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**The Rights of Women With Disabilities in Africa: Does the Protocol on the Rights of Women in Africa Offer Any Hope?**

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**Abstract:** At the time of the adoption of the *African Charter on Human and Peoples' Rights (the African Charter)* in 1981, women's rights were not a priority in Africa. Apart from an insertion of broad provisions pertaining to equality and freedom from discrimination, and their association with children's rights under article 68, the *African Charter* did not really focus on women's rights. However, this shortcoming was corrected in 2003 by the adoption of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol)* which came into force in 2005. Article 23 of the *African Women's Protocol* provides for "Special Protection of Women with Disabilities." Nevertheless, given that women with disabilities suffer double discrimination, both for being women and for living with a disability, and given that women with disabilities face particular difficulties in gaining access to education, employment and health care and are generally victims of violence and sexual abuse, is it enough to address their plight in a single provision of the protocol? This question is important as it investigates the extent to which the *African Women's Protocol* can be useful in protecting women with disabilities on the African continent.

The aim of this paper is to analyze how women with disabilities can fully benefit from the legal framework afforded to African women by the *African Women's Protocol*. The paper argues that the challenges faced by women with disabilities are huge and therefore should not be confined to a single provision, especially if disabled women's rights are to be addressed efficiently. The Paper presents the situation of women with disabilities in Africa, discusses the implications of having a stand-alone provision on the rights of women with disabilities, and makes use of the guidelines for States' reporting under the *African Women's Protocol* with special attention to reporting on "Special Protection of Women with Disabilities" (article 23) to demonstrate the added value of having many and more explicit provisions on the rights of women with disabilities.

**Introduction:** With the adoption in 2003 of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol)* and its coming into force in 2005, the African continent had decided to end impunity for women's rights violations in Africa and this was "the cause for celebration".<sup>1</sup> Women's rights, including the rights of women with disabilities were protected, as Article 23 of the

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\* The Paper reflects the views of the author and not his institution.

<sup>1</sup> F Banda 'Blazing a trail: The African Protocol on Women's Rights comes into force' (2006) 50 *Journal of African Law* 72 -84.

instrument provides for “Special Protection of Women with Disabilities.” Nevertheless, given that women with disabilities suffer double discrimination, both for being women and for living with a disability, and given that women with disabilities face particular difficulties in gaining access to education, employment and health care and are generally victims of violence and sexual abuse, is a single article (Article 23) enough to invite them to the party? In other words, is it possible to address the predicaments of women with disabilities in a single provision of the *Protocol*? This question is significant as it examines the extent to which the *African Women’s Protocol* can be valuable in protecting the rights of women with disabilities in Africa. The aim of this Paper is to analyze how women with disabilities can fully benefit from the legal framework afforded to African women by the *African Women’s Protocol*. The Paper is of the view that the challenges faced by women with disabilities are huge and for that reason should not be confined to a single provision. The first section of this Paper presents the situation of women with disabilities in Africa; the second section discusses the implications of having a stand-alone provision on the rights of women with disabilities; and, the third section makes use of the guidelines for States’ reporting under the *African Women’s Protocol* with special attention to reporting on “Special Protection of Women with Disabilities” (Article 23) to demonstrate the added value of having many and more explicit provisions on the rights of women with disabilities

**The situation of women with disabilities in Africa:** Whereas both men and women with disabilities face many challenges in their fight for equality, women with disabilities are more disadvantaged, they suffer double amounts of discrimination<sup>2</sup> ‘not only because they are disabled, but because they are ‘disabled women’.<sup>3</sup> To quote Arnade and Haefner: “While women with disabilities have much in common with men with disabilities, women with disabilities have to face multiple discrimination in many cases, so that they are often more disadvantaged than men with disabilities in similar circumstances”.<sup>4</sup> African women with disabilities are not at the margin of this tragedy. Poverty, joblessness, misery, and social exclusion are the plights of African women with disabilities,<sup>5</sup> who are marginalized and excluded from every sphere of life -- hence the statement from women with disabilities in northern Uganda: “As if we weren’t human”.<sup>6</sup> As in South Africa,<sup>7</sup> women with disabilities in northern Uganda

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<sup>2</sup> B F Waxman Fiduccia and L R Wolfe ‘Violence against disabled women’ (1999) 2; available at <http://www.centerwomenpolicy.org/pdfs/VAW5.pdf> (accessed 9 November) also S A Djoyou Kamga and J Biegon ‘Report of the disability rights roundtable’ seminar co-hosted by the *Centro de Direitos Humanos*, Eduardo Mondlane University and the Centre for Human Rights, University of Pretoria, Maputo in Mozambique (26 May 2010) 11 (On file with author).

<sup>3</sup> I G-du Plessis ‘African women with disabilities: The victims of multilayered discrimination’ (2007) 22 *SA Public Law* 405.

<sup>4</sup> S Arnade and S Haefner ‘Gendering the Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities’ Legal background paper (2006) 7, available at <http://www.wvda.org.au/dpi1.pdf> (accessed 10 November 2010); E Naidu, S Haffeejee, L Vetten & S Hargreaves ‘On the Margins: Violence Against Women with Disabilities’ (2005) 12 -13. Research report written for the Centre for the Study of Violence and Reconciliation available at <http://www.csvr.org.za/docs/gender/onthemargins.pdf> (accessed 8 November 2010).

<sup>5</sup> C McClain ‘The Triple oppression: Disability, Race and Gender’ available at [http://www.disabilityworld.org/09-10\\_02/women/southafrica.shtml](http://www.disabilityworld.org/09-10_02/women/southafrica.shtml) (accessed 12 November 2010).

<sup>6</sup> Human Rights Watch Report ‘“As If We Weren’t Human” Discrimination and Violence against Women with Disabilities in Northern Uganda’ (August 2010).

<sup>7</sup> Emmet ‘Disability, poverty, gender and race’ in *Disability and social change: A South African*

suffer stigma and discrimination based on their poverty, disabilities and gender.<sup>8</sup> They are prevented from having employment and when they are afforded the opportunity to work, they are poorly paid,<sup>9</sup> earning in general 56 percent of what men with disabilities receive.<sup>10</sup> Moreover, the job market is twice as accessible to men with disabilities as to women with disabilities,<sup>11</sup> who therefore are the poorest of the poor in the society.<sup>12</sup>

In Africa, women with disabilities also are prevented from creating a family, accessing information, health care and other government services, and, more importantly, from taking part in the community's activities.<sup>13</sup> In terms of creating a family, women with disabilities are considered to be asexual, unable to marry, have and raise children. Research shows that women with disabilities "as compared with women without disabilities and men with disabilities, are more likely to be unmarried, married later or divorced earlier."<sup>14</sup> According to Kotze, African women with disabilities "tend to be shunned in the marriage 'market,' whereas more men with disabilities actually get married".<sup>15</sup> In terms of health care, girls and women with disabilities are exposed to sexual violence and rape and, consequently, to HIV/AIDS.<sup>16</sup> When they are infected with HIV/AIDS, women with disabilities are not only discriminated against on the ground of the disease, but also for being women as well as for having a disability.<sup>17</sup>

In Africa, the vulnerability of women with disabilities to sexual violence, rape and HIV is aggravated by a well known myth that sex with a disabled person will cure AIDS – presumably an even more twisted version of the so-called "virgin cure" that is based on the common misconception that people with disabilities are not sexually active and therefore have to be virgins'.<sup>18</sup> In addition, rapists target women with disabilities as they are unable to run away if they are physically impaired, scream if

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*agenda* at [www.hsrcpress.ac.za](http://www.hsrcpress.ac.za) 228; also Du plessis (2007) 420; also E Naidu , S Haffejee, L Vetten & S Hargreaves 'On the Margins: Violence Against Women with Disabilities' (2005) 12 -13. Research report written for the Centre for the Study of Violence and Reconciliation available at <http://www.csvr.org.za/docs/gender/onthemargins.pdf> (accessed 8 November 2010).

<sup>8</sup> Human Rights Watch Report (August 2010) 12.

<sup>9</sup> Naidu *et al*, S (2005) 12-13.

<sup>10</sup> *Ibid*.

<sup>11</sup> *Ibid*.

<sup>12</sup> *Ibid* at 13.

<sup>13</sup> Human Rights Watch Report (August 2010) 24.

<sup>14</sup> Naidu *etal*, S (2005) 14.

<sup>15</sup> H Kotze 'A situational analysis of the state and status of disability issues and rights in Southern Africa: OSISA Project on Disability Rights and Law Schools' (2010) 20 (soon-to-be-published research in Southern Africa, commissioned and funded by the Open Society Initiative for Southern Africa (Osisa)).

<sup>16</sup> Kotze (2010)4.

<sup>17</sup> Human Rights Watch Report (August 2010 ) 25.

<sup>18</sup> Kotze (2010) 51.

hearing impaired and unable to speak, and identify the rapist later if visually impaired.<sup>19</sup> In addition, women and girls with disabilities are specifically vulnerable to marital rape.

In South Africa, a 29 year old woman with physical disability testified: “My husband would force me [to have sex] all the time. When I tell him that I am tired today he would... force me. I would just sleep even though he would be on top of me. It was painful. It happened all the time.”<sup>20</sup> The vulnerability to sexual abuse exposes women with disabilities to risk of HIV.<sup>21</sup> In Zimbabwe, a study in 2004 revealed that 87.4 percent of girls with disabilities had been sexually abused; among them, 52.4 percent tested HIV positive.<sup>22</sup> Similarly, research in Namibia and Botswana reached the same findings,<sup>23</sup> and it was also discovered that women with disabilities in several Southern African countries are excluded “from mainstream HIV/AIDS programmes and denial of access to services such as counselling, testing and treatment”.<sup>24</sup>

Moreover, after being victims of sexual abuse, women with disabilities do not have access to court. For example, in Kenya, after the rape of a 10 year old girl with a disability, her mother went to the police station where she was not only denied the necessary police medical forms because there were none, but was also told that “such cases cannot be properly supported in court - as the girl is deaf and disabled... [and] cannot be able to give evidence in court”.<sup>25</sup> Eventually, when the matter reached the court, it was listed several times, but could not be discussed because of the unavailability of sign language interpreters to assist the applicant.<sup>26</sup>

Facing a similar challenge, a South African 29 year old physically disabled woman abused by her husband shares her experience:

I went to the police all of the time. Maybe I have eight case records. I wanted them to talk to [my husband]. Maybe they can lock him up and throw the keys away, or take him to jail for many years. They did do that, but it didn't work. When I went to them again because he hit me, I asked them to lock him up. They didn't lock him again.

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<sup>19</sup> *Ibid.*

<sup>20</sup> Naidu *et al*, S (2005) 21.

<sup>21</sup> N E Groce & R Trasi ‘Rape of individuals with disability: AIDS and the folk belief of virgin cleansing’ (2004) 363 *The Lancet*, 1663-1664; also M H Kvam & S H Braathen ‘I thought...maybe this is my chance’: Sexual abuse against girls and women with disabilities in Malawi *Sexual Abuse: A Journal of Research and Treatment* 20 (2008) 5-24; also J H-Hancock ‘Interweaving conceptualizations of gender and disability in the context of vulnerability to HIV/AIDS in KwaZulu-Natal, South Africa’ (2009b) 27 (1) *Sexuality and disability* 35 – 47.

<sup>22</sup> ILO ‘Equality at work at work: Tackling the Challenges’ Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (2007) 44, para 161.

<sup>23</sup> *Ibid.*

<sup>24</sup> S A Djoyou Kanga and J Biegon ‘Report of the Disability Rights Roundtable ‘Seminar co-hosted by the *Centro de Direitos Humanos*, Eduardo Mondlane University and the Centre for Human Rights, University of Pretoria, Maputo, Mozambique (26 May 2010) 11.

<sup>25</sup> Women with disabilities and sexual violence in Kenya available at [http://www.newsfromafrica.org/newsfromafrica/articles/art\\_10689.html](http://www.newsfromafrica.org/newsfromafrica/articles/art_10689.html) (accessed 16 November 2010).

<sup>26</sup> *Ibid.*

They said you are disabled, we don't want to discuss disabled matters. You must go to the social workers.<sup>27</sup>

In several African countries, the lack of significant legislation on the rights of women with disabilities is the norm. For example, there is no specific national law protecting women with disabilities in Lesotho, Namibia, and Tanzania; and in Malawi, such a law is still in draft format.<sup>28</sup> In terms of policies on the rights of women with disabilities, Malawi and Lesotho have none,<sup>29</sup> and this is the trend in Africa. Where such policies are exceptionally found, they are “outdated and largely unimplemented”<sup>30</sup> and women with disabilities thus remain invisible and are discriminated against on a daily basis. Kotze summarises in these words:

PWDs [persons with disabilities] are poor. This is particularly problematic in the case of girls and women with disabilities, as they tend often to be economically dependent on parents and/or partners and are therefore generally not in a position to negotiate about safe sex. As a result of a combination of factors, including poverty, gender inequality and lack of education, women and girls with disabilities are very often more vulnerable to sexual exploitation and violence and therefore to infection by the HIV virus.<sup>31</sup>

Attempts to address the problem in Africa include measures such as the adoption of the **African Decade for Persons with Disabilities (2000-2009)** and the transformation of the *African Commission on Human and People's Rights' Focal Point on the Rights of Older Persons* to a *Working Group on the Rights of Older Persons and Persons with Disabilities in Africa*. In addition, special attention to women with disabilities was illustrated by the adoption of a single provision on “Special Protection of Women with Disabilities” in the *African Women's Protocol*.<sup>32</sup> Nevertheless, can a stand-alone provision on the rights of women with disabilities ensure their visibility and bring them to the same level with other members of the society?

**The suitability of having a single provision on women with disabilities in the African Women's Protocol:** The adoption of the 2003 *African Women's Protocol* was the acknowledgement that the era of women's rights violations in Africa had gone. It was the signal that: “[W]omen's rights require priority attention in the protection of universal and inalienable rights...[that] women of Africa deserve and are entitled to full recognition as

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<sup>27</sup> Naidu *et al* (2005)29

<sup>28</sup> Centre for Human Rights *The impact of the Protocol on the rights of women in Africa on violence against women in six selected Southern African Countries* (2009)88.(Pretoria: Pretoria University Law Press (PULP))

<sup>29</sup> *Ibid.*

<sup>30</sup> Djoyou Kamga and Biegon (2010) 11.

<sup>31</sup> Kotze (2010) 25.

<sup>32</sup> Art 23.

equal partners – both in private and family life and in their participation in economic, social and political activities.<sup>33</sup>

However, the rights of women with disabilities are confined in a stand-alone provision under the heading “Special Protection of Women with Disabilities”<sup>34</sup> which calls upon states to undertake to:

- a) ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision making;
- b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.

At first sight, this provision is enough for the protection of women with disabilities in Africa. In fact, it addresses the plight of women with disabilities by ensuring their visibility and it ensures a ‘de facto equality’<sup>35</sup> between women with disabilities and women without disabilities. In addition, a stand-alone article had the advantage of being comprehensive, and gives room to tackle inequality efficiently.<sup>36</sup>

Furthermore, the *African Women’s Protocol* is inclusive; it protects all women, including women with disabilities, who enjoy the same protections as other women. In this regard, states are compelled to take “specific measures” or appropriate actions commensurate with women with disabilities’ physical, economic and social needs in protecting their rights.

However, though this provision addresses normative equality between women with disabilities and other women, it does not clearly expose the double discrimination which affects women with disabilities. It does not deal with the fact that they are excluded both for being women and for being persons with disabilities. For this to happen, there is a need for more than a stand-alone article which not only isolates the issues, but reduces disabled women’s visibility and therefore trims down the ability to monitor States’ compliance. Arnade and Haefner observe that : “[T]he reaffirmation of equality between men and women is necessary but not sufficient”<sup>37</sup> and that: “[S]pecific reference to the problems faced by women with disabilities is necessary to make women with disabilities and the issues that affect them differently or disproportionately visible and to increase the likelihood that they will be addressed by governments and others in the implementation of the Convention.”

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<sup>33</sup> K A Ebeku ‘A New Hope for African Women: Overview of Africa’s Protocol on Women’s Rights’ (2004) 13(3) *Nordic Journal of African Studies* 273.

<sup>34</sup> Art 23.

<sup>35</sup> S Arnade and S Haefner (2006) 21.

<sup>36</sup> *Ibid*, 17.

<sup>37</sup> *Ibid* at 10.

Given that the main focus of the *African Women's Protocol* is on women in general, broadening specific provisions on women with disabilities would enhance the chance of their protection against double discrimination. Even though the multiplication of several articles on the same issue may lead to repetition of other articles, it is important to underline areas of concern for women with disabilities if substantive equality is to be achieved. In fact, before the adoption of the *African Women's Protocol*, the *African Charter* was said to be inclusive in its prohibition of discrimination based on "...sex and other status [including disability]".<sup>38</sup> Moreover, it also obliges State Parties to "ensure the elimination of discrimination against women" and to "ensure the protection of the rights of the woman".<sup>39</sup>

Nonetheless, this inclusiveness was not enough for women, hence the adoption of the *African Women's Protocol* which puts women's issues on the map. In the same way, the insertion of more explicit provisions on the rights of women with disabilities could have raised awareness on the issues and played a role in addressing situations of double inequality, or inequalities between women with disabilities and other persons.

Article 23 speaks of "specific measures commensurate with the needs" of women with disabilities. This is vague and does not ease the monitoring of state compliance. This shortcoming could have been addressed by the incorporation of explicit prescriptive measures to protect and ensure access and to accommodate women with disabilities in all parts of life. In addition to Article 23, the *African Women's Protocol* should have incorporated the measures needed to realise equality between women with disabilities and other persons by following the model set in Articles 2 to 5 of the *Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)*<sup>40</sup> which prescribes explicit policy measures needed to fight discrimination against women.

A possible model could have been to address areas where women with disabilities are most vulnerable. For example, women with disabilities need additional and explicit protection in terms of access to health, education, work and employment, as well as protection against violence and abuse, to list a few.

**The Right to Health:** To ensure the right to health of women with disabilities, a provision should have been inserted along the following lines: State Parties recognise that women with disabilities are entitled to the highest attainable standard of physical and mental health without discrimination on the ground of disability. State Parties should undertake to ensure that all appropriate measures are taken to ensure access for women with disabilities to health services, including health-related rehabilitation.

Specifically, State Parties shall: (a) provide women with disabilities with the same range and standard of services as provided for other women [including sexual and reproductive health services]; (b) ensure that disabled women are enabled to decide freely and responsibly on the number and spacing of their children, without discrimination based on disability. To that end, State Parties shall develop and disseminate policies and

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<sup>38</sup> African Charter, art 2.

<sup>39</sup> African Charter, art 18(3).

<sup>40</sup> On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified.

programs in fields such as family planning and parenthood, pregnancy, childbirth and the post-natal period that are inclusive to women with disabilities and protect them against any form of coercive treatment<sup>41</sup>

In this regard, such a provision would also assist in protecting the right of women with disabilities to create a family. Furthermore, such a provision could also address numerous barriers to care, such as physical inaccessibility of health offices and equipment and the lack of health information in Braille and sign language.<sup>42</sup>

**The Right to Education:** The 2003 *Global Survey on HIV/AIDS and Disability* shows that while literacy rates among persons with disabilities in general are low, women with disabilities are in the lowest category -- as only 1 percent have access to education.<sup>43</sup> Therefore, to address this crisis, a provision on inclusive education should have been inserted in the *African Women's Protocol* to ensure the right to education for girls and women with disabilities, such as the following: (a) States shall ensure that women and girls with disabilities are not denied their right to education and shall take steps to ensure their full enjoyment of that right, in particular by ensuring that they benefit from educational curricula and skills development that do not perpetuate gender [and disability] stereotypes and stigmatisation. States shall ensure an environment in which girls and women with disabilities can learn without harassment, with appropriate role models and with access to gender[and disability]-sensitive services.<sup>44</sup> (b) In realizing this right, State Parties shall ensure that girls and women with disabilities are afforded access and appropriate reasonable accommodation at schools.

**The Right to Work and Employment:** Article 23 should have been supplemented by a provision calling for reasonable accommodation for women with disabilities in the workplace and stating that such accommodation shall not only include needs commensurate with the disability, but also consider the needs of women with disabilities 'during pregnancy, child birth and child care'.<sup>45</sup>

**The Right to be Free from Exploitation, Violence and Abuse:** Article 23 would be substantially strengthened by inclusion of a provision along the following lines: (a) State Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect women with disabilities, both within and outside the home, from all

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<sup>41</sup> S Arnade and S Haefner (2006) 26.

<sup>42</sup> B F Waxman Fiduccia and L R Wolfe *Women and girls with Disability, Defining the issues: An overview* (1999) 8, available on <http://www.centerwomenpolicy.org/programs/waxmanfiduccia/documents/DIS1.pdf> (accessed 9 November 2010).

<sup>43</sup> N E Groce *Global Survey on HIV/AIDS and Disability*. School of Public Health, Yale University (April 2003)10 available at <http://globalsurvey.med.yale.edu/lancet.html> (Accessed 7 November 2010).

<sup>44</sup> S Arnade and S Haefner (2006) 25.

<sup>45</sup> *Ibid* at 27.

forms of exploitation, violence and abuse. (b) For the purposes of this **Protocol**, the term "violence" shall include physical, sexual and psychological violence occurring in the family or other private sphere, including battering, sexual abuse of girls with disabilities in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (c) When implementing these measures State Parties shall particularly take into account that women and girls with disabilities are at great risk of all forms of violence, neglect and exploitation in private or public settings.<sup>46</sup>

These provisions would have shed more light on the plight of women with disabilities in Africa. Though it could be argued that these provisions could be provided for through policies at national levels, their codification through the **African Women's Protocol** would have provided guidance on how to design national policies; it also would have compelled State Parties to reform old national policies that ignored women's rights in general and the rights of women with disabilities in particular and provide more guidance on how States should report on their compliance with the rights of women with disabilities to the African Commission and even to the UN Committee on the Rights of Persons with Disabilities.

**The Guidelines for States' Reporting under the African Women's Protocol -- Reporting on "Special Protection of Women with Disabilities" (article 23):** State reporting can be defined as a mechanism that allows the international or regional communities to monitor states' compliance with human rights. In practice, from time to time, States send reports to chosen and recognized human rights monitoring bodies on the measures they have taken to comply with human rights.<sup>47</sup> According to Nowak, State reporting is an "essential pillar of international human rights monitoring".<sup>48</sup> Sharing this view, Symonides portrays it as an "indispensable component of the overall strategy of the implementation of the human rights treaties".<sup>49</sup>

In the African human rights system, under article 62 of the **African Charter**, State Parties are compelled to submit "every two years a report on the legislative and other measures taken to give effect to the rights and freedoms" contained in the Charter. Since the provision does not designate the monitoring body, the African Commission on Human and Peoples' Rights was appointed to monitor State compliance with human rights in Africa by the Organization of African Unity (OAU) Assembly of Heads of State and Government, in response to the request that the OAU do so made by the African Commission on Human and Peoples' Rights.<sup>50</sup>

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<sup>46</sup> *Ibid.*

<sup>47</sup> J Biegon 'Towards the adoption of guidelines for state reporting under the African Union Protocol on Women's Rights: A review of the Pretoria Gender Expert Meeting, 6-7 August 2009' (2009) 9 *African Human Rights Law Journal* 617.

<sup>48</sup> M Nowak *CCPR Commentary* (2005) 713-714, (Kehl, Germany: Engel)

<sup>49</sup> J Symonides (ed) *Human rights: International protection, monitoring, enforcement* (2003) 59, (UK: Ashgate )

State Parties to the *African Women's Protocol* are required to submit reports under the Protocol "in their periodic reports submitted in accordance with article 62 of the African Charter".<sup>51</sup> In other words, States shall indicate legislative and other measures taken to give effect to the rights guaranteed under the Protocol.

With a view to strengthening the reporting mechanism on the *African Women's Protocol*, a Gender Expert Meeting was held August 6-7, 2009 at the Centre for Human Rights, University of Pretoria to draw up the "Guidelines for state reporting under the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa"<sup>52</sup> which was adopted by the African Commission. According to the Guidelines, "in respect of each of the provisions of the Protocol," States should explain legislative, administrative and institutional measures taken to give effect to women's rights as provided for by the Protocol.<sup>53</sup> In addition, States should explain policies and programmes, public education and any other measures including remedies to 'give effect' to the rights enshrined in the Protocol.

Now, can these Guidelines give a satisfactory account of what is done at the national level to implement the rights of women with disabilities under Article 23 of the Protocol? Unlike the 1989 Guidelines for State reporting under the African Charter, which were criticized for their unnecessary complexity,<sup>54</sup> and the 1998 Guidelines, which were criticized for their unhelpfulness,<sup>55</sup> vagueness and failure "to give sufficient guidance on the material that the Commission requires — or should be requiring — if the dialogue is to have substance,"<sup>56</sup> the 2009 Guidelines for *African Women's Protocol* reporting are comprehensive and clear, and seem to be the only hope for African women with disabilities. In fact, the Guidelines prescribe how States should present and explain measures undertaken to implement the rights enshrined in the Protocol, including the rights of women with disabilities.

However, the size and specificities of discrimination against women with disabilities are complex. For instance, ensuring access to education for girls and women with

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<sup>50</sup> See Second Annual Activity Report of the African Commission (1988-1989) 20.

<sup>51</sup> African Women's Protocol, art 26.

<sup>52</sup> For more on the Experts Meeting, see Biegon (2009).

<sup>53</sup> Guidelines for State reporting under the African Women Protocol, 'Specific provision of the Protocol, para (a)(b)(c).

<sup>54</sup> G Mugwanya 'Examination of state reports by the African Commission: A critical appraisal' (2001) 1 *African Human Rights Law Journal* 268- 279; F Viljoen *International human rights law in Africa* (2007) 372; (Oxford: Oxford University Press).

<sup>55</sup> K Quashigah 'The African Charter on Human and Peoples' Rights: Towards a more effective reporting mechanism' (2002) 2 *African Human Rights Law Journal* 264; Also Biegon (2009) 621.

<sup>56</sup> M Evans & R Murray 'The state reporting mechanism of the African Charter' in M Evans & R Murray (eds) *The African Charter on Human and Peoples' Rights: The system in practice, 1986-2006* (2008) 63; (Cambridge: Cambridge University Press)

disabilities will not be accomplished through passage of a few pieces of legislation and policies on universal access to education. Access to education in this context is broader as there is a need to have inclusive access as well as accommodation measures commensurate with various types of disabilities. The same observation applies to other areas of concern for women with disabilities -- such as access to health, to work and employment, and to protection against violence and abuse, for example.

Therefore, because discrimination against women with disabilities – in all its complexity and diversity -- is not fully covered by Article 23 of the *African Women's Protocol* or completely captured by the Guidelines, discrimination against women with disabilities may not be adequately represented in the State Parties' reports. In other words, while the Guidelines are well drafted, the multifaceted features of discrimination against women with disabilities is not entirely covered and State Parties can still ignore some of the rights of women with disabilities in their reports.

It is important to note, however, that State Parties to the *African Women's Protocol* are yet to report on their commitments under the instrument. But it is perhaps significant that their reports under the African Charter's Article 18(3), which prohibits discrimination against women,<sup>57</sup> generally do not include specific mention of women with disabilities. Therefore, the much awaited reports on the *African Women's Protocol* may give more clues and provide further direction to States on reporting on the rights of women with disabilities.

**Summary and Conclusion:** The aim of this Paper was to assess to what extent the rights of women with disabilities are protected under the *African Women's Protocol*. To attain this objective, the paper looked at three main issues: first, it presented the situation of women with disabilities in Africa; second, it examined the impact of having a stand-alone provision on the rights of women with disabilities; and, third, it examined whether the Guidelines for States' reporting under the *African Women's Protocol* provide enough direction for States' reporting on measures taken to give effect to article 23 on the "Special Protection of Women with Disabilities."

On the first issue, the Paper suggests that African women with disabilities suffer double discrimination, both for being a woman and for being disabled, and that they are excluded from gaining access to job markets, education and health services. In addition, women with disabilities are victims of domestic violence, sexual abuse, are prevented from creating a family, and have no access to justice. On the second issue, the Paper shows that having a stand-alone provision on the rights of women with disabilities in the *African Women's Protocol* does not do justice to women with disabilities; the Paper argues that, because of the multifaceted nature of the rights of women with disabilities, it would have been appropriate to have more than one provision on women with disabilities and that having multiple and prescriptive provisions could have assisted in clarifying pertinent issues for women with disabilities and could have helped to mainstream these issues and ensure their visibility. This would have provided guidance on how to enact and update national laws and policies on these issues and also would have assisted in monitoring States' compliance with the *African Women's Protocol*.

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<sup>57</sup> Biegon,(2009) 624.

On the final point, the Paper also found that, although the Guidelines will be of help for reporting under Article 23 of the *African Women's Protocol*, they do not cover all aspects of the discrimination imposed on women with disabilities by society. The Guidelines should have paid more attention to specific points and interconnections related to the protection of the rights of women with disabilities -- including not only general access but specific measures of accommodation commensurate with specific disabilities. The Paper notes that the much-awaited States' reports on their implementation of the *African Women's Protocol* will provide more insight on how to ensure better protection of the rights of women with disabilities in Africa.