

The role of the African Commission on Human and Peoples' Rights in the protection of women's rights: case study on women belonging to minorities

Presented by the Special Rapporteur on the Rights of Women in Africa, Commissioner Soyata Maiga, during the 4th session of the UN Forum on Minority Issues in Geneva on 29 and 30 november 2011

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1. Introduction

Despite the ratification by African States of all international human rights instruments and the commitment of Heads of State and Government in the 2014 Solemn Declaration on Gender Equality in Africa to eradicate all forms of discrimination towards women, women in Africa keep facing discrimination and harmful practices.

Those women coming from indigenous communities or belonging to minorities face double discrimination and marginalisation, including within their own communities. The consequences of such marginalisation and discrimination call out to the International Community.

For your information:

- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was ratified by all African States except for Sudan and Somalia. The optional protocole to CEDAW was ratified by 22 African States and signed by 9 others.
- The Convention on the Rights of the Child: only Somalia did not ratify it.
- The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities was adopted by the General Assembly in its Resolution 47/135 on 18 March 1992.

2. Overview of the regional framework for the protection of the rights of women in Africa

A. The African Charter on Human and Peoples' Rights (African Charter)

- Entry into force in October 1986
- All African States ratified it

- It takes into account the principle of universality of human rights and presents some specificities that reflect the particularities of the African Continent (traditions and positive values)
- It reaffirms the attachment of African States to the freedoms and human rights included in the declarations, conventions, and other instruments adopted within the frame of the AU and UN.
- Article 2: Right to Freedom from Discrimination

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.

- Article 3: Right to Equality before the Law and Equal Protection of the Law

1. Every individual shall be equal before the law
2. Every individual shall be entitled to equal protection of the law

- Article 18: Protection of the Family and Vulnerable Groups

The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.

B. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol)

- Entry into force in November 2005
- To date, 30 countries ratified it and 20 countries signed it.
- It guarantees all fundamental rights of women and tries to bring responses to the problems and questions that are specific to African women
- Elimination of Discrimination against Women (Article 2):

States are committed to prohibit and sanction all forms of discrimination and harmful practices which endanger the health and general well-being of women.

- Violences against women (Article 4):

States are committed to actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs and practices.

- Elimination of harmful practices (Article 5):

States are committed to: prohibit and sanction all forms of female genital mutilation; provide necessary support to victims of harmful practices (health services, legal and judicial support); protect women and

girls who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

- Marriage and separation (Article 6 and 7):

The minimum age of marriage for women is 18 years; a married woman has the same rights as the man with respect to the nationality and responsibility towards their children, and in case of separation, divorce, and annulment of marriage.

- Access to justice and equal protection before the law (Article 8):

States shall ensure effective access by women to judicial and legal services; that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights; the reform of existing discriminatory laws and practices.

- Participation in the Political and Decision-Making Process (Article 9):

States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries

- Right to education and Training (Article 12)

States shall guarantee equal opportunity and access in the sphere of education and training.

- Economic and social welfare rights (Article 13)

States are committed to promote and support the occupations and economic activities of women, in particular, within the informal sector

- Health and Reproductive Rights (Article 14)

States shall take all appropriate measures to ensure the access by women to adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas; protect the reproductive rights of women by authorising medical abortion

- Right to Food Security (Article 15)

States provide women with access to healthy food, clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food;

- Specific measures for widows, elderly women, women with disabilities and women in distress (Articles 20 to 24)

States shall ensure the protection of poor women, women heads of families, women from marginalised population groups, and provide them an environment suitable to their condition and their special physical, economic and social needs.

3. Specific challenges that women belonging to minorities face

Minorities/Indigenous Peoples

The interchangeable use of denominations like “Pygmy”, “indigenous” and “minority” is common to most countries in Central Africa, both in policies and discourses. National legislations rather use “Pygmy” and

“minority”. The concept of “Indigenous People” is not accepted by most States, even if most of them adhere to the UN Declaration on the Rights of Indigenous Peoples.

Some African constitutions ensure the special protection of minorities, and some allow for the representation of specific ethnic groups in elected national authorities.

- Burundi adopted quotas for ethnic groups (including the Batwas) at the National Assembly and at the Senate.
- No African constitution, except for the Cameroonian, recognises specifically the concept of “Indigenous Peoples”
 - The Amazighs, in Algeria, are recognised as a minority
 - The Batwas in Rwanda are recognised as a minority
 - The Ethiopian constitution “does not explicitly recognise national, ethnic, religious or linguistic minorities, nor the Indigenous Peoples status.”
 - In Nigeria, most Indigenous populations identify as minorities to compensate for the absence of their official recognition and the absence of any national debate on their identification as Indigenous Peoples.

Access to education, literacy, and labour market: non-access and limited access to education and literacy; very high drop-out from school among young girls because of early marriages and pregnancies; insufficient involvement and awareness of communities; in educational policies, minority culture and way of life is not taken into account; poverty in communities; limited or inexistent access to professional training.

Health: Poor access to health infrastructures; lack of, and remoteness of health centres; cultural factor is not taken into account in health programmes; lack of training of traditional women heads of families; inexistent access to family planning services

- Consequences include: persistence of excision and other practices that are harmful to women’s health; very high synthetic fertility index; very limited level of contraceptive prevalence; high maternal mortality rates.

Participation in political life and right to association: weaknesses in the organisational structure and in the advocacy of women’s associations; very low or absence of female representation in administration and elected mandates; weight of socio-cultural practices and overload of housework limit the access of women to political life; weakness of programmes of political and civil education.

Access to land: Limited access to land and property; absence of land reform that integrate a gender perspective and the specific needs of women belonging to minorities; persistence of discriminatory customs related to land; limited access to agricultural inputs and equipments; poverty

Access to savings and credit: lack of awareness of women of the conditions and criteria for the access to financial institutions, in particular for rural women and those working in the informal sector; weakness of training and awareness-raising programmes on funding opportunities; limited access to banks and financial institutions for rural women and those working in the informal sector

Access to justice: illiteracy; lack of rights awareness; fear of the administration of justice; complexity of procedures; remoteness of courts; poverty of women; coexistence of a modern justice system with

traditional mechanisms of conflict settlement that lead to continuous discriminatory practices against women within the family regarding child custody, inheritance, and in particular regarding the access to land; inefficient laws on judicial assistance.

Marriage and inheritance: prevalence of traditional law over modern law, hence persistence of traditional discriminatory practices towards married women and widows (early marriages, dispossession of assets belonging to widows)

4. Responses of the African system of human rights

- In 1987 the African Commission on Human and Peoples' Rights (ACHPR) was established as a way to preserve the rights guaranteed in the African Charter, in Banjul, Gambia.
- Double mission of the ACHPR: promotion and protection of human and peoples' rights
- In its missions, the ACHPR shall, a.o.:
 - formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms (article 45 of the Charter)
- Communications and complaints
 - The ACHPR receives and examines complaints coming from individuals and NGOs regarding the violations of their rights as guaranteed by the Charter and the Protocol (art. 56 of the Charter)
 - To day, the Commission examined 259 communications and complaints against 44 State Parties.
 - In reality, despite the massive violations of the rights of women, to date, only one communication or complaint was referred to the court; it came from an NGO (Association of the Lawyers of Ethiopia) on behalf of a girl whose rights had been violated
 - Communication 341/07 Equality Now vs Ethiopia (early marriage) is currently being examined
- The ACHPR adopted several resolutions on the rights of women, some of which are also about women belonging to minorities
 - Resolution on the situation of women and children in Africa (2004)
 - Resolution on the UN Declaration on Indigenous Peoples (2007)
 - Resolution on maternal mortality in Africa (2008)
 - Resolution on the protection of the rights of Indigenous women in Africa (2011)
- Creation of subsidiary mechanisms within the ACHPR:
 - Special rapporteurs and working groups: two of them work on the issue of minority women

- Special rapporteur on the rights of women in Africa
 - Working group on indigenous populations/communities
- Special Rapporteur on the Rights of Women in Africa
 - Mandate:
 - To assist African governments in the development and implementation of policies and programmes for the promotion and the protection of the rights of women
 - To monitor the implementation of the Maputo Protocol
 - To collaborate with all actors involved in the protection of the rights of women at all level
 - To formulate recommendations for a better protection of the rights of women to the State Parties of the Maputo Protocol and to the ACHPR
 - Examples of achievements
 - Draft directives for the presentation of the State report on the Maputo Protocol
 - Close collaboration with NGOs, among which Forest Peoples Program who developed a Toolkit on the rights of Indigenous women and the African system
 - Press releases, verbal notes, conferences and workshops on the promotion and protection of the rights of women, and advocacy to the States for the ratification of the Maputo Protocol
 - To date: 19 country visits: Algeria, Angola, Cape Verde, Ivory Coast, Burkina Faso, Congo, Djibuti, Ethiopia, Liberia, Libya, Niger, Nigeria, Mauritania, Democratic Republic of Congo, Sao Tome&Principe, Sudan, Chad, Tunisia
- Working group on indigenous populations/communities
 - Created in 2000
 - Mandate:
 - Collect, ask for, receive and share information and communications from all relevant sources, including governments, indigenous populations and their communities and organisations, on the violations of their human rights and fundamental freedoms;
 - Country visits to examine the situation of human rights of indigenous populations/communities;
 - Formulate recommendations and propositions on measures and activities aimed at preventing and countering violations of human rights and fundamental freedoms of indigenous populations/communities.

- Adoption of a report in 2003 on the issue of the rights of indigenous populations in Africa (concepts, characteristics, categorisation)
- Advisory opinion on the UN Declaration on the Rights of Indigenous Peoples (May 2007)
- Adoption of a document titled: Report on the constitutional and legal protection of the rights of Indigenous Peoples in 24 African countries in 2009 (in cooperation with the ILO)
- To date: information and study visits in 14 State Parties where indigenous communities live, and drafting of recommendations to States and other parties concerned
 - 3 regional awareness-raising seminars on the rights of indigenous populations/communities
- Monitoring mechanism for the implementation of the Maputo Protocol
 - States are obliged to incorporate in their periodic reports (which they present to the ACHPR, art 62 of the Charter and 26 of the Protocol) indications on legal and other measures they took to implement the rights recognised and guarantees to women.
 - States are committed to adopt all necessary measures and to allocate appropriate budgetary and other resources for the effective implementation of the rights recognised in the current Protocol
 - In reality, few State Parties respect this obligation to submit periodic reports to the ACHPR
 - States that ratified the Maputo Protocol and submit reports do not say anything about the implementation of guaranteed rights, which led the ACHPR to draft general guidelines regarding the presentation of reports under the Maputo Protocol

Conclusion

Challenges are enormous and the protection of the rights of women belonging to minorities is still insufficiently ensured because of several factors, in particular the lack of implementation of the international and regional human rights conventions.

This situation is likely to carry on and even to worsen because of the conflicts that are tearing some countries as well as the food crisis that is hitting African States full in the face and that led to a serious famine in the Horn of Africa.