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NO PEACE
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*Pour un consensus politique et religieux sur l'abandon
des Mutilations Génitales Féminines*

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THE PROTOCOL ON THE RIGHTS OF WOMEN IN AFRICA TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

(THE MAPUTO PROTOCOL)

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The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted on the 11th day of July 2003 by Heads of State and Government of the African Union (AU) during the Second Ordinary Summit of the AU convened in Maputo, Mozambique-hence the name the Maputo Protocol². Fifteen ratifications are required for the Protocol to enter into force.

The adoption of the Protocol was pushed by widespread sentiments that African women continued to suffer human rights violations simply because they were women and the existing guarantees for the protection of their rights were felt to be inadequate. The adoption of the Protocol was therefore a landmark step in enhancing the promotion and protection of women's human rights on the continent through providing a comprehensive legal framework for holding African governments accountable for their violation.

In this light, the Protocol is in line with *Article 2* of the Universal Declaration of Human Rights (UDHR) which proclaims that

"everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind such as race, colour, sex...or other status"

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² As of May 2004, only Comoros had ratified the Protocol. 28 other African countries have signed the document, namely Algeria, Benin, Burkina Faso, Burundi, Cote d'Ivoire, Congo, Djibouti, Democratic Republic of Congo, Gambia, Ghana, Guinea, Kenya, Libya, Lesotho, Liberia, Madagascar, Mali, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Senegal, Sierra Leone, Tanzania, Togo, Uganda & Zimbabwe

Though the African Charter does impose obligations on States parties to eliminate discrimination against women and to ensure the protection of internationally recognized women's human rights, the Protocol provides a more comprehensive framework and specific guarantees for their protection.

The Protocol recognizes and guarantees a wide spectrum of women's civil and political rights as well as economic social and cultural rights. It thus reaffirms the universality, indivisibility and interdependency of all internationally recognized human rights of women. The most important of these rights include:

- i) The right to life
- ii) right to integrity and security of the person
- iii) Protection from harmful traditional practices
- iv) Prohibition against discrimination
- v) The protection of women in armed conflict
- vi) The right to respect as a person and to the full development of a woman's personality
- vii) Prohibition of exploitation or degradation
- viii) Access to justice and equal protection before the law
- ix) Right to participation in the political and decision making process
- x) The right to health and reproductive rights of women
- xi) The right to food security
- xii) The right to adequate housing

Summary of Guarantees under the Protocol

The Protocol has a preamble and 32 articles and is aimed to give greater attention to the human rights of women in Africa. It aspires to promote the principles of equality, peace, freedom, dignity, justice, solidarity and democracy. The Protocol defines what constitutes discrimination and violence against women and proceeds to outline measures which states parties are required to take in both the public and private spheres to put to an end such practices

The Protocol thus requires states to adopt legislative, institutional and other measures to eliminate all forms of discrimination against women. States parties must therefore integrate a gender perspective in their policy decisions, legislation, development plans and activities. States are also called upon to play a proactive role in order to eliminate harmful cultural, traditional and other practices based on the idea of the inferiority or superiority of either of the sexes, or on stereotyped roles for men and women.

The Protocol calls for the adoption and implementation of measures to:

- Prohibit exploitation or Degradation of Women
- Protect women from all forms of violence whether sexual or verbal, and whether in public or private
- Generally to prevent, punish and eradicate violence against women
- Eradicate elements and stereotypes in traditional and cultural beliefs, which legitimize and exacerbate violence against women
- Prevent and condemn trafficking in women while prosecuting the perpetrators of such acts
- Prohibit medical or scientific experiments on women without their informed consent

On the subject of Female Genital Mutilation, the Protocol specifically requires States to prohibit and condemn practices such as **“female genital mutilation, scarification, medicalisation and**

para-medicalisation of female genital mutilation”³. These practices are deemed to negatively affect the human rights of women and are contrary to internationally accepted standards.

The Protocol further requires that States take measures to ensure that women and men enjoy equal rights and are regarded as equal partners in marriage⁴. Marriages that take place without the free and full consent of both parties are outlawed while the minimum age of marriage for women is set at 18 years of age. The Protocol therefore encourages monogamy as the preferred form of marriage.

The Protocol also requires states parties to respect and ensure respect for the rules of international humanitarian law applicable in situations of armed conflict which particularly affect women⁵. It lays added emphasis on the protection of women seeking asylum, refugees, returnees and internally persons against all forms of violence. Further, it stipulates that rape and other forms of sexual exploitation are war crimes and crimes against humanity and therefore suspected perpetrators ought to be brought to justice before a competent criminal jurisdiction. The Protocol then urges states parties to ensure that no girls especially children under the age of 18 years take part in hostilities.

States parties are also required to:

- guarantee equal opportunity and access to women in the sphere of education and training
- eliminate all stereotypes in text books, syllabuses and the media
- protect women, especially the girl child from all forms of abuse
- provide for sanctions against suspected perpetrators of such practices
- provide access to counseling and rehabilitation services to women who suffer abuses and sexual harassment
- integrate gender sensitization and human rights education at all levels of the education curricula
- promote literacy among women

The Protocol contains a huge array for protection of economic, social and cultural rights⁶ of women the most important of which is the guarantee to women of the freedom to choose their occupation and all their human rights as recognized by international conventions. States are therefore required to create conditions to promote and support the occupations and activities of women and further to punish and prohibit all forms of exploitation of children, especially the girl child. In a nutshell, the Protocol calls on States to take proactive measures to recognize the economic value of the work of women in the home.

The Protocol obligates States to respect and promote the health⁷ of women especially in the area of sexual and reproductive health by *inter alia*:

- the right to control their fertility
- the right to decide whether to have children, the number of children to have and the spacing of the children
- the right to choose any method of contraception

³ Article 5 b), Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa

⁴ See Article 6 of the Protocol as regards the full provisions on marriage

⁵ Article 11

⁶ Article 13

⁷ Article 14

- the right to protection against sexually transmitted infections including HIV/AIDS
- the right to be informed of one's health status and of that of the partner
- the right to have family planning education

One of the most important innovations of the Protocol is the requirement that states extend protection to widows by ensuring they are not subjected to inhuman, humiliating or degrading treatment⁸. This provision further requires that a widow should automatically become the guardian and custodian of her children after the death of her husband unless this is contrary to the interest and the welfare of the children. It guarantees the right of a widow to remarry and in such event, to marry a person of her choice. The widow should also have the right to an equitable share in the inheritance of the property of her husband. There is a further requirement that states parties ensure that men and women enjoy the right to inherit in equitable shares, their parents' properties⁹.

Lastly, the Protocol makes special provision for the protection of elderly women regarding their physical, economic and social needs and especially to ensure their right to freedom from violence¹⁰. States must also ensure the protection of women with disabilities and adopt measures to facilitate their access to employment, professional and vocational training¹¹.

Implementation Mechanism

Article 26 calls on States to ensure the implementation of the Protocol at national level through the submission of periodic reports in accordance with *Article 62* of the African Charter on Human and Peoples' Rights. They must indicate the legislative and other measures undertaken for the full realization of the rights enumerated in the Protocol. The African Court on Human and Peoples' Rights is the judicial body tasked with matters of interpretation arising from the application and implementation of the Protocol.

Since the African Court is not yet functional-the requisite ratifications for establishment of the Court having been achieved just a short while ago- the African Commission, established under Article 30 of the African Charter- is for the time being seized with matters of interpretation.

The function of the African Commission is to promote and ensure the protection of human rights on the continent. Its four areas of mandate are:

- a) promotional activities
- b) protective activities including complaints
- c) the examination of the reports of State parties
- d) the interpretation of the African Charter

The African Commission with its seat in Banjul, the Gambia, holds its regular sessions twice a year, in April and November. It is composed of 11 members elected by the AU Assembly of heads of State and Government from a list of persons nominated by states parties to the African Charter, who serve part time in their personal capacity as opposed to being representatives of their countries.

⁸ Article 20

⁹ Article 21

¹⁰ Article 22

¹¹ Article 23

Once the African Court¹² is functional, it will have the power to entertain cases challenging violations of human rights including civil and political rights and economic, social and cultural rights guaranteed under the African Charter. The Court will consist of 11 Judges who must be nationals of member states to the AU.

The integration of the Protocol into the African Charter will ensure that women whose rights have been violated under the Protocol will have a final recourse to the African Commission and the African Court for the vindication of these rights. Furthermore, individuals other than the victims themselves and human rights NGOs may bring a complaint on behalf of victims. This is of crucial importance because of the political, economic, social and cultural factors that often restrict access by women to information and to practical opportunities to claim their rights.

Conclusions and Recommendations

The Adoption of the Protocol on the Rights of Women in Africa is a significant development which should serve to ensure the full integration of women's human rights concerns in the regional human rights framework. It helps to fill major lacunae in the regional human rights system which until now, is yet to develop a comprehensive framework for the promotion and protection of women's human rights.

The Protocol will allow both the African Commission and the African Court to elaborate how the rights recognized under it should be guaranteed in real life situations. The Protocol will allow these institutions to develop a fuller jurisprudence and provide a platform for the articulation of international legal principles regarding women's human rights at the regional level. It will also provide direction and precedents for domestic courts and other international institutions such as UN treaty bodies.

Most importantly, the Protocol offers a real remedy for women at the regional level when remedies for violation are exhausted at national level. This will give women victims of human rights violations an alternative forum where remedies for violation are not available at national level. But this potential will only be fulfilled if States parties ensure they meet the needs of women's human rights in practice and further work to implement the commitments they have made.

From the foregoing, African Governments are called upon to:

- i) Publicly condemn all violations of women's human rights
- ii) Investigate all allegations of violations of women's human rights by State and non State actors
- iii) Ratify the Protocol on the Rights of Women in Africa and the Protocol establishing the African Court without any reservations
- iv) Ensure full implementation of the Maputo Protocol by reviewing all national laws, policies and practices to conform to the Protocol
- v) Review and amend criminal laws and procedures to eliminate discrimination against women

¹² The Protocol establishing the African Court on Human and Peoples' Rights was adopted by the OAU Assembly of Heads of State and Government in 1998. The Protocol establishing the Court has entered into force and the election of Judges of the Court was held at the Third Ordinary Summit of the AU Assembly of Heads of State and Government held in Addis Ababa, Ethiopia in July 2004

- vi) Ratify all other regional and international human rights instruments essential for the effective protection of women's human rights in Africa
- vii) Upon ratification of the Protocol, proceed to formulate national plans of action to tackle violence against women
- viii) Take measures to report the implementation of their obligations under the Protocol

In conclusion, I wish to remark that the fact that the Protocol on the Rights of Women in Africa has been adopted, it should not be assumed that its entry into force once the 15 ratifications are reached will turn Africa into a bed of roses as far as violation of women's rights is concerned.

Numerous violations against women continue unabated primarily because of their gender. The most prevalent of these remain Female Genital Mutilation, forced marriage, discrimination, domestic violence, sexual exploitation and rape. These abuses are compounded by women's social and economic inequality. The challenge is therefore for African governments and other stakeholders to translate the fine statements in the Protocol into reality at the national level.