women are subject to gender-based violence, including harmful traditional practices. Women continue to be numbered disproportionately among illiterate people in almost all African countries, a fact which reflects girls' limited access to education. Women also continue to be largely excluded from formal political participation, and they participate on an unequal basis in other decision-making processes in society.

The African Women's Protocol has 32 articles, covering social, cultural, economic, legal, and political concerns. It commits countries that sign and ratify it to adopt all measures necessary for women to be able to enjoy their human rights, including the provision of resources to make this possible. So far, 38 out of the 53 member states have signed the Protocol. Of these, eleven countries had ratified the Protocol at the time of writing.<sup>1</sup> The July 2004 Heads of State Summit Declaration urged States to sign and ratify the Protocol by the end of 2004, and to support the launching of public campaigns to ensure its entry into force by 2005. However, the Women's Protocol cannot come into force until 15 member states have ratified it. The need to ratify the Women's Protocol was reiterated at the second session of the Pan African Parliament in Midrand, South Africa, in September 2004).

Oxfam conducted research between November 2004 and May 2005 on the implications that the African Women's Protocol would have for women in the southern Africa region. The purpose of the policy research was to inform policy makers and implementers about the Protocol and its role in supporting gender equality and women's rights. The policy makers and implementers whom we were targeting included parliamentarians in the national and Pan African parliaments, officials of the African Union, and government officials. The research also aimed to raise public awareness of the Protocol's implications for women in Africa, and to strengthen the ongoing campaigns run by other organisations in connection with the Women's Protocol.

Oxfam's research focused on Mozambique, South Africa, and Zambia. It included a comparative analysis of the Protocol and other international and regional laws and policies. It examined women's ability to assert their right to freedom from violence, and to sexual and reproductive rights, and women's role in governance.<sup>2</sup> Key findings are discussed below.

***Comparing the Protocol with other laws and policies***

The African Women's Protocol builds on prior legal agreements, aiming to promote and protect women's rights in a number of significant ways. It supports women confronting problems that were not addressed in either CEDAW (the 1979 Convention on All Forms of Discrimination Against Women), or the African Charter on Human and People's Rights. These problems include violence against women, HIV/AIDS, and denial of women's health and reproductive rights. The Protocol also widens the definition of crimes against humanity to include rape, sexual slavery, and other forms of sexual violence. It is clear that the Protocol is an advanced tool for protecting the rights of women in particularly vulnerable situations – for example, widows, older women, and pregnant and nursing mothers.

The African Women's Protocol differs from previous legal agreements in another sense: it is home-grown, developed by Africans for Africans. In some parts of Africa, women activists have considered CEDAW's effectiveness to be weakened by its perception as a legal instrument of Western women. On the other hand, the Protocol avoids the problems of the African Charter on Human and People's Rights, which in the opinion of many African women activists was excessively positive in its endorsement of African tradition, values, and customs. Because of this, it failed to acknowledge that some of these customs and traditions discriminate against – and harm – women.

The African Women's Protocol outlaws traditions such as female genital mutilation (FGM), widow inheritance, and child marriages. Furthermore, it does not stop at outlawing negative cultural practices, but goes on (in Article 17) to assert the right of African women to live in a 'positive cultural context' and their right to 'enhanced participation in the determination of cultural

policies'. This article provides African women with a legal tool which can address one of their biggest challenges: the co-existence of customary and religious laws – which often discriminate against women – and civil law. Customary and religious laws often govern personal and family affairs, and often prevail over civil law and constitutional guarantees. This has been a major problem in implementing both CEDAW and the Beijing Platform for Action.

Another advantage of the African Women's Protocol is that it is legally binding. In this respect it differs from the Beijing Declaration and its associated Platform for Action, and from the Southern African Development Community (SADC) Gender Declaration and its Addendum on the Prevention and Eradication of Violence against Women and Children (1997). The Protocol reinforces CEDAW on a number of subjects, such as the trafficking of women, and the need to address inequalities in marriage with respect to decision making, inheritance of property, and parental rights. By calling for equal representation in decision making and political life, it further reinforces CEDAW, and improves on the 30 per cent target for women's representation that was set by the Beijing process and the SADC Declaration.

Women and NGOs can also make use of the rights enshrined in the Protocol to submit individual or group complaints to the African Commission on Human and People's Rights and to the African Court on Human and People's Rights (when the latter becomes operational – it is still unclear when this will be<sup>3</sup>). It therefore potentially provides for remedies to women whose rights have been violated. However, except in rare cases, individuals and other non-State actors do not have direct access to these mechanisms. Direct access is limited to cases where international instruments, once ratified, automatically become part of the country's national law.

Overall, the African Women's Protocol can strengthen the legal and policy

framework of countries, and can help to promote action to protect the rights of women. It can help to bridge the gap between law and policy on the one hand, and practice and reality on the other. It can act as a shield against retrograde action which threatens women's rights, protecting the gains made by women in legal, political, economic, and social spheres.

## **Countries' responses to the Protocol**

The research report considers in particular the implications of the Protocol for women in Mozambique, South Africa, and Zambia. It focuses on ways of enabling women to participate equally in governance, to resist and survive violence, and to monitor government spending through 'gender budgeting'; it also focuses on ways of involving men in work to support equal rights for women.

### ***Political participation***

Article 9 of the African Women's Protocol requires States that sign and ratify it to take specific positive action to promote the equal participation of women in governance and the political life of their countries. This affirmative action is intended to ensure that national legislation and other measures promote and support women's equal participation in elections, electoral processes, and the development and implementation of State policies and programmes.

Article 9 also requires States to increase the representation and participation of women at all levels of decision making, and ensure that this representation and participation are effective. The African Union has responded to the call for equal participation in decision making by appointing commissioners and elected women to high-level posts, such as the presidency of the Pan African Parliament. This sends out a positive signal to women.

The Protocol could be used to strengthen the regulatory framework for the participation of women in decision making, through legislation quotas and other affirmative-action measures. In South Africa, great strides have been made in the representation of women in decision making and political life, thanks to the 30 per cent quota currently applied as a voluntary measure by the African National Congress. However, such measures need to be formally incorporated into institutional policy and practice in order to ensure that they are sustained. Currently, they depend on the goodwill of the ruling party. Formal incorporation could also result in improvements in the practices of other political parties.

In Zambia, NGOs have proposed the introduction of quotas in their recommendations to the country's Constitutional Review Commission, in a bid to enhance the participation of women in politics. The Protocol could provide leverage for these efforts. In both South Africa and Zambia, the African Women's Protocol could also be used to spur much-needed progress in areas of governance such as local government, public service, the judiciary, the armed forces, and the private sector. The African Women's Protocol could also be used in advocacy work aiming to persuade institutions to put policies on equal participation into practice.

### ***Violence against women***

Article 4 of the African Women's Protocol commits States to enact and enforce laws to prohibit all forms of violence against women, whether it takes place in public or in private. States are obliged to adopt all appropriate measures to ensure the prevention and eradication of violence against women, and to punish perpetrators. The Protocol also commits governments to provide adequate budgets and other resources for the implementation and monitoring of these measures. This latter

provision will be especially useful to women's rights activists in light of the fact that in all three countries resource constraints have been identified as a major challenge. In South Africa, the reference to budgetary resources has been widely praised. Article 4 also tackles the issue of the trafficking of women: a pervasive problem in the region, which none of the three countries has adequately addressed. The African Women's Protocol will support calls for more research, stronger legislation, appropriate policy, and more effective action in this area.

Article 5 prohibits and condemns all forms of harmful practices which negatively affect the human rights of women and are contrary to international standards. Women are still subject to harmful traditional practices in all three countries. To take the example of South Africa: the Constitution protects women from violence and harm and protects their rights to life, dignity, and health. However, no detailed policies exist on specific harmful practices such as female genital mutilation (FGM), virginity testing, 'dry sex' (the drying out of the vagina using chemical substances prior to sex, which increases vulnerability to injury during intercourse, and hence to sexually transmitted diseases), abduction or forced marriage, *ukungena* (taking over a widow by a male relative of the husband, without her consent), or burning and victimising women who have been branded 'witches'.

However, in dealing with harmful traditional practices, it will be important to define and build a consensus on what constitutes such practices. There are some practices in some areas on which there is no clear consensus, including *lobola* (bride-price), virginity testing, and some initiation rites. More research needs to be done on the impact of practices such as these, and a consensus must be built to define the circumstances under which some traditional practices become harmful, and how women can be protected.

### ***Health and reproductive rights***

Article 14 of the African Women's Protocol calls on States to ensure that women's right to health, including sexual and reproductive health, is respected and promoted. It provides women with the right to protection against sexually transmitted infections, including HIV/AIDS. It also authorises medical abortion in cases of sexual assault, rape, and incest, and where the continued pregnancy endangers the mental or physical health or life of the mother or foetus.

In South Africa, the Constitution provides women with unconditional rights to the termination of pregnancy. The Protocol therefore actually limits South African women's abortion rights. In contrast, in Zambia the Protocol is an advance on national legislation. Zambian women seeking medical abortion currently need a panel of three doctors to agree that the mother's health is threatened. If the mother's health is not threatened, Zambian law does not provide for termination, even in cases of rape, sexual assault, or incest.

Given the high prevalence of HIV/AIDS in the southern African region, the provisions of the Protocol on protection for women against HIV infection could help to improve the dire situation of women, since activists could adopt a rights-based argument, rather than the current welfare-focused arguments, in campaigning for more effective action. In all three countries, the emphasis on needs in rural areas in the Protocol's call for adequate, affordable, and accessible health services could help to bridge the wide disparity between services available to urban and rural women.

The focus on political participation, alongside other areas of concern, including reproductive and sexual health, confirms that the African Women's Protocol understands the link between the increased participation of women in decision making and socially responsible outcomes. Improved control over their fertility would free women

to pursue more productive and fulfilling lives and would ensure healthier, more prosperous families. By addressing violence against women and harmful traditional practices that disempower them, the African Women's Protocol will help to improve living standards for both men and women.

### *Levels of awareness of the Protocol*

Our research suggests that, on the whole, the level of public awareness about the African Women's Protocol is woefully low. Unfortunately, it was lowest among people working in the media, and community organisations. These are two groups who are crucial to its implementation. Most community organisations had never heard of the Protocol, and media coverage of the African Women's Protocol has been negligible. In South Africa, the ratification of the Protocol did not even make the news. The researchers did not find any reports about the ratification in newspapers or on TV or radio. There was no fanfare or public announcement. It was a missed opportunity for promoting public awareness about the Protocol.

In our view, the level of awareness was highest among individuals (government officials, members of parliament, and NGO workers) who have actually been involved in the promotion, adoption, and ratification of the Protocol. South Africans were more aware than Zambians: South Africa has already ratified the Protocol, and Zambia has not. In Zambia, where debate has been more limited, officials interviewed were largely ignorant of the Protocol and its content. Only a limited number of NGOs seemed sufficiently familiar with the African Women's Protocol to be able to use it to advance women's rights. With regard to Mozambique, the fact that the Protocol was adopted in Maputo did not seem to have had any significant effect on the levels of awareness among the general population. As in the other countries, very few people beyond those who had actually been directly involved in work on the Protocol knew

anything about it. Promoting awareness about the Protocol must remain high on the agenda if it is to be an effective instrument of change.

## **Harnessing the force of the Protocol**

The report identifies challenges but also focuses on case studies of good practice. These discuss ways of raising public awareness of the existence and use of international agreements; ways of creating a legal, policy, and institutional framework which enables women to realise their rights; and cases where international legal agreements have been used by women. A number of challenges must be faced in the process of harnessing the potential force of the African Women's Protocol. They include making good the gaps and weaknesses in the African Women's Protocol itself.

In common with most international human-rights instruments, the Protocol contains no sanctions for non-compliance. For monitoring, the African Women's Protocol relies on States to include a section on its implementation in their periodic reports on the implementation of the Charter. Yet these reports have not hitherto been very forthcoming. Given the poor record of compliance of States in fulfilling this obligation, advocates of women's rights will have to pressurise governments simultaneously on two fronts: first, with respect to the preparation of the report on implementation of the Charter, and second with regard to ensuring that it contains a meaningful report on the Protocol. It will be helpful for them to draw on CEDAW's experience of reporting processes, and devise measures such as NGO shadow reports and indicators to help to overcome weaknesses.

As regards implementation, there will be a need for a clear definition of the relationship between the Court and the

Commission, and the resolution of uncertainties with respect to competence. It is not yet clear how the merger of the Court on Human and People's Rights and the Court of Justice of the African Union will affect its capacity to promote and protect human rights. Countries will have to make a declaration accepting the competence of the Court to receive individual complaints before their citizens can enjoy this protection. In addition, unless adequate resources are provided, the Court will share the problems that the Commission experienced in its early years.

A key challenge is the absence of a culture that encourages the use of international human-rights instruments to realise all categories of human rights, including women's rights. The weakening of the women's movement in Africa in the past decade, and the weakness of key partnerships and alliances, are other hurdles that women must overcome. Lack of political will to address gender issues, and the weakness of policies and procedures intended to realise gender equality – in terms of power, resources, and skills – are some of the other challenges with which we must grapple. Other problems include the strength of patriarchy, tradition, culture, and religion; the co-existence of multiple legal systems; and the public/private dichotomy, which restricts women to the private sphere. Finally, there are threats in the wider political and economic context in which African women live their lives. These range from the diversion of resources to fund the international fight against terrorism, the implementation of economic policies which limit government spending on social services, and the rise in religious and cultural fundamentalisms. All these could roll back the gains made by women over the years.

#### ***Using the research to inform action***

The report that came out of the research recommends the development of national/regional plans or strategies which link

actors, actions, and targets. The plans should include the following key elements:

- identification of champions (individuals) and key drivers (institutions) to lead the way;
- development of holistic national/regional plans or strategies tailored to each country's/region's circumstances;
- development of tools for dissemination;
- support for activities to popularise the Protocol and ensure its ratification, domestication, and implementation;
- capacity building and efforts to strengthen vital or strategic organisations;
- meetings of key stakeholders, convened at national and regional levels to jump-start this process.

As we complete the research, we feel that a number of areas merit further research. They include the following.

- The implications of Article 17, on the right to participate in the determination of cultural policy. How best could this right be used to change women's lives? How does it relate to upholding women's rights in a context of cultural practices such as *lobola* (bride price), virginity testing, and initiation ceremonies? How does it relate to issues of sexuality?
- The situation with regard to the trafficking of women in southern Africa.
- The state of the women's movement in Africa in the twenty-first century, and the question of how it can be strengthened. In our view, this should include studies on the link between the growing numbers of women in public office and the status of women in general.

Since the research was undertaken, Oxfam has participated in a range of activities in relation to advocacy for women's rights

and the African Women's Protocol in the southern African region.

#### **Activities linked to World AIDS Day and the 16 days of activism**

On 30 November 2004, at its offices in Pretoria, to mark the occasion of World AIDS Day and its intersection with the 16 Days of Activism Against Violence Against Women, Oxfam facilitated a Public Dialogue on the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. The focus of the event was on Sexual and Reproductive Health and HIV/AIDS, within the framework of the Women's Protocol.

#### **Consultative workshops**

Three consultative workshops were held to disseminate the findings of the policy research mentioned above to a range of actors, including academicians, parliamentarians, government officials, the African Union's Special Reporter on Women, the media, civil-society organisations, and Oxfam staff. The aim was to identify strategies for ratification, awareness raising, and domestic use of the Women's Protocol. The workshops included two national workshops, held in South Africa and Mozambique. There was an internal Oxfam workshop to develop the regional strategy and identify potential allies for popularising the Women's Protocol.

#### **Regional strategy on the Africa Women's Protocol**

Oxfam developed a regional strategy on the Protocol at a regional consultative workshop held in April 2005. The regional workshop aimed to disseminate the findings of the policy research to Oxfam country staff, and to identify elements that different sectors could incorporate into their programmes to further women's rights.

A draft regional strategy on the Protocol emerged, informed by the experiences of Oxfam staff and partner organisations of working with several institutions within the

African Union; by our policy research on the Women's Protocol; and by some internal consultations with staff. The strategy lists activities that Oxfam will undertake at regional and country levels. We see the strategy as important not only in its own right, as a contribution to gender equality, but as an element in work to realise the Millennium Development Goals (MDGs) in Southern Africa.

#### **Collaboration with the Pan African Parliament**

In 2004 March, Oxfam's Pan Africa Policy Adviser and the Regional Gender Adviser for Oxfam in Southern Africa attended a launch of the Pan African Parliament in Addis Ababa. Since then, a coalition on African Women's Rights has been formed to raise public awareness and campaign for the ratification of the AU Women's Protocol across Africa. The coalition is composed of 19 organisations. Oxfam staff also attended the strategy workshop of the Gender, Family, Youth, and People with Disabilities Committee of the Pan African Parliament in April 2005. A draft strategy from this workshop is to be tabled in the fourth session of the Pan African Parliament, due in November 2005. The draft strategy identifies a number of areas which need attention if women's rights are to be realised.<sup>4</sup> As a way forward, the Oxfam GB Southern Africa region is to collaborate with the Gender, Family, Youth, and People with Disability Committee of the Pan African Parliament, sharing its experience with regard to HIV/AIDS.

In conclusion, our advocacy activities linked to the African Women's Protocol suggest to us that it is a potential force for positive change, despite its imperfections. The Protocol legitimises the struggles for gender equality and the promotion and protection of women's rights as an African struggle. If properly harnessed, it can serve as an effective tool to be used by African women, to support their empowerment.

This is an issue of fundamental human rights. In addition, empowering African women, who make up more than half of the continent's population, will have a positive multiplier effect, which will eventually produce happier, healthier, wealthier, and more harmonious families and societies.

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## Notes

- 1 These are Comoros, Libya, Rwanda, Namibia, Djibouti, Cape Verde, Mali, Lesotho, Nigeria, South Africa, Senegal, and Malawi.
- 2 The methods used in the research were a literature review, interviews, and questionnaires. Key interviewees included officials of national governments and regional intergovernment organisations, parliamentarians and members of the Pan African Parliament, academics, and representatives of civil society and community-based organisations. A four-person team conducted the research. It included a lead researcher (Rosemary Semafumu Mukasa) and one national researcher per country.
- 3 The court's operationalisation has been delayed by a decision to merge it with the African Court of Justice. At the summit in Sirte, the Assembly of Heads of State decided that, pending consideration of a legal instrument to establish the merged court (which will be considered in the next session), all necessary measures for the functioning of the Human Rights Court (such as the election of judges, the determination of budgets, and the operationalisation of the registry) should proceed. No agreement was reached on the seat of the Court. If agreement is not reached between Tanzania and Mauritius, the two contenders, a vote will be taken next session.
- 4 These include fundraising; research; resource mobilisation; the development of a popular campaigning movement in Africa on HIV/AIDS, prostate cancer, and maternal mortality; monitoring of individual countries' adoption and implementation of human-rights instruments; the strengthening of women's voices in decision making; and the promotion, ratification, in-country adoption, and implementation of the Africa Women's Protocol.