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# What is Right with Africa: The Promise of the Protocol on Women's Rights in Africa

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# **WHAT IS RIGHT WITH AFRICA: THE PROMISE OF THE PROTOCOL ON WOMEN'S RIGHTS IN AFRICA**

L. AMEDE OBIORA\* & CRYSTAL WHALEN\*\*

## **1. THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES'**

**RIGHTS ON WOMEN'S RIGHTS IN AFRICA**, otherwise known as the Maputo Protocol, is

widely celebrated as the most progressive international treaty on women's rights. The

protocol, which exemplifies an Africa-focused and driven framework for comprehensive human

rights clearly demonstrates Africa's capacity to self-determine, innovate, and lead. Deferring to

commentators who may prefer to chronicle a litany of shortfalls that thwart the effectiveness of

the protocol, we opt to commemorate the fifth anniversary of the instrument's entry into force as

an august opportunity to illuminate how it is emblematic of what is right with Africa. We posit

that objective conditions which enabled the emergence and growing embrace of the protocol

augur well to steadily, even if slowly, engender the necessary resources, processes, and

institutions to substantiate the logic, mechanics, and impact of deploying African solutions for

African problems. Reflecting on the genesis, opportunities, and challenges of the protocol, we

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analyze the generative gains of demonstrating what is right with Africa in the pursuit of gender justice.

## **II. RENNAISSANCE**

2010 marks the jubilee of 1960 – the so-called “Decade of Africa,” the year that 17 African countries attained independence from colonial subjugation. The euphoria that attended independence was soon eclipsed by a deluge of structural and cultural violence that left the continent hemorrhaging for decades and precipitated a development industry beholden to afro-pessimism. Within this context, Africa was manipulated as the quintessential laboratory for crusading experiments that privileged so-called experts to champion and arbitrarily test prescriptions across the gamut. Increasingly, the steep learning curves of Africa’s harsh realities have proven fertile ground to incubate the fundamentals and invigorate Africa’s self-renewal. Seasoned observers celebrate this present time as Africa’s moment. Resounding narratives about Africa’s emerging competitiveness in the global economy and commendations of the underlying conditions for the transition temper conventional afro-pessimistic perspectives and discourses. World-class analysts, including the McKinsey Global Institute and the Boston Consulting Group spotlight patterns, sources, and strong prospects about Africa’s widespread awakening and growth acceleration. After discounting for lagging individual countries, the dominant sentiment

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is that Africa – with 20 percent of the world's land and 15 percent of its population—recorded at least 4.9 percent in annual GDP growth and continued to outperform global indexes in the recent economic down-turn. Objective evidence of deepening economic growth and macroeconomic reforms, improved governance and correlative rule of law, and positive social indicators stimulate productivity and validate many African countries as attractive destinations for global capital.

Consensus on the critical role of women for Africa's revitalization is not lacking. Abiding features of the contemporary epoch which enabled the incubation of innovations such as the protocol further point to the end of the interregnum and foreground an auspicious environment to systematically orchestrate a renaissance sensitive to gender equity as a catalyst to optimize Africa's control of the full expanse of its resource potential and augment demographic dividends. For African women, there is no time like the present, especially owing to the proliferation of data and intelligence that continue to underscore their invaluable contributions and vindicate the multiplier intergenerational benefits of gender empowerment as the linchpin to galvanize growth that counts at the ground-level. Notwithstanding that women have been in the frontline of, and are often the hardest hit by, perennial struggles over resources, they are invariably credited with saving the day by shouldering Herculean burdens to spell the difference in the lives of their families.

### III. RATIFICATION

More than five years after the Maputo Protocol came into force, over twenty-nine out of the fifty-four countries in the African Union have ratified it.<sup>1</sup> While this pace is not slow in comparison with ratification precedents and trends across the globe, key stakeholders are anxious to expedite the process to attain universal ratification and implementation. The significance of universal ratification is without question, although modest assessments of footprints attributable to the protocol among member countries demonstrate the limits of universality, independent of forceful implementation. The noteworthy lesson is that there is need to balance campaigning for ratification with a corresponding focus on impactful strategies for domestication and implementation. Ratification is just a start, albeit an indispensable first step.

In principle, governments are quick to simulate or approximate political will and endorse progressive platforms for gender inclusion. However, the principle is not often matched by meaningful action to transform gender realities on the ground. Sovereign African states imbued with responsibility for implementing, monitoring, and evaluating the protocol relegate the obligation to national gender machineries which are notoriously constrained and marginalized in the body politic. In the past few years, several ratifying states have taken significant steps to

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<sup>1</sup>. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa online: African Commission on Human and Peoples' Rights <<http://www.achpr.org/instruments/women-protocol/ratification/>>

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domesticate the protocol by introducing an array of laws to locally substantiate it, even though some legislation has engendered considerable controversy as subtexts for regressive agendas. By the same token, considerable effort has been devoted to securing the enshrinement of salient provisions into national constitutions. However, assumptions about the effectiveness of some form of incorporation into the constitution are not necessarily consistent with the experiences of countries where gender equality is a constitutional principle. In the final analysis, the lackluster impact of gender equity guarantees even when they are embedded in the supremacy of the constitution speaks volumes of the political economy for meaningful transformation.

The protocol's popular support and *home-grown* provenance has not inoculated it against ritualized banalities that culminate in the politics of ratification. Historical resistance to imperialism which fuelled popular aversions to other-defined agendas reinforced the appetite for the mystification and cooptation of culture, broadly construed to encompass religion, as a shield against human rights. Nonetheless, the adoption of the protocol right from the start by some states like Libya with predominantly Moslem populations suggests that concerns about the putative incompatibility with religious tenets is less of an insurmountable handicap than the lack of political will, which coincides with the inclination to politicize or pander to religious fundamentalism. Indeed, some of the countries that have invoked religious strictures to justify their reluctance to endorse the protocol have ratified both the *Convention for the Elimination of*

*all forms of Discrimination Against Women (CEDAW)*<sup>2</sup> and its Optional Protocol, undeterred by the threat of intrusiveness that inhere in the fact that the Optional Protocol is the first gender-specific international complaints mechanism.<sup>3</sup>

The profile of non-ratifying states, most of which are embroiled in or transitioning from some conflict or upheaval, is telling of some degree of correlation between elected government or relative accountability and political will to guarantee women's human rights. However, a performance audit that idealizes democracy fails to explain the deplorable scores of Mauritius and Botswana which rank among Africa's oldest and stable democracies. While Mauritius signed the Maputo Protocol in 2005, it has not ratified it to date.<sup>4</sup> More curiously, Botswana, which is a stable democracy and flourishing economy neither signed nor ratified the protocol.<sup>5</sup> This despite several innovations for which the protocol is celebrated, including its status as the first international human rights treaty to explicitly address and incorporate a tool to fight HIV/AIDS, the incidence of which is disproportionately high in Botswana. Equally striking is the failure of Ethiopia which is the regional hub and cradle of human rights diplomacy to ratify the protocol.<sup>6</sup> Ethiopia's peculiarities recommended it as the host country of both the United Nations Economic

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<sup>2</sup> *Convention on the Elimination of Discrimination against Women*, [CEDAW] United Nations Treaty Series, vol. 1249, p. 13.

<sup>3</sup> The Optional Protocol includes both a procedure which allows individuals or groups to complain about violations and a procedure that allows the investigation of substantial abuses of women's human rights by an international body of experts.

<sup>4</sup> *Supra* note 1.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

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Commission for Africa and the African Union. Being the seat of the AU made Ethiopia the nerve-center of the height of the passionate debates and fervent activism that fomented the protocol.

Of the countries that signed but failed to ratify the Maputo Protocol<sup>7</sup> – all but three signed and/or ratified the CEDAW and its Optional Protocol.<sup>8</sup> Building up to and shortly after the Fourth World Conference on Women in Beijing, most of the countries that are yet to sign and/or ratify the Maputo Protocol ratified CEDAW without reservation. All of the four countries – namely Botswana, Tunisia, Egypt and Eritrea – that have reneged on either signing or ratifying the Maputo Protocol ratified the CEDAW.<sup>9</sup> With the exception of Egypt,<sup>10</sup> none of the ratifications by the countries in this category were accompanied by any reservation. In fact, Botswana proceeded to ratify the Optional Protocol in February 2007<sup>11</sup> and Tunisia followed suit as recently September 2008.<sup>12</sup> Paradoxically, such ambivalence recuperates grounds for a

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<sup>7</sup>. *Ibid.*

<sup>8</sup>. Status as at 25-01-2015 Chapter IV Human Rights, Convention on the Elimination of Discrimination against Women, online: United Nations Treaty Collection <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)>

<sup>9</sup>. *Ibid.*

<sup>10</sup>. Egypt has been consistent in its invocation religious beliefs and tenets to circumscribe its commitment to women's human rights. Upon signature and ratification of the CEDAW, Egypt rendered Article 16 concerning the equality of men and women in all matters relating to marriage and family without prejudice to the Islamic Sharia's provisions and indicated its willingness to comply with CEDAW, supra note 2, art 2, provided that such compliance does not run counter to Islamic Sharia. By virtue of CEDAW, supra note 2, art 2, States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

<sup>11</sup>. Status as at 25-01-2015 Chapter IV Human Rights, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, online: United Nations Treaty Collection <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8-b&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en)>

<sup>12</sup>. *Ibid.*



proposition that, all things considered, Africa's overarching orientation in favor of human rights amounts to an affirmative culture which further signifies what is right with Africa.

A cursory comparison of Africa's ratification history with experiences in so-called advanced economies and mature democracies with highly sophisticated rule of law systems buttresses the perspective to appreciate the premium placed on the human rights regime in Africa. In the United States, for example, it bears reiteration that the Equal Rights Amendment which was first proposed as far back as 1923 has yet to see the light of day and the CEDAW which the US signed several decades ago in 1980 has stalled in Congress incessantly awaiting ratification.<sup>13</sup> Apologists for American exceptionalism are quick to extol the wisdom and expediency of "compliance without ratification" as opposed to "ratification without compliance". However, such rationalizations neglect the strong empirical correlation between ratification and result. To the extent that much of the traction that accounts for purported "compliance without ratification" in the US largely tends to be a function of social justice activism, it stands to reason that civil society entities would be infinitely more energized to transcend resistance, broker reform, and cultivate effective outcomes, and referee diligent compliance if armed with ratifications, instead of agitating for change in an atmosphere more prone to be hostile to ratification.

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<sup>13</sup>. *Supra* note 4.

#### **IV. RESERVATIONS**

The sparsity of copious reservations that marks the Maputo Protocol is in stark contrast to the CEDAW which is presumably the human rights instrument with highest number of reservations. Notwithstanding Article 28(2) of the CEDAW which prohibits reservations incompatible with the object and purpose the Convention<sup>14</sup>, it is impaired by the exceptionally high number of reservations that several state parties opposed as threatening the integrity of the human rights regime in general. Apparently, only two countries, South Africa and Gambia, originally entered reservations qualifying their ratification of the protocol. Gambia subsequently rescinded its reservation and much of South Africa's reservations aimed to preclude the risk of compromising progressive national laws that were perceived as superior affirmations of the protocol's ideals. Again, if the incidence and nature of reservations is a measure of propitious human rights bias, we proffer that African states generally exhibit patterns that intimate a friendly predisposition towards human rights. Incidentally, only a few African states ratified the CEDAW with reservations and the number of reservations entered against the Maputo Protocol is even more negligible; as of 2007, only South Africa's ratification remained encumbered with reservations and even those are arguably formalistically or far from damning. It is conceivable that the low

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<sup>14</sup>. Convention on the Elimination of all Discrimination against Women, online: United Nations Entity for Gender Equality and the Empowerment of Women <<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>>

occurrence of reservations in the Maputo Protocol may be seen as signaling heightened conscientiousness and deliberative adoption in a manner that may actually offer partial explanation for the gap in ratification. A party contemplating joining the instrument would not be unmindful of the pattern of “ratification without reservation” hints of an incipient culture that is likely to frown at attempts to deploy reservations to exempt out of substantive provisions.

## **V. ALLIANCES**

A hallmark of the protocol is the platform that it has provided for the unparalleled mobilization of women across the African continent for tireless consultations, debates, advocacy, monitoring, and evaluation. Indeed, the protocol is a testament of the resilience of gender activism and a tribute to the courage of indefatigable women who stood their ground against grave odds in fierce contestations for Africa’s destiny in general and for gender equity in particular. Vigorous gender activism has not merely been a recipe to stimulate a hospitable environment to enlist support, consolidate gains, and facilitate compliance with political commitments; it has been an engine of change in its own right and intrinsically an infrastructure for promoting gender justice. The success of gender forums, coalitions, and networks is further indication of extant political will for human rights and the trajectory that gradually pipelined the success of these advocates is

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instructive on frameworks that can effectively advance both broader participation in and implementation of relevant instruments.

Individuals and groups of divergent stripes who coalesced around shared visions of gender equality and persevered through tedious processes of iteration and grinding challenges to build confidence, commitment, and critical networks to mid-wife the adoption and ratifications of the protocol remain pivotal to drive and sustain the successes of implementation. Much of the credit for the celebration of the protocol as an innovation in the human rights regime inures to cohesive gender networks which foster awareness and sensitization, enrich relevant knowledge, foster greater understanding, nurture confidence, and build capacity among critical stakeholders to actively engage salient issues. The interventions of these networks at once increase opportunities for constructive dialogue about home-grown solutions, help leverage resources more efficiently, and promote strategic collaborations with better coordination to design, manage, and focus efforts to implement programs that ultimately to pipeline a culture of gender equity that consistently maintains the momentum of progress for women's human rights.

### **VI. WAY-FORWARD**

The astute gender entrepreneurs whose tenaciousness sweat-equity has thus far facilitated the birth and progress of the protocol were neither oblivious of nor naïve about the obstacles to

domestic compliance when they set out to enliven the dialogue and dissent that ultimately culminated in the protocol's promulgation. To the contrary, there is ample empirical evidence to contend that they went to length to campaign for the adoption of the instrument precisely to create entitlements that would augment the arsenal to struggle against gender discrimination. Such arsenal underpin an infrastructure that constitutes a rally point to continuously incentivize and spur stakeholders across the spectrum of the society to transformative action of moment to help mediate the discrepancies of statecraft. The existence of the protocol is an objective measure of the bandwidth of gender activists to influence the democratic process and state institutions. Insofar as the advantage of hindsight calls for optimism, it is not unreasonable to assert that the journey so far is encouraging and provides inspiration for the considerable undertakings ahead; the activism that endowed the world with the gift of the normative protocol boasts the dexterity to stay the course and help foster critical macro and micro level changes in respective countries.

The initiative, enterprise, skill sets, and competencies it required to formulate, nurture, and sustain the protocol's paradigmatic relevance to date parallel those necessary to reconcile compliance with commitment and align behavior with normative standards. However, planning is integral to progress and advancement on the unfinished business. In material respects, core experiences with the protocol bear out the insights of development experts who are inclined to

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argue that plans exemplified by pronouncements such as the protocol are nothing, while insisting that planning is everything. An outright concession of the bankruptcy of plans such as the protocol may be overly stated, but the claim is an important reminder that a failure to plan is tantamount to a plan to fail. From inception to implementation, the history of the protocol reflects proactive strategies which suggest ample opportunities to turn the table against African political elites who ordinarily tend to be adept at adopting frameworks that they fail to implement. The value of a plan to systematically mount and maintain pressure on these elites to live up to the promise of the protocol cannot be over-emphasized. What ideologies and perspectives inform this next phase of the struggle are as momentous for the specificities of women's realities as they are definitive of the maturation of gender advocacy as a strategy to at once exfoliate the hidden face of Africa and propagate a profile becoming of its emerging prospects at the dawn of the 21<sup>st</sup> century.

## VII. CONCLUSION

Juxtaposing a deficit-based critique of the role of the protocol which emphasizes the challenges of signing, ratification, and implementation against an asset-attuned standpoint, we have deliberately elected a narrative of hope in lieu of despair by privileging the gains of the protocol over its gaps. Part of the enthusiasm for the protocol derives from its promise as an instrument

for Africa's self-determination specifically drawn and driven by Africans. A fine example of African agency on gender matters which has found expression in other respects, the protocol evinces a pedigree that demonstrates the resonance of gender parity and/or equity ideal and Africa's stake therein. As mentioned earlier, constitutional guarantees of equality abound in Africa where the CEDAW has been adopted by almost all and the protocol which was signed by all but seven African countries has been ratified by 29 countries within less than five of coming into force. Granted, the enormous potential of the instrument as a formidable tool for gender empowerment has not readily translated into qualitative transformations of gender realities to date. After all, it is one thing to secure the far-reaching protocol; it is another to organize, dedicate, and invest the quality of resources imperative to ensure that the instrument matures into a compelling tool to enrich women's capabilities and functioning. Accordingly, it behooves critical stakeholders to come to terms with the reality that individual feminists and gender networks have their work cut out for them.

Just as the protocol was a hard-won gain, its forceful implementation and weighty impact will not be conceded on a platter of gold, so to say. The good news is that just as the interventions of non-state actors turned the tide to generate the critically acclaimed protocol, the same actors are well-equipped to build on discernible footprints to embrace the enforcement challenges as an apt opportunity for creativity. The steep learning curve that has characterized

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efforts to bring about and routinize measurable change vis-à-vis women's human rights can be harnessed as a cornerstone to provide fresh thinking to tool up, map out, execute and calibrate a robust plan to systematically leverage the resources necessary to give adequate teeth to the protocol. Consistent with women's invaluable, even if typically discounted contributions, the reinforced efforts of gender advocacy networks are poised to enhance what is right with Africa and to ameliorate human rights strategies in ways that that are of global applicability.