

THE SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN IN AFRICA (SRRWA) 2007-2015

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Abstract

The purpose of this article is to examine the progress recorded so far by this mechanism focusing on the period from 2007-2015. It focuses on the relevance and importance of the office of the SRRWA as a special mechanism of the African Commission. Since the SRRWA is a Commissioner of the African Commission, focus will be placed on some remarkable achievements made by the Commission relating to women's rights during the stated period. Where necessary, the role of the Special Rapporteur will be highlighted and suggestions for the way forward provided.

Keywords: *Special Rapporteur on the Rights of Women in Africa; African Commission; women's rights.*

Introduction

The Special Rapporteur on the Rights of Women in African (SRRWA) is one of the oldest special mechanisms of the African Commission on Human and Peoples' Rights. The office was created in 1998 with the objective of ensuring the promotion and protection of women's rights in the African region (African Commission, 1998). The need for the creation of this mechanism was to address the pervasive human rights violations experienced by African women. At the time of its establishment, the principal human rights instrument in Africa -the African Charter on Human and Peoples' Rights 1981 (African Charter) - contained only one provision specifically referring to women (Article 18(3)). Deep-rooted cultural practices coupled with the patriarchal nature of the African societies tended to relegate women's rights to the background. Indeed, women were treated as second class citizens and confined to the roles of child-bearers (Eboh, 1998). The developments at the international level during the 1990s, such as the International Human Rights Conference in Vienna (Vienna Declaration, 1993) and the drafting of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) (African Women's Protocol), provided the needed impetus for more commitment to women's rights in the region. Since its establishment, the SRRWA has been very instrumental in advancing women's rights in the region.

The purpose of this article is to examine the progress recorded so far by this mechanism focusing on the period from 2007-2015. It focuses on the relevance and importance of the office of the SRRWA as a special mechanism of the African Commission. Since the SRRWA is a Commissioner of the African Commission, focus will be placed on some

remarkable achievements made by the Commission relating to women's rights during the stated period. Where necessary, the role of the Special Rapporteur will be highlighted and suggestions for the way forward provided.

Brief history of the SRRWA

The Commission is empowered to create subsidiary mechanisms such as special rapporteurs, committees, and working groups. Usually, the Commission determines the mandate and terms of reference of each subsidiary mechanism. Since the appointment by the Commission of a Special Rapporteur on Prison, Condition of Detention and Policing in Africa as its first mandate holder in 1996, there now exist 15 of such special mechanisms. While the African Charter does not specifically empower the African Commission to appoint a Special Rapporteur or establish any special mechanism, the provision of article 45 has often been relied on to justify this approach of the Commission. Specifically, article 45 (2) has been interpreted broadly to confer on the Commission the power to establish any special mechanism, including the appointment of a Special Rapporteur to assist in the promotion and protection of women's rights in the region.

The position of the SRRWA was established during the 23rd Ordinary Session of the Commission, which took place from 20-29 April, 1998 in Banjul, The Gambia. During its 25th Ordinary Session in Burundi, the Commission appointed Commissioner Julienne Ondziel Gnelenga of the Republic of Congo as the first SRRWA (African Commission, 1999). By virtue of the resolution, the mandate of the SRRWA includes among others serving as the focal person on women's rights in Africa, assisting governments to implement appropriate policies on women's rights, ensuring ratification and domestication of the African Charter and the Maputo Protocol, embarking on promotional visits and liaising with states and civil society groups as well as other stakeholders on issues relating to women's rights.

The SRRWA is expected to participate in activities and meetings with international, regional and national organizations on issues bordering on the rights of women in Africa. Commissioner Gnelenga was later succeeded by Commissioner Angelo Melo from Mozambique during the 30th Ordinary Session of the African Commission on 27 October 2001 in Banjul, The Gambia. Her appointment coincided with the drafting stage of the African Women's Protocol. She later played a key role in the drafting and the eventual adoption of this important instrument in 2003 during the African Union Assembly meeting in Maputo. In 2007, the Commission appointed Commissioner Soyata Maiga, a Malian jurist, to take over as the SRRWA (African Commission 2007). Commissioner Melo is today fondly remembered for her role in midwifing the African Women's Protocol into reality. Her tenure will also be remembered for being instrumental in the process that facilitated entry into force of the African Women's Protocol just two years after its adoption. The Protocol came into force on 25 November 2005, when Togo became the 15th country to ratify as required by law.

Commissioner Maiga's tenure as the third SRRWA lasted from 2007-2015. Her tenure as the SRRWA witnessed remarkable development in the promotion and protection of women's rights. In assessing the tenure of Commissioner Maiga, attention is given to issues such as development of norms and standards on women's rights, engaging with states to promote women's rights, advocacy and awareness activities and embarking on research/study on women's rights.

Developing norms and standards on women's rights

At the time Commissioner Maiga assumed duty as the SRRWA, the foundation had already been laid for her to build on as regards advancing women's rights in the region. The African Women's Protocol, one of the most radical human rights instruments for women, had come into force and gathering momentum. However, daunting challenges remained as women continued to face a myriad of human rights violations in the region including high rates of violence, high maternal mortality rates and incidence of harmful cultural practices. In response to these challenges, the SRRWA was in the forefront of developing important norms and standards on women's rights at the regional level to ensure states' commitments to realising women's rights. The SRRWA was able to this through championing the adoption of resolutions and general comments.

Resolutions

In 2008, the African Commission adopted two important resolutions addressing the lack of access to life-saving medications in the context of HIV and the need for African governments to adopt a rights-based approach to maternal mortality. While these resolutions cannot be traced directly to the Special Rapporteur on Women, there is no doubt that she played a crucial role in their adoption. The first on access to medicines in Africa in the context of HIV came at the time many Africans, particularly women, were dying due to lack of access to life-saving medicines and infecting their unborn children with the virus (African Commission, 2008). During this period, the costs of antiretroviral drugs were beyond the reach of many Africans and efforts to ensure access were jeopardized by pharmaceutical companies who enjoyed patent rights on these drugs. Most of these companies have their headquarters in developed countries. It was therefore a critical time in Africa as millions of people, mainly women and children were dying every year due to inability to afford life-saving medications (African Commission, 2008). Thus, the resolution by the Commission was timely as it emphasized the need for African governments to live up to their obligations to realise the right to health of Africans as guaranteed under the African Charter.

The second resolution on maternal mortality was as important as the first (African Commission Resolution on Maternal Mortality, 2008). At this time, it was estimated that Africa accounted for more than half of the total number of women dying during childbirth worldwide. Indeed, the odds of a woman dying during pregnancy in Africa were put at 1-31 compared to 1-4300 in developed countries (WHO *et al.*, 2014). Beyond the scientific reasons for death during childbirth, other factors such as the low status of women and socio-cultural reasons played a crucial role in aggravating

maternal death in Africa. The Commission declared maternal mortality as a state of emergency in Africa and called on African governments to double their efforts in addressing this serious challenge to the continent (Durojaye, 2010). It further observed that maternal mortality constitutes a violation of women's rights as guaranteed in the African Charter and other human rights instruments.

Also, the Special Rapporteur in conjunction with the Committee on the Protection of the Rights of Persons Living with HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV (HIV Committee) was involved in the drafting and adoption of some important resolutions aimed at responding to the human rights violations perpetrated against vulnerable and marginalised groups in the region. For instance, in response to the recent gross human rights violations arising from forced sterilisation of HIV positive women in some parts of Africa, the SRRWA together with the HIV Committee facilitated the adoption of a resolution declaring forced sterilisation of HIV positive women a human rights violation (African Commission, 2013). The resolution notes that forced sterilisation undermines the rights to dignity, liberty, health and non-discrimination of HIV positive women and therefore calls on states to ensure that sterilisation is only carried out on HIV positive women with their full, free and informed consent (African Commission, 2013, para 3). Also, the SRRWA championed the adoption of resolution 283 on the situation of women in armed conflict in Africa (African Commission, 2014). The resolution unequivocally condemns acts of sexual violence against women during conflict, declaring them as gross violations of African women's fundamental rights and freedoms. It further calls on African governments to urgently address the situation by providing support to victims and adopt appropriate 'legislative, administrative, social and other measures to prevent and eradicate all forms of violence against women and children in conflict situations' (African Commission 2014, para 1). This resolution is important in the sense that it addresses an issue that is of great concern to the region. Experience has shown that women have often been made subject of sexual abuse during conflict.

General Comments

In 2012, the Special Rapporteur in conjunction with another mechanism of the African Commission- the HIV Committee- was instrumental in the drafting and adoption of the first General Comment of the African Commission on article 14 (1) (d) and (e) of the African Women's Protocol (African Commission General Comment, 2012). Article 14 (1) (d) protects a woman's rights to self-protection and to be protected from HIV, while 14 (1) (e) protects a woman's rights to know her HIV status and that of her partner. This provision is the first in any human rights instruments specifically protecting women's rights in the context of HIV. However, the provision does not clearly outline the specific measures African governments must take to protect women from HIV infections and ensure that they know their status and that of their partners. Thus, the General Comment seeks to fill this gap by outlining the steps and measures African governments should take in order to ensure the realisation of the provision of article 14 (1) (d) and (e). The Commission explains that states have the overall obligation to

create an enabling, supportive, legal and social environment that empowers women to be in a position to fully and freely realise their right to self-protection and to be protected (African Commission General Comment, 2012, paras 10-11). According to the Commission, this requires ensuring access to sexual and reproductive health information and services that will meet the special needs of adolescent (African Commission General Comment, 2012). The Commission notes that the right to self-protection and the right to be protected are intrinsically linked to other women's rights such as equality, non-discrimination, dignity, life and the right to be free from all forms of violence. The General Comment obligates African governments to respect, protect and fulfil women's rights in the context of HIV. The Commission enjoins states to create enabling legal and policy framework, including a 'supportive, legal and social environment that allows women to control their sexual and reproductive choices in order to prevent HIV transmission' (African Commission General Comment, 2012, para 33).

Also, with support from civil society groups, the SRRWA was actively involved in the drafting and adoption of the second General Comment on Article 14 (1) (a), (b), (c) and (f) and Article 14 (2) (a) and (c) of the African Women's Protocol (African Commission General Comment No. 2, 2014; Ngwena *et al*, 2015). In this General Comment, the Commission explained that the general obligations of states to protect under article 14 requires states to take positive steps to ensure that third parties do not interfere with 'the rights of vulnerable groups such as adolescent girls, women living with disabilities, women living with HIV and women in situations of conflict' (General Comment No. 2, 2014, para 43). The Commission further enjoins states to take appropriate measures towards eliminating stigmatization and discrimination in relation to sexual and reproductive health (General Comment No. 2, 2014, para 44). The General Comment further emphasizes the need for states to ensure that women in need of abortion are assured affordable and accessible services in line with the African Women's Protocol. This General Comment became necessary due to the inaction and complacency of many African governments to address the perennial problem of deaths associated with unsafe abortion in the region. It is estimated that unsafe abortion constitutes 13% of all maternal deaths worldwide, most of which occur in Africa (Grimes *et al*, 2006). Some of the deaths arising from unsafe abortion could have been avoided had women and girls assured access to services.

Before stepping down, the SRRWA commenced work on the drafting of two important general comments on women's rights. The first relates to equal sharing of property between husband and wife upon divorce or separation under article 7 (d) of the Protocol. The second is a joint General Comment with the Committee of Experts on the Rights and Welfare of the Child on early/child marriage. Early/child marriage remains one of the harmful cultural practices undermining the human rights of girls in the region. Articles 2 and 5 of the African Women's Protocol enjoin states to take all necessary measures to eliminate discriminatory practices against women in the region and to adopt measures, including legislative as well as education and awareness

programmes to address harmful cultural practices that may undermine women's human rights. More importantly, article 6 of the Protocol prohibits the marriage of a child under 18 in Africa.

Guidelines

Furthermore, the SRRWA was instrumental in the development of Guidelines on States Reporting under the African Women's Protocol (African Commission, 2009). These Guidelines highlight what should form the content of the initial and periodic reports of states on the measures they have taken with regard to the provisions of the African Women's Protocol. This is a significant development in strengthening the protection of women's rights in Africa. It is not enough for states to ratify human rights instruments they must also demonstrate their willingness to fulfill their obligations contained therein. Thus, the guidelines will assist states in preparing their reports under the African Women's Protocol thereby strengthening the accountability mechanism of the African Commission as regards women's rights in the region. Since the adoption of the Guidelines, about five African countries (Nigeria, Malawi, Burkina Faso, South Africa and Namibia) have submitted their state reports to the Commission in line with the provisions of article 26 of the African Women's Protocol.

Engaging with policy makers and states to advance women's rights

As part of her mandate in engaging with state parties to promote and protect women's rights in the region, the SRRWA embarked on important promotional visits to countries where she engaged with policy makers and civil society organizations on various issues relating to women's rights. Some of her visits have been to conflict-affected countries where cases of sexual violence against women are rife. For instance, from 1 to 9 April 2011 the SRRWA was involved in a joint human rights promotion mission to Kinshasa, DRC (Special Rapporteur Activity Report 2011). The DRC remains a scar on the conscience of the region with regard to gross abuse and violation of women's rights during conflict. One of the objectives of the said mission was, among others, to exchange ideas with the highest authorities of the land, the Women's Organizations and the UN agencies involved in gender programmes and issues; to assess the progress made in the protection of women in the DRC and to identify the shortcomings of the current laws, policies and strategies. In the light of what was derived from the meetings with the various stakeholders, some important recommendations that will further enhance the protection of women's rights were made to all relevant stakeholders in the country.

During her many promotional visits to states, the SRRWA had raised concerns with governments on issues such as violence against women, impact of harmful cultural practices on the enjoyment of sexual and reproductive rights of the girl-child, lack of political will to address gender inequality, lack of awareness programme on discriminatory practices against women and slow progress towards ratification of the African Women's Protocol (Special Rapporteur Activity Report, 2009, 2011, 2015). These visits coupled with her persistent advocacy about the importance of the African Women's Protocol and human rights violations facing women across the region may

have triggered some of the positive developments at the national level. This can be seen in the number of ratifications of the Protocol by the end of Commissioner Maiga's tenure, which increased to 37 countries compared to just 17 when she took over as the SRRWA. Also, some African countries have embarked on legal and policy reforms on women's rights from 2007-2015. While these positive developments may not be entirely credited to the Special Rapporteur's work, there is no doubt that her doggedness and unrelenting efforts at advancing women's rights contributed in no small way to some of the changes in the region.

Advocacy and awareness programme on women's rights

During her tenure, the Special Rapporteur initiated a number of important workshops and conferences on women's rights in Africa. These meetings were aimed at drawing the attention of states and other stakeholders to the human rights challenges facing women in the region. They also provided avenues for discussing strategies and measures that should be adopted to address these challenges. For instance, she was instrumental in organising the first regional conference on 'The Role of the African Commission in the Promotion and Protection of the Rights of Women in Africa' held in July 2010 in Bamako, Mali. The conference brought together over 85 participants from 18 West and North African countries representing States Parties, national human rights institutions, national and regional women's NGOs, and UN human rights agencies (Special Rapporteur Activity Report, 2012). The SRRWA used the opportunity to call on African governments to ratify the African Women's Protocol and ensure its full implementation at the national level. Several other workshops have followed addressing the gender dimension of HIV and the impact of cultural practices on the enjoyment of sexual and reproductive rights of women and girls in the region (Special Rapporteur Activity Report, 2014).

Apart from being involved in organising workshops and seminars on women's rights in the region, she also participated in numerous conferences and meetings within and outside of the region. One of such important meetings is on maternal mortality and human rights organised by some civil society groups, Human Rights Watch, Center for Reproductive Rights and International Initiative for Maternal Mortality. The meeting was held in Geneva in June 2009, where the SRRWA made a presentation on the role of the African Commission in addressing this issue (African Commission 2009). The outcome of that meeting eventually informed the adoption by the Human Rights Council of a resolution on Maternal Mortality as a human rights challenge (African Commission 2009). This was coming a year after the African Commission had taken the lead on a similar issue. At every opportunity that comes her way, she has made it a point of duty to popularise the African Women's Protocol and highlight human rights violations experienced by African women in the region.

Relevance of studies/reports to advancing women's rights

The SRRWA is also involved in conducting studies relating to women's rights in the region. On 28 August 2009, the SRRWA finalized a regional Study on the Sex-specific

discriminatory provisions and gaps in terms of gender equality in the national legislation of member states of the Economic Community of West African States (ECOWAS) (Special Rapporteur Activity Report, 2009, para 39). The objective of the study is to enable the Gender Centre to formulate appropriate recommendations for the Member States and for ECOWAS. Also, it aims at ensuring the need to draw up a strategy of advocacy for the benefit of the political decision makers, the parliamentarians and the opinion leaders in order to promote the integration of the regional and international legal instruments which impact the status of women in national legislation and to accelerate their effective implementation. Equally, the SRRWA is currently involved in an important study to examine the socio-cultural and human rights issues relating to early/child marriage in Africa. It is hoped that this study will document nature and extent of human rights violations arising from early/child marriage in Africa. .

Despite the achievements of the SRRWA, there is no gainsaying the fact that more efforts are required in advancing women's rights in Africa. The norms and standards developed by the Commission through the efforts of the Special Rapporteur need to be made more accessible and known to vulnerable and marginalized women, especially in rural areas across Africa. As the Special Rapporteur would herself admit, some of the challenges to the realisation of women's rights in the region include 'high rates of women living in poverty, illiteracy amongst women, lack of awareness of their rights, persistent socio-cultural and religious burdens that legitimise certain forms of violence, discrimination and marginalisation of women and girls in their families and communities, as well as in the public sphere' (Interview with Special Rapporteur, 2013).

More importantly, there is a need to engage with policy makers and other stakeholders at the national level to ensure the effective implementation of the standards and norms on women developed by the African Commission. Currently, there is a paucity of evidence to show that African governments are putting into effective use the various resolutions and general comments of the Commission relating to women's rights. While progress has been made in terms of the number of African governments that have ratified the Protocol, much more can be done. There is no reason universal ratification of the Protocol should not take place soon given the importance of this instrument. Moreover, African governments should take seriously the implementation of the African Women's Protocol by submitting their reports in line with article 26 of the Protocol. As noted earlier about five out of 37 countries have so far complied with this provision. National human rights institutions need to be more active in educating the women and other stakeholders about the Protocol and how it can be put into use at the national level.

Conclusion

The period 2007-2015 can be regarded as an important era in the advancement of women's rights in Africa. During this period, a number of important norms and

standards were developed at the regional level to promote and protect the human rights of women in Africa. More importantly, there were renewed commitments on the parts of African governments to advance women's fundamental rights and freedoms. Commissioner Soyata Maiga played a key role in this development. Her visibility, networking skills and charm contributed to the huge support she received from states, civil society groups and other stakeholders as the SRRWA. Though her path was strewn with thorns and thistle, yet with intrepidity and fortitude she managed to wade through and finish the race gallantly. Her tenure will always be remembered for not only drawing attention to the pervasive human rights violations women encounter in the region, but also for pricking the conscience of African governments to act on these violations.

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