



**COMMEMORATION OF THE NATIONAL WOMEN'S DAY:
AN EVALUATION OF REGIONAL, SUB-REGIONAL AND NATIONAL
LEGAL INSTRUMENTS FOR THE ADVANCEMENT OF THE RIGHTS OF AFRICAN WOMEN**



22 AUGUST 2011

HUMAN RIGHTS INSTITUTE OF SOUTH AFRICA

**AN EVALUATION OF LEGAL INSTRUMENTS AND MECHANISMS FOR THE
ADVANCEMENT OF WOMEN'S RIGHTS IN AFRICA: A REPORT ON THE
COMMEMORATION OF THE NATIONAL WOMEN'S DAY IN SOUTH AFRICA**

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HUMAN RIGHTS INSTITUTE OF SOUTH AFRICA

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RESOURCE PERSONS



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FROM LEFT TO RIGHT: LLYOD KUYEYA (LAWYER) & AGNES KABAJUNI (CIVICUS)



FROM LEFT TO RIGHT: MS. CORLETT LETLOJANE (EXECUTIVE DIRECTOR OF HURISA), MS. LUCRESIA SEAFIELD (FHR) & AGNES KABAJUNI (CIVICUS)

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ACRONYMS

ACHPR	-	African Commission on Human and Peoples' Rights
AU	-	African Union
CBO	-	Community-Based Organisations
CCJ	-	Community Court of Justice (ECOWAS)
CEDAW	-	Convention on the Elimination of all Discrimination Against Women
CGE	-	Commission for Gender Equality
CSO	-	Civil Society Organisation
EAC	-	East African Community
ECOWAS	-	Economic Community of West African States
FHR	-	Foundation for Human Rights
HURISA	-	Human Rights Institute of South Africa
NEPAD	-	New Economic Partnership for African Development
NGO	-	Non-governmental Organisations
SADC	-	Southern African Development Community
WiLDAF	-	Women in Law and Development in Africa
ICJ	-	International Commission of Jurists
ACDHRS	-	African Centre for Democracy and Human Rights Studies

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PROFILE OF WORKSHOP ORGANISERS

HUMAN RIGHTS INSTITUTE OF SOUTH AFRICA (HURISA)

The Human Rights Institute of South Africa (*hereafter referred to as the HURISA*) is a non-profit, non-governmental organisation incorporated under Section 21 of the Companies Act, 1073. It was founded in June 1993 as the Institute for the Study of Public Violence and served as the research and documentation arm of the Commission of Inquiry into Public Violence Chaired by Judge Richard Goldstone. Since its transformation, this institution has offered efficient and successful human rights training within and beyond South Africa. The Vision of this noble institution is to create and promote a culture of Human Rights where people know, understand and promote human rights and responsibilities to all in their communities. Its mission is to provide as much human rights education as possible primarily in South Africa, but also in the Southern Africa Development Community (*hereafter referred to as the SADC*) region and the continent as a whole, especially in terms of human rights as a philosophy, understanding human rights systems, accessing rights especially socio-economic rights and learning skills to train others and promote human rights and to provide support to Non-Governmental Organisations (*hereafter referred to as NGOs*) in neighbouring countries. In partnership with the Foundation of Human Rights (FHR), HURISA has been able to actively engage in a number of human rights awareness and promotion workshops and training. This has been effective in all regions of South Africa.

FOUNDATION FOR HUMAN RIGHTS (FHR) SOUTH AFRICA

The Foundation for Human Rights (*hereafter referred to as the FHR*) is one of the primary indigenous grant-makers to the Human Rights sector in South Africa. Established in 1996 through the cooperation agreement between the European Union and the South African government, the Foundation receives funds primarily from the European Union as well as other donors such as DCI, Mott Foundation and Care International. The Foundation supports Civil Society Organisations and Public Institutions to promote and facilitate increased awareness, respect, protection and fulfilment of the rights contained in the Constitution. The Foundation uses a rights-based approach in addressing poverty and inequality – emphasizing the prioritisation of the rights of the most vulnerable groups in the society such as the poor through participation, accountability, non-discrimination and direct linkages to the rights as set out in the Constitution. It most importantly aims at addressing the historical legacy of apartheid, support transformation of South Africa and build a human rights culture using the constitution as a tool. The FHR is the donor and partner of the HURISA in this Workshop, commemorating the National Women’s Day Celebration in South Africa, held on the 22 August 2011 at the Parktonian Hotel in Johannesburg. The benefits of this workshop continue to contribute to the overall objective of the Foundation – to assist in creating awareness and promote the culture of Human Rights in South Africa.

EXECUTIVE SUMMARY

The imperative to safeguard the rights of African women cannot be overemphasized. In an environment where gross parochial tendencies, poverty, corruption and inequality, discrimination among people on different grounds of gender and sexual orientation appear to be rife within this society. This prompts the need for effective mechanisms and instruments to secure, protect and procure the rights of the victims of these situations. In recognition of the Basic Human rights of women, the United Nation (***hereafter referred to as the UN***) Assembly adopted the Convention on the Elimination of all Forms of Discrimination Against Women (***hereafter referred to as CEDAW***) – an international legal instrument which defines the meaning of discrimination against women.¹ It thus established obligations for state parties to end such discriminations in the civil, political, social and economic and cultural spheres – with specific reference to women and girls.

The African Charter on Human and People's Rights (***hereafter referred to as ACHPR***) built upon this and other international conventions and declarations in the drive towards procuring the rights of women in Africa. More importantly too, the Protocol to the ACHPR on the Rights of Women in Africa even goes deeper in line with making the rights of women its major focus in all aspects of life and in the changing trend of gender related issues based on the noted limitations in the ACHPR. Being the most affected by incidents of Abuse and Discrimination, Crisis and Health disaster issues, Gender-based violence, poverty and inequality, this protocol was designed as an answer to the pertinent questions around the promotion and protection of Women's rights in Africa. It has been appraised as one of the most effective mechanisms (in principle or theory) in the pursuance of the institutionalisation of the rights of African women. As an intrinsic part of the AU legal mechanisms/instruments, this protocol has its subsidiaries in different regions of Africa – the SADC region, the Economic Community of West African States (***hereafter referred to as the ECOWAS***) region, and the East African Community (***hereafter referred to as EAC***) region. Although there have been mixed-bag experiences in the different regions, one thing is certain, the African Union (***hereafter referred to as the AU***) mechanisms for the protection of human rights with special reference to women have roots in all of Africa.

However, we cannot deny the glaring fact that the existence of a structure, mechanism or instruments does not necessarily imply effectiveness. This flows from experiences with the continent where these issues of inequality, abuse, discrimination and disempowerment suffered by women have remained rife. Despite the fact that Rwanda, South Africa, and Mozambique have relatively high percentage of women in the political realm,¹ it cannot be

¹ Winnie (2008) shows that Rwanda has the highest number of women participating with 47.3% followed by South Africa which had 45.9% of female parliamentarians. Mozambique with 39.2% is followed by Tanzania.

denied that the knowledge of and the accessibility to these important empowering mechanisms and instrument remain far removed from the ordinary woman. More still, the impasse among state parties with regards to signing and ratifying the Protocol(s) poses huge challenges to the effectiveness of these mechanisms in the promotion and protection of these rights within the African context and more so within the SADC region where the SADC tribunal is temporarily closed for political reasons.

It is against this backdrop that **the HURISA** and **the FHR** designed a workshop in commemoration of the National Women's Day in South Africa. This workshop titled, "*AN EVALUATION OF LEGAL REGIONAL INSTRUMENTS FOR THE ADVANCEMENT OF WOMEN'S RIGHTS,*" attracted over 120 participants made up of Women, Children and Youth organisations, Refugee and Migration organisations, Community-Based Organisations (CBOs) and Civil Society Organisations (CSOs). It also attracted different groups' representatives, Human Rights Lawyers, Environmental activists, HIV /AIDs groups, People with Disability, Peace and disarmament activists, Faith-Based Organisations and the media. Also in attendance included prominent regional and sub-regional personalities: African Union Human Rights Organ, Honourable Commissioner and Special Rapporteur on Freedom of Expression and Access to Information in Africa, Pansy Tlakula; Dr Justina Dubazah, Programme Manager – Anglophone (NEPAD Planning & Coordinating Agency); Dr Teboho Maitse (the Commission on Gender Equality (CGE)); Professor Vincent Nmehielle (HURISA Chair and lecturer at Wits; Yasmin Sooka (the FHR Executive Director); Regional Legal Expert, Lloyd Kuveya; Agnes Kabajuni (CIVUCUS); Osai Ojigho (Alliance for Africa) was represented by Lucrecia Seafield (FHR); and Corlett Letlojane (Executive Director, HURISA).

Indeed the context and objectives of this workshop drew upon issues in and around the ACHPR Protocol on women's rights, the role of NEPAD, the SADC Gender and Development Protocol, the West African and East African experiences, and the role of NGOs and CSOs, Public and Government institutions – all in the stride towards the protection of the Human rights of the African Woman. Through the presentations and participation of respected regional and sub-regional personalities, government and public officials, leaders of local and international NGOs and CSOs and other members of CSOs and the public – mainly women – this workshop among other things, created awareness of the regional and sub-regional instruments; evaluated their impacts and effectiveness within the SADC region; interrogated their enforceability; and explored more effective methods of upgrading their relevance to the ordinary woman at the grassroots. Its emphasis on the Rights-Based approach to development was insightful to the participants who showed huge sense of enthusiasm during and after the workshop.

This view is however challenged by Lloyd who states that South Africa has 45% female parliamentarians followed by Mozambique with 39.2% and Tanzania is third (See Lloyd, 2011)

1. INTRODUCTION

This report is an outcome of this workshop designed to evaluate the effectiveness and efficiency of the regional, sub-regional and domestic legal instruments designed to advance the rights of African Women. The overarching focus of this workshop was on the situation of the rights of Women in South Africa based on the commemoration of Women's Month in August 2011. Thus, based on issues of the socio-economic as well as civil and political rights of Women in South Africa, it was pertinent to revisit the situation that women in this country continue to live under. More importantly however remains the condition of rights of women in cases of sexual violence and other related offences being committed against Women basically because they are women.

In this light therefore, this workshop was a reappraisal of instruments and mechanisms such as the African Commission for Human and Peoples' Rights as well as the African Court for Human and Peoples Rights. This also includes instruments such the African Charter on Human and Peoples' Rights as well as the Protocol to the African Commission on the Rights of Women in Africa. Other instruments and Mechanisms that were evaluated in terms of the situation of Women (and also children in South Africa) include the CEDAW, the SADC Protocol on Gender Equality as well as Provisions within South African Law. The situation of the Moribund SADC Tribunal and the issues bedevilling its effectiveness were also appraised vis-à-vis the ECOWAS Community Court of Justice (CCJ) which has remained the most active sub-regional Court in relation to resolving human rights related issues – including women's rights issues.

Based on these appraisals of the situation of and the challenges to Women's rights in Africa and which flowed from the presentations of the different resource persons and the different focal group discussions on the conditions of Women at the grassroots levels, a number of recommendations thus emerged to assist in the dissemination of knowledge regarding rights and responsibilities to the grassroots. The role of the state, NGOs and civil society in this regard was re-emphasised so as to ensure that more women are empowered and more communities and organisations are able to adequately impact positively in the creation of new South Africa where the rights of Women are upheld and respected.

The other parts of this report are therefore based upon this understanding of the need to secure women's rights and to create more awareness around the need for people to know their rights within the South African Democracy.

2. CONTEXT AND OBJECTIVES OF WORKSHOP

In the opening remarks, the Chairman of the HURISA Board, Professor Vincent Nmehielle emphasised on the important roles played by South African Women in the liberation of the



country, most especially at a period when most of the freedom fighters were either imprisoned or in exiled.² This important role, he insisted, maybe taken for granted, but should never be. The South African society thus recognises this role hence the dedication of the month of August in commemoration of the role and place of women in the life of the South African society. It is also important to note that within the African (regional) context, the colonial experiences create the desire to have an Africa where resources and

assets are locally controlled for the benefit of its people. The Executive Director of the FHR, Yasmin Sooka, also stated that it is desired that all citizens – women, men, boys and girls – be developed by means of equal rights, opportunities and entitlement.³ Thus, to ensure this, the AU established instruments such as the African Commission on Human and People's Rights as well as the ACHPR Protocol on the Rights of Women in Africa. These instruments as well as mechanisms were geared towards the protection and promotion of the rights of women against all forms of discrimination, abuse and disempowerment since women as well as men are all citizens who are born equal. Thus as a party to the CEDAW, AU at different times adopted Charters, Protocols and Declarations in support of the rights of women – making it imperative for member states to adhere to the fundamental issues around gender equality, health, economic, political, cultural and social aspects of the African continent as they impinge on the African woman. Issues domestic violence, marital rape, forced marriages, Female Genital Mutilation (*hereafter referred to as FGM*), inheritance, participation within the political arena, sexual and reproductive health – all – formed the corpus of the drive by the Protocol to address.

However, the progress made in achieving substantive equality through these instruments and mechanisms have suffered a great deal due to the pre-eminence of corruption within Africa. These have stalled the effectiveness of prosecuting perpetrators of violent crimes against women since majority of African states are weak. In Africa too dreadful incidents of the use of rape as a weapon of warfare; the rising rate of adolescent mothers in Sub-Saharan Africa; clauses in some national laws that place limits on the rights and freedom of women and the effects of stunted socio-economic growth on women – remain issues that need effective development approaches to tackle. The AU declaration of the years 2010 –

2020 as the decade of African women is important to enhance the implementation of the various commitments to gender equality and economic empowerment of women with special focus on the grassroots through a bottom-up approach that also involves the sharing of development strategies at all levels as well as the removal of all harmful laws that impede women's right. But in all of these, it is still obvious that the development of women in Africa is still a long way off. It is thus pertinent to take a look back at these regional and sub-regional instruments designed to help in the achievement of these goals.

This workshop designed to bring together different bodies of persons – government, civil society and the lay-people – therefore set out certain basic objectives in this review of the regional and sub-regional instruments in the advancement of African women. These objectives are subsumed under the need to access and be aware of the mechanisms within Africa in the drive towards the safeguarding of women's rights. They are thus:

- To create awareness on the ACHPR protocol on women and the SADC Gender Protocol amongst NGOs and CSOs.
- To create a forum for the discussion on the impact and relevance of these regional mechanism on the advancement of women's rights in the region.
- To interrogate how effective these legal regional mechanisms and institutions have been in terms of enforceability.
- To explore methodologies to make these instruments more relevant and accessible on the local level.



It is important at this point to note that these objectives animated the proceedings of the workshop it can be viewed as criteria for accessing its productivity and overall relevance.

3. THE AFRICAN UNION AND THE ADVANCEMENT OF WOMEN'S RIGHTS

The African Union has over the years continued to reaffirm its commitment to gender equality in Africa. As a signatory to the Universal Declaration of Human Rights, the CEDAW and other international declarations and conventions, the Union developed instruments to further this cause within the continent. According to the AU Constitutive Act 2000, “the organisation shall function in accordance with the promotion of gender equality.”⁴ Prior to this, the AU Charter on HPR Article 2 had stated that “every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the ... charter without distinction of any kind such as race, ethnic group, colour, sex, language ...”⁵ In 2003 the Protocol on the Rights of Women in African which was adopted at the 2nd Ordinary Session of the AU Assembly in Maputo and in 2004 at the 3rd Ordinary Assembly in Addis Ababa, the Solemn Declaration on the Principle of Gender Equality (**hereafter referred to as the SDGE**) was also adopted – all steps to prove Africa’s commitment to the promotion and protection of the rights of women and the reaffirmation of its commitment to the principle of gender equality as enshrined in article 4(1) of the Constitutive Act of the AU mentioned above.

It has to be noted that these are among many other instruments designed and working within the AU in this drive towards the advancement of African women. According to Winnie Byanyima, in the book *THE AFRICAN UNION AND ITS INSTITUTIONS*, the AU’s Commission on Women, Gender and Development Department (WGDD) considers certain instruments – the OAU Charter (1963), the ACHPR (1981), the treaty establishing the African Economic Community (1999), the Constitutive Act of the AU (2000), the statutes of the AU Commission (2000), the AU decision on Gender Equality (2003), the African Commission position of 2004 (2004), the Protocol on Women’s Right (2004)⁶ and the *AU Solemn Declaration on the Principle of Gender Equality (2004)* – as instruments designed in the quest to mainstream gender equality in Africa’s developmental process. Thus, defining gender mainstreaming as a process for accessing the impact of gender on any “... planned legislation, policies or initiatives at any level,”⁷ Byanyima points to the fact of the political undertones underlying the relationships between men and women, boys and girls, groups or individuals in a society within the context of same entitlements and or access to opportunities. The border line here is that gender related issues have formed a huge part of the African Unions development plan, and through the various mechanisms that it has established, it is hoped that the rights of women will be made a priority.

This averment therefore creates room for an understanding of the (African) Regional Mechanism (The African Commission on Human and People’s Rights – The African Commission) and its impacts on the advancement of women’s rights.

3.1 THE (AFRICAN) REGIONAL MECHANISM AND ITS IMPACTS ON THE ADVANCEMENT OF WOMEN'S RIGHTS

The African Charter on Human and People's Rights is the major legal instrument in the continent of Africa. Having existed for 30 years and being the instrument through which different mechanisms have come to be established within Africa, one of which is the African Commission on Human and People's Rights (established in 1987 and headquartered in the Gambia), it can be said that the quest to establish a strong and effective human Rights culture in Africa is celebrating its 30th Anniversary. This Charter bestows on the Commission the mandate of promoting and protecting the rights of people; it empowers it to establish rules and procedures and special mechanisms, committees and groups to take charge of various thematic areas.⁸ These are special mechanisms that exist within the Commission, having Special Rapporteurs on thematic areas such as human rights defenders, freedom of expression and access to information, the rights of women in Africa, prisons and conditions and detentions, refugees, asylum seekers, migrants and displaced people in Africa and many more.

This Charter makes provisions for the rights of women, but as indicated by the Honourable Commissioner and the Special Rapporteur on Freedom of Expression and Access to Information Pansy Tlakula, those provisions in articles 2, 3 and 18 (3) of the African charter were too broad in their engagement with gender equality and the definition of the Elimination of all Forms of Discrimination Against Women.⁹ Although this Charter calls on state parties to take part in ensuring the effectiveness of these provisions of the ACHPR in their territories in line with the UN Charter, the UDHR and other international conventions and declarations, it remains clear that in the context of the African woman and girl child, the provisions suffer grievous limitations. Noting that the charter was built on the traditional African values most of which are harmful to women and robs them of their human rights, such as FGM, forced marriages, inheritance laws that were discriminatory against widows, she stated that the Protocol on the Rights of Women in Africa which was drafted was a direct consequence of these deliberations.

This Protocol was adopted in July 2003, and entered into force on the 26th of November 2005 with 20 state parties having ratified the protocol – in the SADC region, Lesotho, Malawi, Namibia, South Africa, Mozambique signed and ratified, Swaziland and Zimbabwe have signed but not ratified; while Sudan, (South Sudan, the newly formed state), Soutome and Principe, Eritrea, Egypt, Botswana, Angola have not signed.

The basic issues that this protocol interrogates include FGM, the rights of widows and inheritance, forced marriage, gender-based violence against women – the use of rape as a weapon of war in crisis ridden states like the Democratic Republic of Congo (*hereafter referred to as the DRC*), rights to sexual and reproductive health among other issues. The

Protocol calls state parties to repeal and eliminate all laws that are harmful to women's rights, most of which are rooted in the traditional and customary values of the state parties. This position thus creates a deadlock among state parties – when customs collides with the fundamental rights of women – hence the delay in the signing and ratification of this Protocol by some state parties.

Although the AU Charter (article 62) and the Protocol (article 26) enjoins on state parties to promote these rights of women by requesting state parties to submit a report on its measures taken in the promotion of the rights of women in their countries every two years, the process of getting these reports and their objectivity has been rather slow and difficult.¹⁰

To assist in the submission of these reports, the African Commission on Human and People's Rights (*hereafter referred to as the Commission*) also developed guidelines on the writing and submission of the reports on issues to assist state parties to guard against verbosity in report submitted. These reports must be submitted during the public session of the commission (whereby the commission engages with the representatives of the government on the reports presented), thus giving room to NGOs and CSOs with observer status (who are obliged to submit a shadow report to the commission side by side the reports from the state parties to enhance the objectivity in the commission appraisal of the reports) also to engage these state parties on relevant issues, thus making them accountable, in the public domain.

It is the duty of the Special Rapporteurs within the Commission to undertake promotional and fact-finding missions in different state parties to disseminate the instruments for the protection of the rights of women as well as investigate issues of violations of women's rights especially in states in crisis like the DRC, Somalia, the Central African Republic (**CAR**) and so on. The Commission also passed resolutions on the protection of women such as: the resolution on the situation of women and children in Africa; women in the DRC; health and reproductive rights of women; right and reparation of girl and women victims of sexual violations; on maternal mortality in Africa; crimes committed against women in the DRC; the prevention of women and child trafficking during the 2010 World Cup.

In spite of the enthusiasm that the Protocol brings as well as the ACHPR, the Commission is faced with different challenges such as:

A) The challenge of the implementation of the recommendations of the Commission since as a quasi-judicial body, the Commission lacks the capacity to make state parties to implement those recommendations. This is worsened as most of these state parties have refused to ratify the Protocol.

B) The need to make African Court effective as a tool towards a just legal system in Africa. According to Commissioner Pansy, “we have to make that court to work. It is the only instrument that we have that will give us an effective remedy on the protection of human rights in the continent.”¹¹ The problem lies in the fact that very few countries have signed and ratified the Protocol. More still, the Protocol that established the court has a clause whereby the state parties must sign a Declaration that allows individuals and NGOs/CSOs directly access to the African Court. Thus without the signing of this Declaration, which most state parties have not signed yet, it becomes difficult for the court to hear cases since majority of cases brought up to the court come from individuals and NGOs/CSOs in different countries. This is a huge challenge that demands NGOs/CSOs to lobby state governments to sign the Declaration to enable the African Court to actually be effective.

More still, access to this court and any other mechanism as such remains very difficult especially to the people at the grassroots who are neither informed nor have the capacity to reach out to these mechanisms and instruments. It is thus incumbent on the CSOs and NGOs to help inform these groups of people by means of workshops and conferences – like those of HURISA and FHR – to bring about an engagement of CSOs and women with these regional instruments thus improving accessibility and knowledge of them.

3.2 NEPAD’S ROLE IN THE ADVANCEMENT OF WOMEN IN THE REGION

The role of the New Partnership for African Development (*hereafter referred to as NEPAD*) in the advancement of women was highlighted by Dr Justina Dubazah of the Gender Unit of the NEPAD. Through an overview of the establishment of this New Partnership, its activities and strides in the advancement of African women, the gaps or challenges faced and the possible ways forward – focusing on the questions of how gender issues are addressed within NEPAD’s initiatives and their implications for African women, CSOs/NGOs, governments and the economic communities in Africa – Dr. Dubazah opened up the depth of NEPAD’s engagement with the development of women in Africa. This is undertaken mainly through the new NEPAD agency – the NEPAD Planning and Coordinating Agency (NPCA).

NEPAD’s role springs from the belief that the empowerment is intrinsic for productivity and growth within a country – a view that is built upon the ever increase call for gender mainstreaming considering the under-representation of women in the political, economic and cultural spheres in Sub Saharan Africa (SSA). Thus NEPAD insists on main-streaming and benchmarking gender equality with all development partners in and around Africa. All stakeholders must get on board in the drive to ensure the development of women – governments, NGOs/CSOs, multi-lateral and bilateral organisations and all other

development partners in Africa. NEPAD reckons that without these, sustainable development will still be unachieved.

The NPCA which was adopted in 2010 at the 14th Summit of the AU showed the new path designed for NEPAD following its integration in to the AU. Its focus is an inward driven development approach characterised by a local engineering, assessment and construction of developmental plans, and partnering with other development organisations – multilateral and bilateral – in this implementation. This New Agency has the mandate of facilitating and coordinating the implementation of continental and regional priority programmes and projects; mobilising resources and partners in support of projects and programme implementation; conducting and coordinating research management; managing implementation of programmes and projects management; and advocating on AU and NEPAD missions, and principles and values. It is the technical agency/body of the AU in charge of the implementation of projects and programmes in the continent with basic thematic area/priorities: Agriculture and food security; climate change and natural resource management; regional integration and infrastructure; human development (which consist of education, access to health care); economics and corporate governance; and cross-cutting issues of gender, ICT, and capacity development. It is committed to stakeholders' participation in development – gender, improved governance and greater development impacts on the grassroots – hence its engagement with CSOs through its procedural mechanism which emphasizes a broader concept of civil society engagement. Although certain gaps still exist in this partnership, the agency still encourages greater engagements with CSOs so as to achieve the over-riding goals of the AU and NEPAD in terms of gender equality especially through an effective liaison with the women's directorate at the AU level in this drive. This is pursued through three (3) approaches: a) Examining internal issues such as recruitments, promotion and other aspects of women activities within an economy; b) Through projects and programmes by domesticating policies and making them more practical and accessible to the women at the grassroots. It does answer the question of how policies are translated practically for the grassroots; and c) Examining the policy level to look at how poverty and growth remain primary development issues in Africa. One of the major focus areas is the rural women, thus the need to strengthen them in agriculture and access to production resources, market opportunities, macroeconomic financing, and income generating opportunities, infrastructure, service delivery and overall empowerment of African women.

This NEPAD's way of looking at development is a RIGHTS-based approach to development – development should not be appraised as a favour but a RIGHT; rights that must be respected in all the thematic areas designed by the AU and NEPAD. Thus the Agency aims at establishing effective institutions, engage other organisations – the private/public sector –

involved in rural development to ensure that they approach development under the terms of the rights of the African woman and not as a favour. It also aims at applying gender analysis tools for development planning and the utilisation of gender sensitive indicators in order to assess the effectiveness of its own approach (NEPAD's self-evaluation).

The agency also designed the NEPAD Spanish fund aimed at promoting gender equality and increase capacity and autonomy of African women. They are thus open to assist women in different categories to achieve basic self-reliance and confidence. The fund focuses on agriculture, women empowerment, small and medium scale enterprises, and cross-regional trade. The AU 17th summit also called upon member states to adequately fund the NPCA, and with these funds it can more effectively pursue its development goals¹² and help more in the economic empowerment of women.

Despite the achievement of the New NEPAD agency since 2010 (following NEPAD's integration into the AU), it still faces challenges ranging from identifying emerging issues, trends and new developments within the ambient of gender issues; working hard to consolidate engagement with CSOs in the pursuance of the goal of gender equality and women empowerment in the continent. It thus calls on more engagements between CSOs and the NEPAD agency in the quest to promote gender equality. On the whole, NEPAD remains committed to ensuring the achievement of all these goals, especially gender equality.

In other words, the benefits of the workshop can also be seen in the light of an awareness of the readiness and commitment of NEPAD to the cause of women empowerment in Africa.

4. REGIONAL AND SUB-REGIONAL MECHANISMS AND EXPERIENCES RELATING TO WOMEN'S RIGHTS: ISSUES AND ACCESSIBILITY

Within the African region, different sub-regions have instruments and mechanisms, alongside the regional instruments and mechanisms, through which the rights of women are protected and promoted. Of utmost importance are the lessons that can be drawn from these sub-regional experiences, and the accessibility and relevance of these legal instruments and mechanisms to the women – mainly at the grassroots. These issues inform the corpus of the next discourse, ranging from the experiences in the SADC region through the ECOWAS region, down to the EAC region (which is relatively the youngest in terms of the establishment of mechanisms aimed at protecting and promoting the rights of women). However, it is important to take an inventory of these existing mechanisms, especially in relation to the international declarations and conventions on human and people's rights – mainly the CEDAW.

4.1 OVERVIEW OF THE PROTOCOL TO THE ACHPR ON THE RIGHTS OF WOMEN IN AFRICA

The Protocol to the ACHPR on the Rights of Women in Africa has been referred to as the most complete legal instrument or mechanism in defining the rights of women in Africa.¹³ History has it that among the motivational factors for the birth of this Protocol were the insufficiencies and limitations in the AU Charter's definitions and provisions for the rights of women which prompted the Lome deliberations and subsequent drafting of the Protocol following the provisions of article 66 of the Banjul Charter which empowers the African Union, to establish Protocols and Agreements to give effect to provisions of the African Charter.¹⁴ Based on the fact that the Charter only made broad provisions on the rights of the African woman in article 2 (**NON DISCRIMINATION CLAUSE**), article 3 (**EQUAL PROTECTION CLAUSE**) and article 18 (**FAMILY CLAUSE**), its review was pertinent so as to take cognisance of and seek to repeal laws that are harmful to women in all spheres on life – political, economic, social and cultural – since many of the laws recognised by the Charter were deeply rooted in traditional value systems most of which were harmful to women. Corlett elucidates that although article 18, "... prohibits discrimination against women, it does so in the context of the family. There are no provisions to guarantee equality for consent of marriage and equality of spouses during and after marriage. These omissions fail to address traditional African values and the concern that some customary practices are harmful and pose life threatening risk to women such as, female genital mutilation, forced marriages and wife inheritance."¹⁵

The drafting process of the Protocol which started with a meeting held in 1995 in Lome Togo, by Women in Law and Development in Africa (WiLDAF) had experts including the International Commission of Jurist (ICJ) and other national NGOs including the African Centre for Democracy and Human Rights Studies (ACDHRS).¹⁶ Adopting the NGO Forum resolutions, the meeting called the African Commission to appoint a Special Rapporteur on the Rights of Women in Africa. It was followed by the mandate of the African Commission to elaborate the Protocol on the Rights of Women to the Assembly of Heads of States and Government of the African Union (OAU) during the 31st session held in June 1995 in Addis Ababa.

After the presentation of the drafts for adoption to the African Commission, lobbying strategies were developed by Equality Now, FEMNET, Ethiopian Women Lawyers Association, Malian Women Lawyers, Femmes Afrique Solidarity, ACDHRS, and WRAPA, at the AU level for the adoption of the Draft Protocol. The Protocol was adopted in 2004 at the 3rd ordinary assembly of the AU in Maputo and it entered into force on 25th November 2005 asserting its importance as: an African instrument that validates the struggle for gender equality; a precise instrument that tackle peculiar situations affecting African Women; a mechanism to outlaw harmful traditional practices, enshrine rights to positive cultural

context, address areas omitted by other instruments; reinforce existing instruments to accelerate efforts aimed at promoting women's rights and provide remedies for women.¹⁷

This protocol draws from but transcends the definitions proffered in the CEDAW and other international instruments thus emphasizing the relevance of the CEDAW to its formulation. The CEDAW was needed to address the effects of long-standing and pervasive discriminatory conduct against women. It was designed to specifically promote and protect women in a holistic and systematic way. It defines the principle of substantive equality² between men and women; gives explicit definition of discrimination; addresses gender inequalities in all spheres of women's life and at all levels-within the family, community and public; and seeks to end forms of trafficking in women and exploitation of prostitution of women. These aspects of the CEDAW make it a very effective mechanism in the international realm of the protection of the rights of the woman and girl child.

Like the CEDAW, the Protocol effectively makes provisions on issues of Equality, Elimination of discrimination and participation. It emphasize the need for equal treatment between men and women as well as the elimination of discrimination of women on ground of sex in terms of enjoying full participation in all spheres of life.¹⁸ Both instruments make emphasis on issues of Human Dignity, Abortion, reproductive health, marriage, the rights of widows, and HIV/AIDS.

However, the ACHPR Protocol on Women's Rights goes beyond all International legal instruments on women's rights by affording specific legal protection against gender-based violence, in both the public and private sphere, including domestic abuse and marital rape.

Despite its strides, the Protocol still has limitations such the lack of a mechanism by which member states signatory to the treaty can interrogate and even object to accepting new members who sign the treaty and ratify it with reservations (like in the CEDAW). It also lacks enforceability and practicability since states are not monitored and made to submit the required process reports as in the CEDAW. In this light Corlett lamented that the Protocol has a Special Rapporteur on Women's Rights which has no single state report except that issues of women are incorporated generally in the state party report. The lack of awareness raising to empower women understand the relevance and benefit of the Protocol in local context, the issue of Lesbian, Gay, Bisexual, Transgender and identity which consists of the right to Sexual Orientation and Gender Identity. Furthermore, the need for more engagement with state parties especially according to the guidelines of reporting, using the dual avenues of the AU SDGEA and integration of the state reports into the ACHPR. These

² Substantive equality means real equality between men and women and guarantee of equal opportunities and equal incomes.

are pertinent issues that must be addressed especially within all sub-regions and championed by NGOs and CSOs.

4.2 ANALYSIS OF SADC GENDER PROTOCOL AND ITS ENFORCEMENT MECHANISMS AND ACCESS TO THE REGIONAL STRUCTURES

SADC Protocol on Gender and Development

In the SADC region, the rights of women are protected and promoted through the SADC Protocol on Gender and Development which was signed on 17 August 2008. One of its objectives is to take the region a step further to finding local, concrete ways of achieving gender equality amongst its 15 member states. “At the time the Ministers of Gender and Women’s rights met in Namibia in June 2011, 7 states had ratified the Gender Protocol. These are Angola, Lesotho, Mozambique, Namibia, Seychelles, Tanzania and Zimbabwe.”¹⁹ Drawing from the legacy of the Protocol to the ACHPR on the rights of women in Africa, this SADC Protocol is “revolutionary and unapologetic” in its provisions towards mainstreaming gender equality and protecting the rights of the woman at all levels. However, its ability to function effectively within the region depends strongly on its ratification by the state parties hence the imperative of speeding up the process before 2015. Thus the importance of three more ratifications for the enforceability of the Gender Protocol must be achieved – South Africa and DRC are said to be in the process of submitting the instrument of ratification of the protocol.²⁰

Article 34(2) of this Protocol provides that a committee of ministers responsible for Gender/women affairs shall ensure the implementation of this Protocol; it shall be assisted by a committee of senior officials and the SADC secretariat to constitute a three tier system of dispute resolution.²¹ Section 35 provides that all state parties submit progress reports to the Executive Secretary of SADC once every two years, while section 36(1) obliges state parties to strive to resolve disputes regarding application, interpretation or implementation of the Gender Protocol amicably. More importantly, in article 36(2), any dispute arising from the application, interpretation or implementation of this Protocol, which cannot be settled amicably, shall be referred to the SADC Tribunal, in accordance with Article 16 of the Treaty. Some of the substantive provisions of the gender protocol include addressing issues of paternity leave, gender based violence,³ sexual harassment, sexual reproductive rights,⁴ the principle of non-discrimination, multi tasking of women, minority status of women and recognition and remuneration of domestic and agricultural.

³ The rampant rape of women in DRC and Zimbabwe during conflict is disturbing and so is the corrective rape of lesbians in SA.

⁴ Reports of coerced sterilisation of women in Namibia and SA are worrisome.

Accessing the SADC Tribunal

The SADC Tribunal is the major sub-regional mechanism in the pursuit of an effective regional justice system. Access to this tribunal as in any other international court of law has been quite difficult for individuals, CSOs and NGOs for quite a number of reasons: the parochial notion of national sovereignty and the fact of the unwillingness of states to submit to the jurisdiction of supranational judicial bodies that will scrutinize domestic acts and policies the apprehension on the part of state parties of appraisal from supra-national legislative bodies.²² A major blow however to the SADC region is the suspension of the SADC tribunal which is the strongest mechanism and the final call in the resolution of gender issues and has been known to be effective in handing out decisions on different issues ranging from land rights, In August 2009 the Zimbabwe government issued a legal opinion challenging the legality of the Tribunal and impugning its jurisdiction, mandate and powers to enforce decisions.²³ This closure is a major blow to justice seeking CSOs and individuals, and worse still is the fact that majority of state parties to the ACHPR Protocol on Women's Rights have refused to make the declaration that allows individuals and CSOs to sue (the) state(s) in the African courts. In essence, the legal instruments available to the people in Africa as well as the SADC sub-region ranges from the AU Charter, the Protocol to the ACHPR on the Rights of Women, the African Court, the SADC Treaty, the SADC Protocol on Gender and Development, and the SADC Tribunal (though temporarily closed for political reasons).²⁴

Lloyd notes that blocking private access to international legal mechanisms such as the African Court, the SADC Tribunal and so on is retrogressive in all dimensions especially with regards to render related issues. It will also render these courts redundant, a view also echoed by Commissioner Pansy Tlakula since most case presented before these courts are brought by individuals, NGOs and CSOs. Stressing the importance of these international legal mechanisms, Lloyd further states thus:

The increase in cases filed before international courts allowing direct individual access⁵ has contributed to the development of jurisprudence, the enforcement of international law at the domestic level and the formal debate of controversial legal questions⁶ (See Lloyd, 2011).²⁵

It thus means that regional economic community courts and continental courts are critical in the promotion and protection of human rights, the stepping up of regional trade and economic integration and the entrenchment of democracy and the rule of law. It is imperative that the SADC Heads of state take into account current trends and standards on

⁵ The European Court of Justice has a current case backlog of 140000 cases and has developed some rich jurisprudence.

⁶ The SADC Tribunal was asked to deal with Zimbabwe's land reform programme in the Mike Campbell Case

compulsory jurisdiction versus optional jurisdiction and accessibility to international courts. This is because in terms of the AU (African Economic Community (AEC)) treaty objectives, it will be inappropriate for the SADC to contradict the trend with the other sub-regional courts that have granted access to private actors and recognize the compulsory jurisdiction of international courts.

The direct implication of the closure of the SADC Tribunal by the SADC Summit on the quest to procure the rights of women is that it becomes very difficult to pursue cases of Gender-related violence, discrimination and abuse at all an international level within the SADC region. It thus pulls back the struggle to fully establish the rights of women at all levels within the SADC region.

4.3 THE ROLE OF GENDER-BASED NGOS IN ACCESSING AND STRENGTHENING THESE INSTITUTIONS – THE EAST AFRICAN EXPERIENCE

The East African experience of the role of gender-based Women organisation in the same pursuit of Women's right is relatively different from the SADC experience considering that it is relatively the youngest region when compared to the likes of ECOWAS and SADC. However, the region has developed and is still developing structures in its bid to strengthen its regional economic and political ties. According to Agnes Kabajuni, in East Africa, the EAC is the main structure established by the **EAC Treaty**, and its members since 2007 have included Rwanda, Burundi, Kenya, Uganda, and Tanzania. The Governing organs of this body – the EAC – include; the EAC Summit, the EAC Council of Members whose structures include, the Coordinating Committee, the Sectoral Committee; and while its judicial and legislative organs are: the East African Court of Justice and the EAC Court; its executive organ consist of the Secretariat and the East African Society Forum (EACSOS). The secretariat is an intrinsic organ of the EAC. It is the guardian of the treaty which ensures that regulations and directives adopted by the council are properly implemented. It also initiates, receives and submits recommendations to the council.²⁶

The EAC Treaty is the main legal document in the EAC. Article 3 (3(b)) of the EAC Treaty emphasizes the universally accepted principle of good governance, democracy, rule of law, observance ..., while Article 3(5(b)) provides for granting observer status to civil society. The East African Court of Justice has no jurisdiction on human rights although Article 27(2) provides an extension in that regard.

With regards to issues of women's right within the EAC treaty, Article 5 objective 3(e) provides for mainstreaming gender and enhancing of the role of women in cultural, social, political, economic and technological development. The EAC gender action plan was designed to implement the EAC Treaty with regards to Women. This plan recognises other

gender instruments and programmes of action; it has other thematic areas such as youth, children, disability, community development and civil society.

Women CSOs' engagement in the EAC processes experiences a number of challenges militating against their participation as CSOs. These challenges include the hustles of gaining accreditation for an observer status due to the stringent processes involved. The limited engagement of women as there is limited consultation processes that target women's participation; the overriding focus on regional economic integration issues over and above core gender-related issues and the financial cost of creating awareness, engagement and participation.

In essence women in the EAC are also faced with huge financial difficulties; they are unaware of the EAC mechanisms and its opportunities; and most importantly, there is no background in the form of strong Regional Women's Organisations that stand at the forefront of the quest to engage the EAC with regards to promoting and protecting the rights of women in the region. In this light therefore, Agnes admonishes that the EAC must be made relevant to women by paying more attention to human rights and gender equality issues with the EAC Treaty. There is need to adequately consult women organisation by the ministers of the secretariat as well as extending the provisions of the EAC treaty towards promoting human rights in the region.

On the whole, the East African experience shows that advocacy on the rights of women is still very low within the EAC despite its commitment to gender equality – being part of the ACHPR and signatory to the ACHPR Protocol on the rights of Women. However, a growing body known as the Eastern African Sub-regional Support Initiative (EASSI) has drafted a Protocol in the like of the SADC Gender Protocol known as the Protocol on Gender Equality (2009). This aims beginning an engagement with the EAC to establish a Protocol which speaks to gender related issues as they impinge on the woman and the girl child with the East African socio-political, economic, cultural and technological sphere. This goal is to be pursued also through the coalition known as the East African Declaration on Gender Equality (EAGE).

4.4 THE ROLE OF REGIONAL AND SUB-REGIONAL STRUCTURES FOR THE ADVANCEMENT OF WOMEN'S RIGHT – THE WEST AFRICAN EXPERIENCE

The West African sub-region has been appraised as the most effective in the African region. Lloyd noted that in comparison with the SADC Tribunal which has been closed due to the SADC Summit executive interference, "... the ECOWAS Court of Justice continues to play a critical role in ensuring respect, protection and fulfilment of human rights in West Africa without executive interference."²⁷ Osai Ojigho notes that the major mechanism for the

promotion and protection of human rights, the rights of women, in the sub-region is the ECOWAS Community court of Justice (ECOWAS CCJ). The ECOWAS also has established instruments as well as institutions that deal with issues of gender mainstreaming within the sub-region. They include: the ECOWAS Gender Policy, the ECOWAS Gender and Development Centre (EGDC) and ECOWAS Commission's Gender, Youth, Civil Society, Employment and Drug Control Department, amongst other mechanisms and institutions.

The ECOWAS CCJ whose jurisdiction necessarily ends within the ECOWAS sub-region has its mandate entrenched by the Supplementary Protocol 2005, Art. 9(4). Article 10 of this Protocol also provides that individuals and NGOs/CSOs can bring cases directly to the court on any issues of the violation of human rights. In this case therefore, the issue of the exhaustion of domestic remedies rule does not apply within the ECOWAS sub-regional mechanism. Osai notes however that this court cannot hear appeals from national courts (See *Tidjani v FRN, ECW/CCJ/APP/01/06*). In terms of cases of individual and CSOs access to the ECOWAS Court, the case studies shown by Osai include:

- 1) The case of Women Groups representatives who stormed Abuja during the ECOWAS Summit of Heads of states and government, between 23 and 24 March 2011, to protest the killings during the post-election violence in Cote d'Ivoire as a result of the failure of the outgoing President Gbagbo to accept the results of the 2010 elections declaring the opposition leader Mr. Ouattara the winner. This was as a result of the aftermath of the killing of seven women during an all-women peace rally in Abidjan on the 3rd March 2011. The result of this protest was the commitment of the ECOWAS Heads of State to restoring peace and obtaining gender justice for the victims.
- 2) *Hadijatou Mani Koraou v Niger ECW/CCJ/JUD/06/08 of 27 October 2008*. 12 year Old Hadijatou sold into Slavery in Niger in 1996. During her servitude she was sexually and physically abused by her master, El Hadji. In 2005, he gave her a 'liberation certificate' but insisted that she stayed in his home as a wife. She eventually left and married a man of her choice. El Hadji charged her, her brother and husband to court for bigamy. After unsuccessful attempts to get justice from Niger's Court, Hadijatou with help of a pro-bono lawyer and INTERIGHTS filed in the ECOWAS CCJ claiming a violation of her rights Art 1,2,3,5,6, 18(3) African Charter and violation of Niger's law against slavery. The ECOWAS CCJ decided that for failing to protect Hadijatou from slavery despite the existence of a national law prohibiting slavery, Niger will be fined 10 Million CFA (about \$19,000) as reparation for her sufferings.

Osai notes that this decision of the ECOWAS CCJ had a rather bizarre implication on the protection of human rights and dignity as well as the rights of the woman. Its "... refusal to hold Niger responsible on grounds of not protecting the woman against violation shows poor interpretation of states' responsibility to protect standards."²⁸ It means, relegating to

the background the pertinent issue of the abuse, degradation and violation of the fundamental human rights of the woman. Be that as it may, the ECOWAS experience shows a deeper participation among Women Civil Society Organisations with issues bothering on the rights of the woman, and building on the fact that the ECOWAS CCJ is readily accessible; there is always the possibility of using it to further the cause of women in the region.

Osai also notes the importance of women groups engaging at different levels with donors, NGOs, human rights institutions, pro-bono lawyers as well as organising workshops where people can be enlightened about the mechanisms and instruments within the African and global circle. There remain huge challenges ranging from the need for gender-based rights to be prioritised: child marriage, inheritance, sexual and gender based violence, access to justice, participating in politics, employment discrimination, sexual and reproductive rights and so on. Most times, these rights don't form the hub of legislations at national, regional and sub-regional levels. The problem of bureaucratic red-tapes in acquiring observer statuses or access to regional mechanisms as well as language barriers – all form huge challenges for women engagement and participation in the ECOWAS region.

5. NATIONAL RELEVANCE OF REGIONAL (AND SUB-REGIONAL) STRUCTURES: THE ROLE OF GOVERNMENT, PUBLIC INSTITUTIONS AND NGOS

5.1 THE ROLE OF PUBLIC INSTITUTIONS (THE COMMISSION FOR GENDER EQUALITY)

Public institutions designed to promote and protect the rights of women in South Africa have the responsibility to ensure that this goal is achieved. The Commission for Gender Equality (CGE) as an institution designed for the purpose of ensuring gender mainstreaming in South Africa has the mandate to protect people who are victimised on account of gender. According to Dr. Teboho Maitse, the mandate of the commission focuses on gender-related issues of victimisation and not nationality. Evaluating the role of the CSOs in South Africa, Dr. Teboho Maitse argues that they are weak when it comes to issues of women which include the trafficking of women and children.²⁹

The importance of women's voice against different problematic issues within and around the region and sub-region cannot be over-emphasized considering that in the long run, they are the once who turn out as the worst victims. It is important that "we speak out against the neglect of women in the crisis ridden states of Somalia (War, drought, hunger and famine) and on issues such as climate change, Female Genital Mutilation, Reproductive Health, Gender-based violence and HIV/AIDS, especially during the upcoming Conference on

Climate Change (COP 17 in November 2011) because it is women who bear the brunt of its effects in different parts of Africa.³⁰

In terms of monitoring the progress of international instruments within South Africa, she also notes that South Africa has ratified and signed almost all international instruments. However governments need to be reminded by CSOs to keep to the treaty to which they are signatories. About ACHPR Protocol on the Rights of Women in Africa, she noted that the government was deliberating on certain areas of the Protocol that are unfavourable for South African Women because certain contentious issues such as marriage, tradition and religion slash most times with the liberal culture of the South African Constitution.

She added that the CGE invited NGOs to a forum in which a review of issues on gender equality could be discussed, but a lot of NGOs failed to take part in the process. The non-submission of reports about South Africa's adherence to the gender equality principle to the African Commission and NEPAD owes a great deal to non-participation on the part of CSOs and NGOs.

5.2 THE ROLE OF CIVIL SOCIETY (AND NGOS) IN THE IMPLEMENTATION OF REGIONAL INSTRUMENTS

The CSOs and NGOs engagement within the region is said to be in four areas – Participation, Engagement, Influencing and Lobbying³¹ – since it entails being part of the law and monitoring the law. There are three levels of engagement for women CSOs, and this includes engagement at: the African Commission on the Human and People's Rights; the NGO Forum; and the National and Local level.

THE ACHPR LEVEL

The African Commission sits twice a year at the ordinary sessions where CSOs are given the opportunity to engage. NGOs can develop and submit shadow reports (when country reports are reviewed) side by side the Government reports to the Commission. The CSOs can also write an alternate report if and when the governments fail to (submit) reports. This report focuses on critical issues within the state by engaging in policy analysis of government policies that will form part of the government reports to the Commission. This policy analysis is best undertaken by a network of NGOs working on different thematic areas – abuse, reproductive health, HIV/AIDS, etc – by pulling resources together to form a comprehensive report to the African Commission.

The commission ordinary session also provides for oral statements, by only NGOs with observer status, on pertinent issues within the country. Engaging with Commissioners is also provided for by organising events (such as this Workshop of HURISA and FHR) in

collaboration with other NGOs –regional and sub-regional – that work on different thematic areas. This will enhance the depth of reports that the commissioners write since these network of NGOs bring in a rich depth of data, experiences and recommendation from the local, sub-regional and regional level.

THE NGO FORUM LEVEL

This level of engagement requires being part of the NGO Forum. There is the provision for Panel discussion on thematic areas, and thus Women CSOs are able to engage and raise women issues. These CSOs are also able to request to make thematic presentation on issues to influence a particular policy since this is a possible way of accessing the Commission collectively as an NGO Forum. . There is also the possibility of engaging with the Special Rapporteurs on research and other issues that affect women within the region.

THE NATIONAL AND LOCAL (GRASSROOTS) LEVEL

Although the quest to engage at the level of the African Commission lies in the fact that it is possible to influence issues if they come from the Commission to the state parties. However, it is very important to engage first at national levels to influence policies. The experiences at the grassroots need to be taken up with national institutions (like the CGE) to influence policy formulation and monitoring. At the grassroots, it is important to reach out, involve them and incorporate their views. NGOs therefore need to engage at this level with the women to get data and recommendations that can be used in lobbying at the national levels.

As an addendum to these, it has to be noted that the role of NGOs is critical to ensure ratification of the Protocol without reservations, because there's no provision provided at AU level to counter reservations entered by states unlike, CEDAW which has a water tight provision to make ratification with reservations very difficult. More still:

- They need to run awareness campaigns to sensitive religious, traditional practitioners, communities, families, etc, about the protected rights of women.
- They are very important in the monitoring of implementation of the international, regional and sub-regional instruments at the three levels of government to advocate for laws, policies, programmes and projects to give effect to the treatise to deepen reform, practice and application.
- They are to participate actively in country reporting at national level and dissemination of publications at UN, AU and sub regional level.

- They are invaluable in the evaluation of progress made since entry into force of the two instruments and hosting of meeting, capacity building workshops for NGOs / CBOs, government departments, especially the justice sector, police, policy makers, business sector and communities.
- Summarily, it is important that NGOs and CSOs are flexible and demonstrate a willingness to learn about new mechanisms, apply international (& Regional) human rights standards in activities and cases – to build jurisprudence, translate documents to the official AU languages and local languages where applicable, Work with the National Human Rights Institutions and build contacts with the key human rights & mechanisms, Seek out and build relationships with donors, pro-bono lawyers, counsellors, volunteers for litigation support, Disseminate information widely especially on progressive decisions, Organise training, awareness raising events, ratification and domestication of treaties campaigns.

6. PARTICIPANTS (GENERAL PRACTICAL) **OBSERVATION/RESPONSE/ RECOMMENDATIONS**

Considering the fact that the mechanisms and instruments within the region and sub-regions face serious challenges, some recommendations were proffered by the participants at the workshop. These are however built on certain background set forth by HURISA and FHR's initiation of the idea of liaising with the Departments of Justice and International Relations and Cooperation. This entails a reminder to these departments about the outcome of this workshop forum which is the agreement that they need to initiate the process of drafting the country report which has not been submitted since 2005. The Workshop forum also recommends that the CGE has to initiate the process of drafting the report on the Protocol on Women's Right; it should not just work on the CEDAW only. This will give the CGE an opportunity to work with CSOs in the process of working on the reports on issues in South Africa. These thus created room for participant discussions whereby they interrogated the Protocols and other mechanisms within the region and sub-regions. Four groups took up for thematic areas, and these brought about different recommendations from participants. These observations and recommendations signify the overall benefits of the workshop, especially in the light of the set objectives of this workshop.

Indeed the coincidence of views between the presentations, the participants' observations and recommendations and the overall objectives of the workshop points to the fact of the benefits gained through this workshop. It shows the inter-connectivity between the workshop and its participants, thus portraying the bigger picture of the will among CSOs and NGOs to move forward and provide practical and effective steps towards the procurement,

protection and promotion of women's rights in Africa. Below are the views of the different groups.

GROUP 1: KNOWLEDGE OF THE REGIONAL AND SUB-REGIONAL INSTRUMENTS (PROTOCOLS)

This group observed that the language used in the presentations and guidelines on the Protocols were highly technical for all participants. They also agreed that the Protocols are good and effective instruments in the pursuit of gender-based issues, but they are difficult



for all participants to understand since the available copies were insufficient.

They agreed that information sharing within the region and sub-regions should take a bottom-up approach so as to enhance the goals of Human Rights NGOs. The lack of knowledge of the Conference on Climate Change (COP 17) by all participants was a major concern. There is

also the need to involve the issues in the Protocols into school curriculum and the need to use contemporary issue in the Protocol. With regards to the desire for self-education, the group recommends that the Protocol and guidelines should be incorporated into public education as well as translated into different accessible languages. Also there is the need to hold workshops as often as possible to keep up awareness on the Protocols. Finally, with respect to culture and tradition vis-a-vis the Protocol, they clarified the need to promote the positive aspects of tradition and to leave out harmful cultural practices.

GROUP 2: HOW TO PRESSURE AND HELP IN MONITORING THE STATE ACCOUNTABILITY IN TERMS OF THE REGIONAL AND SUB-REGIONAL INSTRUMENTS AND MECHANISMS

This group came up with resolutions that include the need for NGOs to pressurise the two departments to follow up in the submission of the country reports to the ACHPR; enforce the shadow reports to strengthen government accountability to make them adhere to the terms of the Protocol. It also includes the need to coordinate groups within the NGOs that will follow up the two relevant departments and the public institutions like the CGE to ensure that country reports are drafted and submitted to the ACHPR.



Other resolutions deal with:

- The need for NGOs to be in unity of voice and cause in the pursuance of rights issues.
- The need for NGOs to lobby parliament to rectify and incorporate the provisions of the Protocol into national law.
- The need for the NGOs to get into the grassroots to get data on human rights and gender issues, and create awareness in simple language.
- The need for NGOs to lobby the parliament to impress it upon the state to sign the Declaration that allows individuals and NGOs to access the African Court.

Finally, the group recommends that the SADC should stop blocking NGOs and Individuals from accessing the SADC Tribunal.

GROUP 3: WHAT ARE THE ROLES OF WOMEN CSOS AT THE SUB-REGIONAL LEVEL

The group recognises the roles of Women CSOs to include: advocacy, monitoring, capacity building, cooperating with interest groups, promoting and identifying groups at different levels at the grassroots.

The group also observed the following issues:

- That institutions at the local levels are weak, hence the need for NGOs to tap into local and sub-regional public and traditional institutions in the pursuit of human rights.

- That the Chapter 9 Institutions focus less on the local/grassroots levels where their presence is mostly needed.

In all of these, the CSOs have the obligation of collaborating at the local level to:

- Ensure effective communication within the local level between women by identifying issues of common interest in spite of the different thematic areas.
- Identify organisations at national and sub-regional levels and engage with them by promoting exchanges across the border – national, regional and even international.



GROUP 4: HOW TO CREATE AWARENESS OF INSTRUMENTS TO MAKE THEM RELEVANT

The Group agrees that NGOs have the responsibility of creating awareness on the instruments and their positions on gender related issues as they impinge on women's rights.

The group therefore resolved that:

- In terms of capacity building, the NGOs need to get a data base of Women CSOs to enhance familiarity among other CSOs.
- NGOs need to be familiar with all the relevant regional and sub-regional instruments.
- NGOs need to acquire funds to pursue these goals since NGOs don't always have sufficient funding.
- FHR, HURISA and the Department of Justice should ensure that funding comes from more than one donor.
- On Thematic Women's right issues, NGOs need to acquire the relevant tools



to create awareness such as the electronic mediums, school workshops, capacity building at home and schools focused not only on women but also men and boys so as to sensitize them on gender-related issues.

- NGOs need to empower themselves financially and not depend totally on funding from donors,
- Finally, this workshop should transcend the level of a mere talk-show hence the need for a follow-up workshop in the near future (sometime in October) to consolidate on the outcome of this workshop as well as procuring more practical approaches to improve women in South Africa and Africa at large.

7. CONCLUSION

The importance of Women in all spheres of life cannot be over-emphasized. The role of women in different liberation struggles in Africa remains fresh in the hearts and mind of all peoples. The South African liberation from the apartheid regime also had the ever green memories of the great women of valour. This Commemoration of the National Women's Day and the dedication of the whole month of August to women is a way of honouring the role of the woman in bringing freedom to the great nation-state – South Africa. However, having helped in freeing the nation, the onus now lies on the nation to protect and promote the rights and freedom of these great mothers of the nation.³² This is the reason why the instruments and mechanisms with International, Regional and Sub-regional legal systems have been designed to secure women's rights and protect them from discrimination in all areas of life within and around South Africa. The AU declaration of the years 2010 -2020 as the Decade for African Women is also a sign of commitment to keep women empowered in all ramifications.

However, the importance of knowing their rights and knowing how to access these rights, and how the instruments designed in this regard can be made relevant to the practical daily lives of (South) African women lies at the heart of this Workshop forum organised by the Human Rights Institute of South Africa (HURISA) and the Foundation for Human Rights (FHR). Having arraigned a host of international and indigenous national personalities such as the Special Rapporteur on Freedom of Expression and Access to Information (Advocate Pansy Tlakula), the Project Manager – Anglophone – of the New NEPAD Planning and Coordinating Agency Gender Unit (Dr. Justina Dubazah), the Commission for Gender Equality in South Africa (Dr. Maitse Teboho) and a host of other resource persons, this workshop engaged with the regional and sub-regional mechanisms and instruments on the advancement of African Women. It created great awareness among the participants on these instruments and mechanisms; how to gain access to them; how their provisions can

and need to be enforced at national and grass root levels; and how they can be practically relevant to the ordinary women, especially through the important roles playable by NGOs and Women CSOs.

There were noted challenges within the workshop especially in terms of communication between the presentations and the participants. This owes to the fact that participants came from different parts of South Africa and Africa, and many did not understand the language used in communication – English. The organisers also realised the need for translation, however due to financial reasons, this was not undertaken. But in spite of that, the workshop was a huge success, as participants looked forward to another session to consolidate on the merits of this workshop.

We at HURISA express our immense gratitude to our donor as well as collaborator, the FHR for making this workshop possible and a memorable one. We also look forward to reaping the bountiful merits of this workshop especially as more women's rights are procured in Africa.

PHOTO-GALLERY



FROM TOP-DOWN: DELEGATES POSING WITH MS. CORLETT LETLOJANE (MIDDLE) AND A CROSS SECTION OF PARTICIPANTS DURING THE PLENARY



TOP-DOWN: PARTICIPANTS DURING THE PLANARY AND A PARTICIPANT CONTRIBUTING DURING THE DISCUSSION SESSION



TOP-DOWN: PARTICIPANTS SIGNING IN (TOP) AND THE REGISTRATION OF PARTICIPANTS BEFORE THE WORKSHOP

ENDNOTES

¹ United Nations, 2003, The Convention in the Elimination of All Forms of Discrimination against Women and its optional Protocol: Handbook for Parliamentarians, Inter-Parliamentary Union.

² Prof. Vincent Nmeielle (Chairman Board of Directors, HURISA), Introductory Remarks at the Workshop commemorating the national Women's Day, August 2011.

³ Yasmin Sooka, "Contextualisation and setting the objectives of the Workshop", Presentation at the commemoration of the national Women's Day, HURISA & FHR, Johannesburg, August 2011

⁴ The Constitutive Act of the AU, AU, July 2000, Lome, Togo.

⁵ African (Banjul) Charter on Human and People's rights (1981-1986)

⁶ Byanyima, 2008, "Africa and Gender Equality: Priorities of the AU," in Akokpari et al (eds), *The African Union and its institutions*, Cape Town: CTP Book Printers.

⁷ Ibid

⁸ African (Banjul) Charter on Human and People's Rights (1981-1986). It has to be noted that the Commission was established a year later.

⁹ Advocate Pansy Tlakula, 2011, "Overview Of The Regional Mechanism Of The Achpr And Its Impact In The Advancement Of African Women's Rights," Presentation at the commemoration of the national Women's Day, HURISA & FHR, Johannesburg, August 2011

¹⁰ Advocate Pansy lamented that SA's last report was received in 2005 and nothing has come to the commission since then. This makes it difficult to evaluate progress.

¹¹ Pansy Tlakula, op.cit.

¹² Decisions adopted during the 17th AU Summit, "On the Nepad Heads of state and Government committee (HSGOC)," AU, Malabo, Equatorial Guinea, 23 June – 1st July 2011.

¹³ Pansy Tlakula, comments on the protocol on women's rights.

¹⁴ See African (Banjul) Charter on Human and Peoples rights, 1981-1986.

¹⁵ Corlett letlojane, "Overview of the Protocol to the ACHPR on the Rights of Women in Africa." Presentation at the commemoration of the national Women's Day, HURISA & FHR, Johannesburg, August 2011

¹⁶ Ibid

¹⁷ ibid

¹⁸ See CEDAW article 2, Protocol article 2

¹⁹ Lloyd Kuveya, "Legal Opinion on Access to International Courts." Presentation at the commemoration of the national Women's Day, HURISA & FHR, Johannesburg, August 2011

²⁰ Lloyd, op. Cit.

²¹ See Articles 34, 36, & 36 of the SADC Protocol on Gender and Development.

²² Lloyd, loc. cit

²³ Lloyd, ibid

²⁴ Yasmin Sooka insists that Governments in the SADC region Lobbied at the SADC summit not to allow individuals and CSOs to be able to access the SADC Tribunal directly.

²⁵ Lloyd, loc. cit.

²⁶ Agnes Kabajuni, "The role of regional and sub-regional structures for the advancement of women's rights: The East African perspective." Presentation at the commemoration of the national Women's Day, HURISA & FHR, Johannesburg, August 2011

²⁷ Lloyd, loc. Cit.

²⁸ Ossai Ojigho, "The role of regional and sub-regional structures for the advancement of women's rights: The West African Experience." Presentation at the commemoration of the national Women's Day, HURISA & FHR, Johannesburg, August 2011

²⁹ Dr. Teboho Maitse, in her presentation on the Role of Public institutions in the implementation of regional instruments, expresses disappointment in the CSOs for been 'weak'. She notes that the CGE had intervened in cases of child and women trafficking before the world cup – the case of a woman preparing 8 year olds for sex during the world cup. The second case is that of women and girls been trafficked from Mozambique by a mother and daughter for sex trade in South Africa.

³⁰ Ibid.

³¹ Agnes Kabajuni, op.cit.

³² Prof. Vincent Nmeielle, Loc. Cit.