



WOMEN'S
RIGHTS
IN AFRICA



"We are all born equal irrespective of sex, race, religion and creed. This preamble of the Declaration of Human Rights recognizes that women's rights is not a mere act of charity but a principle which one of humanity and a precursor to inclusiveness and prosperity. This principle is further reaffirmed in the African Charter on Human and People's Rights, consecrated in the Protocol to the Charter on Human and People's Rights in Africa on the Rights of Women and by prior continental and global conventions and policies on human and women's rights and actualized by the AU theme of 2016 "human rights with a particular focus on the rights of women". This report is dedicated to those whose commitment and actions have led to the respect and promotion of women's rights on the continent. The late Ambassador Fatoumata Sire Diakite, (title) invested the better years of her adult life in promoting and implementing actions which yielded positive benefits for women in her native Mali and across the continent. We will miss her passion and strong disposition for actions over words. May her soul rest in eternal peace. This report is the first in a series of report which WGDD will continue to collaborate with UN-OHCHR to raise awareness and influence policy in support of women's rights which require urgent attention and need to stand alone in order to obtain the necessary attention. It is informed by existing reports such as the Solemn Declaration on Gender Equality in Africa, the Reports of the Special Rapporteur on Women's Rights and from other recognized AU and international sources. I am particularly pleased that this report is providing an update on the status of domestication of the Maputo Protocol in all of our member states and providing knowledge on topics such as women in prison and those living with albinism which deserve our attention and action. Enjoy!"

Dr. Nkosazana Dlamini Zuma, Chairperson, African Union Commission



"Human rights are not a utopian fairy-tale -they are a recipe for sound institutions, more sustainable development and greater peace. I commend the African Union's emphasis on women's rights during this inspirational African Year of Human Rights, and I look forward to intensifying our promotion of women's rights across the Continent in years to come. When all women are empowered to make their own choices and share resources, opportunities and decisions as equal partners, every society in Africa will be transformed."

United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein

WOMEN'S RIGHTS IN AFRICA

"This report is the result of a yearlong collaboration with the UN-OHCHR, the African Union Special Rapporteur on the Rights of Women and UN-Women. It is a contribution to honor the AU 2016 theme "year of human rights with a particular focus on the rights of women", celebrate gains and continue advocacy for the voiceless. It started as a conversation on a knowledge product that would shed light on topics which are not as prominent in mainstream discussions and took the final shape of a full fledged report which will enable us move a step forward the rights of women by tracking and reporting progress. It has undergone several iterations and your feedback will ensure follow-up editions continue to meet our knowledge and advocacy needs."

Mahawa Kaba Wheeler, Director Women Gender and Development



TABLE OF CONTENTS

08 – INTRODUCTION

09 – BACKGROUND

12 – Framework on Women’s Right

13 – Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol)

15 – CONCEPTUALIZING RIGHTS

15 – Equality between women and men

15 – Gender

16 – Intersectionality and Multiple forms of discrimination

16 – Public-Private Sphere

19 – Indivisibility, Interrelatedness and Interdependence of Human Rights

19 – Cultural Values

20 – SITUATING THE MAPUTO PROTOCOL IN KEY ISSUES

22 – Sexual and Reproductive Health and Rights

22 – SAFE AND HEALTHY PREGNANCY (MMM)

22 – ACCESS TO SAFE ABORTION

27 – FORCED STERILIZATION OF WOMEN LIVING WITH HIV

28 – Persons with Albinism in Particular Women

30 – Sexual and Gender Based Violence

33 – Harmful Practices

35 – CHILD MARRIAGE

37 – FEMALE GENITAL MULTILATIONS

38 – ECONOMIC, SOCIAL AND CULTURAL RIGHTS

39 – ACCESS TO LAND

40 – Laws that Discriminate Against Women

43 – Women, Peace and Security

45 – Women in Prison

46 – AU HUMAN RIGHTS STRUCTURES

46 – African Commission on Human and Peoples’ Rights

46 – African Committee of Experts on the Rights and Welfare of the Child

49 – African Court on Human and Peoples’ Rights

50 – RELEVANT AU POLICES AND DIVISIONS

50 – Solemn Declaration on Gender Equality in Africa

50 – African Union Specialized Technical Committee on Gender Equality and Women’s Empowerment

50 – Directorate of Women, Gender and Development

50 – AU Gender Policy

52 – CHALLENGES TO IMPLEMENTATION

54 – RECOMMENDATIONS

INTRODUCTION

On January 2016, the Assembly of the Heads of States and Governments of the African Union declared 2016 as the Africa Year of Human Rights with a particular focus on the rights of women. To commemorate the year, the African Union commissioned this report with technical support from the Office of the United Nations High Commissioner for Human Rights (OHCHR) and contribution from UN Women. This report is the first in a series of analytical reports on the situation of women human rights on the continent that will be issued periodically and should be read in conjunction with existing African Union reports on women's human rights such as the States Parties report on the Solemn Declaration on Gender Equality in Africa, State Parties reports on the Maputo Protocol and reports from the Special Rapporteur on the rights of women in Africa, among others. The information contained in this report is based on a large number of sources including African Union institutions, United Nations organizations, reports of United Nations special procedure mandate holders and treaty bodies, as well as national and international civil society actors. Reports from the Special Rapporteur on the rights of women in Africa have also been taken into account. In preparing this report, a number of limitations were taken into consideration, including: gaps in State reporting particularly to the regional mechanisms on the human rights of women and States, documentation of appropriate baseline data in relation to women. This lack of data disaggregated by gender and sex makes it difficult to clearly assess the impact of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) on the ground. The examples included in this report are not exhaustive, their purpose is to feed into ongoing assessments of the extent to which the Maputo Protocol has contributed to the realization of women's rights on the continent and also what opportunities might lie ahead.

The report assesses progress made using specific thematic areas where protection gaps currently persist and where action is needed. The report also contains information on the African Union's structures and programs aimed at ensuring gender equality and the protection and promotion of the human rights of women. It concludes with recommendations on policy measures that governments could take to improve the situation of women's human rights on the continent. We hope that this report will feed into key discussions currently underway including the AU 10-Year Action Plan on Human Rights, and will help generate a greater and more effective reporting an implementation of the Maputo Protocol as well as the international human rights standards.





BACKGROUND

Significant progress has been made at the regional and national levels towards advancing the human rights of women and ensuring gender equality on the continent. The African Union Commission and its human rights mechanisms have adopted binding agreements, numerous measures and produced recommendations and reports addressing the human rights of women¹ These include, the African Charter on Human and Peoples' Rights; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; the Convention Governing the Specific Aspects of Refugee Problems in Africa; the African Charter on the Rights and Welfare of the Child; and the Protocol on the Statute of the African Court of Justice and Human Rights. There are also a number of instruments and monitoring bodies committed to the promotion and protection of the rights of women on the continent. These include, inter alia, the African Union Solemn Declaration on Gender Equality in Africa, The African Union Gender Policy and Agenda 2063. Regional political organizations have also adopted protocols and resolutions as well as issued declarations pertaining to the protection and promotion of women's human rights, including the Economic Community of West African States (ECOWAS) and the Southern African Development Community (ECOWAS).

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa also referred to as the Maputo Protocol has been integrated into several constitutions and into national laws and policies.

There are now provisions on sexual and gender-based violence, economic, social and cultural rights and the principle of equality and right to non-discrimination in constitutions, polices and in legislations across the continent. In the area of political participation, female participation in African legislatures outpaces many in developed countries. Rwanda (at 63.8 per cent) is ranked number one in the world, with Senegal and South Africa in the top 10. Fifteen African countries rank ahead of France and the United Kingdom, 24 rank ahead of the United States, and 42 rank ahead of Japan.²

Yet, it must be acknowledged that the remaining challenges and gaps for the full realization of women's rights is daunting. In every country on the continent, as is the case globally, women continue to be denied full enjoyment of their rights. In Africa, 1 in 3 women have experienced either physical and/or sexual intimate partner violence or sexual violence by a non-partner at some point in their lifetime, in 6 countries there is no legal protection for women against domestic violence, in 2013, African women and girls accounted for 62% (179 000) of all global deaths from preventable causes related to pregnancy and childbirth, in sub-Saharan Africa women comprises the highest percentage of new HIV infections, globally, an estimated 130 million girls and women alive today have undergone FGM, mainly in Africa and 125 million African women and girls alive today were married before the age of 18. Protection gaps in the areas of health, marriage and family relations are particularly striking as is the non-recognition of intersectional forms of discrimination. In many countries, these gaps are also compounded by political instability and conflict.

¹ Hereafter the 'AU'.

² <https://www.brookings.edu/blog/africa-in-focus/2016/01/21/foresight-africa-2016-maintaining-a-focus-on-womens-empowerment/empowerment/>
In 2015 the Seychelles was among the top 10 of countries, however, following its 2016 elections in which the AU deployed an All-Woman African Union Election Observation Mission (AUEOM) team, 7 seats are now held by women in the National Assembly (21.2%, more than 20 % reduction).

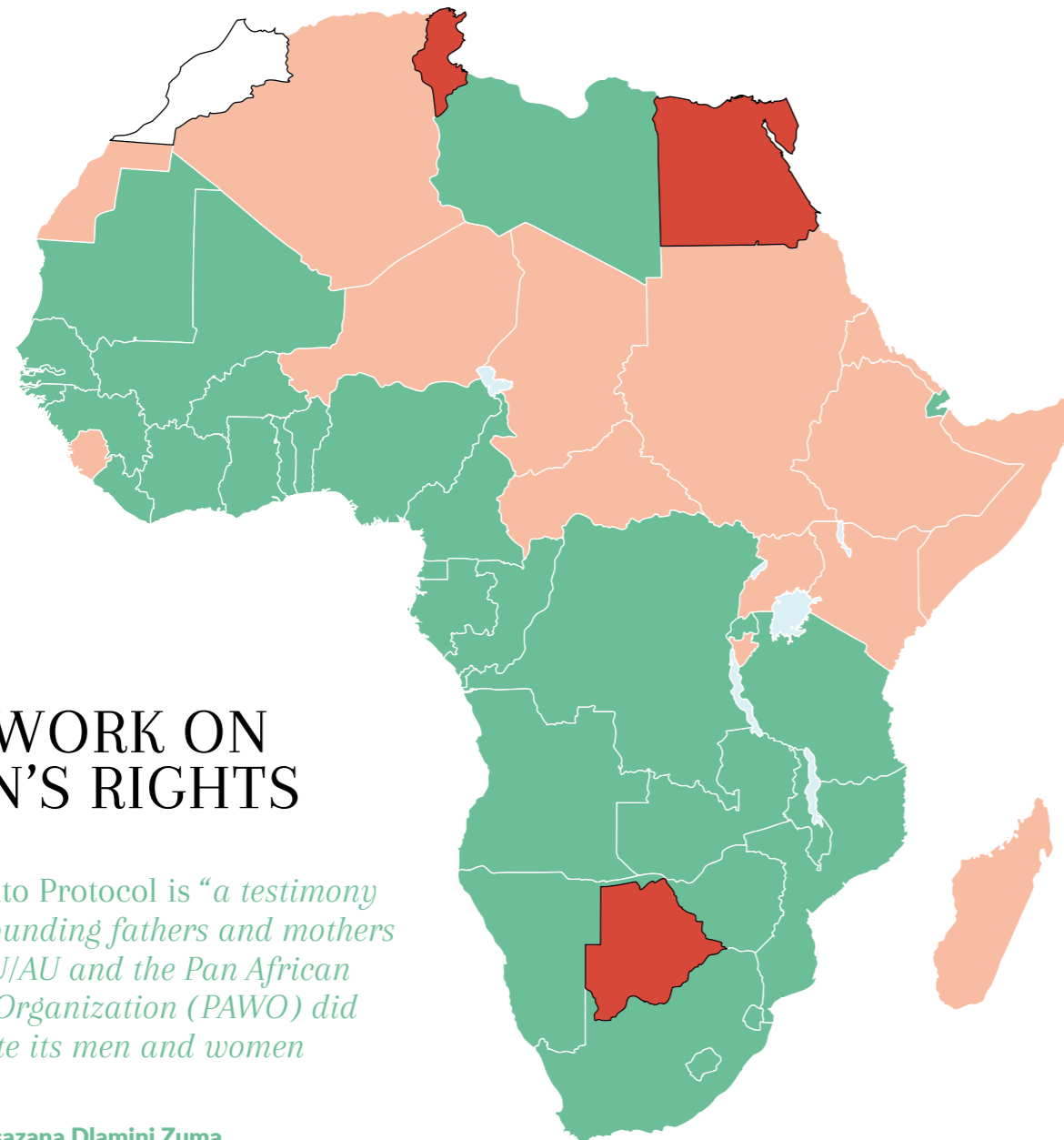
FRAMEWORK ON WOMEN'S RIGHTS

The Maputo Protocol is “a testimony that the founding fathers and mothers of the OAU/AU and the Pan African Women’s Organization (PAWO) did not liberate its men and women in vain.”

H.E. Dr. Nkosazana Dlamini Zuma

The African Charter on Human and Peoples’ Rights in art. 2, prohibits discrimination, including on the basis of sex, and obliges State Parties in art. 18 (3), to eliminate all forms of discrimination against women and to ensure the protection of the rights of women. In addition, art. 60 of the Charter mandate the African Commission on Human and Peoples’ Rights to draw inspiration from international law in its promotion and protection of human rights.³

³ The African Charter on Human and Peoples’ Rights Charter was adopted in Nairobi on 27 June 1981 and entered into Force October 21, 1986. Hereafter The Charter.



■ Not signed, not ratified
 ■ Signed, not ratified
 ■ Ratified

Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol)

The Maputo Protocol was adopted on 11 July 2003 following advocacy efforts led by the Special Rapporteur on the Rights of Women in Africa⁴ and civil society organizations. The Maputo Protocol contains almost identical provisions as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and expands legal protection for women. In particular, it takes a more nuanced approach to culture and tradition and explicitly acknowledges the positive role culture and tradition can play in women’s lives. Art. 2 of the Protocol requires States to take positive action to address inequalities between women and men and to ensure women are able to exercise and enjoy their rights. Other Art.s in the Protocol lays out States obligations to, inter alia, the right to dignity; the right to life, integrity and security of the person; protection from harmful practices; rights in marriage, which include entitlement to property and the custody and guardianship of children; protection from child, early and forced marriages; the right of access to justice and equal protection of the law; the right to participate in political and decision-making processes; the right to peace; the rights to adequate housing, food security, education, and equality in access to employment; reproductive and health rights, including control of one’s fertility; and the right to be protected against HIV infection. The Protocol also includes specific provisions on the protection of rights of women with disabilities. In addition, all promotional and protective provisions in the African Charter on Human and Peoples’ Rights and other human rights instruments are equally applicable in the interpretation of the Protocol.

Art. 26 of the Protocol requires State parties to submit every two years, periodic reports on administrative, legislative or other measures taken at the national level to give effect to the provisions of the Protocol. Thirty-seven countries have ratified the Protocol.

⁴ The mandate of the Special Rapporteur on Rights of Women in Africa was created in 1999. See Section on the African Commission on Human and Peoples’ Rights.

The impact of the Maputo Protocol should be viewed in the context of African States international treaty commitments. African States are parties to other human rights treaties with overlapping and parallel obligations, which means that there are multiple accountability forums for issues specific to women. For example, harmful practices, in particular female genital mutilation and child marriage, which have specific references in the Protocol have also been taken up by other international treaty bodies including the United Nations Committee on the Elimination of Discrimination against Women and the United Nations Committee on the Rights of the Child. All African countries are state parties to the CRC. With the exception of Somalia and Sudan, all African countries are party to CEDAW.

A number of countries have made reservations certain Art.s in the Protocol upon ratification of the Maputo Protocol on the ground that certain Art.s in the Protocol are incompatible with their national law, tradition, religion or culture. These include Cameroon, Namibia, South Africa, and Uganda. **None of these four countries have made reservations to the CEDAW.** The States that have signed the Protocol but have yet to ratify are: **Algeria, Burundi, Central African Republic, Chad, Eritrea, Ethiopia, Madagascar, Mauritius, Niger, Sahrawi Arab Democratic Republic, Sao Tome and Principe, Somalia, South Sudan and Sudan. Botswana, Egypt and Tunisia.**

To date, forty-six African countries have reported to United Nations Committee on the Elimination of Discrimination against Women. Only four countries have submitted reports to the African Commission on Human and Peoples’ Rights under the Maputo Protocol.

HUMAN RIGHTS OF WOMEN IN AFRICA

Conceptualizing rights

The following concepts are based on agreed language in AU and United Nations official documents.

Equality between Women and Men

Art. 2 of the Maputo Protocol defines discrimination against women as any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life. The definition of discrimination encompasses a variety of possible discriminatory actions having either the express purpose (*de jure*) or the actual effect (*de facto*) of discriminating against women. The Maputo Protocol prohibits practices that can perpetuate women's inequality. Discrimination can occur through direct or indirect discriminatory provisions, such as when a law or policy restricts, prefers or distinguishes between certain groups, for instance, prohibiting women from driving, owning land or inheriting property. Laws, policies or programmes can also have detrimental effects on women even though they appear to be gender-neutral, for instance, aid programmes which distribute benefits to the "head of household" may not benefit women equally since men are often considered the head of the household in a number of cultures. Similarly, given women's disproportionate representation among those living in poverty, a government lending scheme to buy land may be inaccessible to women due to its cost—even if the scheme is open to both men and women. Substantive equality is critical for gender equality, but also for addressing other horizontal inequalities between groups that are discriminated against or otherwise excluded.

Gender

The term "gender" refers to socially constructed identities, attributes and roles for women and men, and society's social and cultural meaning for these biological differences, which result in hierarchical relationships between women and men and in the distribution of power and rights favoring men and disadvantaging women. This social positioning of women and men is affected by among others, political, economic, cultural, social, religious, ideological and environmental factors, and thus can be changed by culture, society and community. Gender constructions are dynamic and fluid; they change over time and can be different in different cultures. As an example of socially learned differences, women's role in most societies has traditionally been to take care of the household and the children, whereas the role of men has been to provide for the family by working outside the home. In most societies, these traditional perceptions of women's and men's roles have changed and are constantly evolving."⁵

Intersectionality and Multiple Forms of Discrimination

Intersecting forms of discrimination arise when women face discrimination on two or more grounds, including for instance, age, economic status, racial or ethnic background, religion, nationality status, citizenship, marital status, health, HIV/AIDS or disability, poverty and sexual orientation, among others. These factors in many settings contribute to exacerbate and/or influence the nature of discrimination experienced by women.

The African Commission on Human and Peoples' Rights (The Commission) has addressed the impact of the intersection of gender-based discrimination with discrimination based on other status including for example poverty or HIV status⁶. The Commission has explained that intersectional or multiple discrimination occurs when a woman is subjected to discrimination on more than one ground at the same time, for example race and gender which compounds the effect of the discrimination and that multiple and intersectional forms of discrimination based on sex and gender, if not effectively targeted and resolved, often perpetuate and exacerbate the violations of women's human rights and their right to live free from discrimination. The World Bank Women, Business and the Law 2016⁷ found "that lower legal gender equality is associated with fewer girls attending secondary school relative to boys, fewer women working or running businesses, and a wider gender wage gap.

Public-Private Sphere

Violations of women's human rights pervade all areas of women's life, in both public and private spheres and take many different forms. Violations occurring in the private sphere, such as for example domestic violence, family and property law where customary law is the applicable law and are often perceived as private matters in which the State should not interfere. The Maputo Protocol clearly prohibits discrimination against women and practices that can perpetuate women's inequality whether occurring in the public or private sphere.

There is now a recognition that the purpose of the public/private dichotomy is to limit the autonomy of women and their access to the public sphere; however women continue to face discrimination when seeking to participate equally in all spheres of private and public life and in decision making. States are obligated to protect individuals including women against human rights violations by third parties, including in the private sphere, and failure to respond and protect is also a human rights violation.



UNITED NATIONS PHOTOMARK GARTEN

⁶ <http://www.achpr.org/sessions/52nd/inter-session-activity-reports/hiv-aids/>

⁷ World Bank Group, Women, Business and the Law 2016.



SOURCE: ANGRY AFRICAN GIRLS UNITED

Indivisibility, Interrelatedness and Interdependence of Human Rights

Human rights are all interrelated, interdependent, indivisible and universal. The principles of indivisibility (all human rights have equal status, and cannot be positioned in a hierarchical order) and the mutually reinforcing nature of human rights, interdependence (each right depends at least to some degree on the fulfillment of the other rights) mean that to achieve substantive gender equality for women, measures, strategies and programmes must be comprehensive and multisectoral in nature. For example, to be effective, government strategies directed at eliminating harmful practices must be combined with programmes to promote women's autonomy and decision-making over their bodies and lives as well to tackle discriminatory cultural and social attitudes and practices in both public and private spheres. In addition, concrete steps must be taken to actively promote and fulfill the principle of gender equality for example, by identifying, confronting and transforming harmful gender stereotypes.

The indivisibility and interrelatedness of human rights of women must also be a primary consideration in national and regional poverty-reduction efforts aimed at women. For instance, promoting equal access to education or women's political participation ought to be accompanied with elimination of discrimination in access to land, property, inheritance, credit, financial resources for investment among others. The Maputo Protocol commits States to ensuring the full implementation of the human rights of women. As such the Art.s contained in the Protocol should not be read and understood in isolation from other provisions of the Protocol.

Cultural Values

Culture is often invoked as a justification for violations of women's human rights, reflecting deep-seated patriarchal structures and harmful gender stereotypes. In several countries, culture is invoked to negatively impact the rights of women, in particular in the areas of marriage and property. However, culture is not a static or unchanging concept, although some States tend to present it as such in order to justify discrimination and violent practices against women and girls. The Maputo Protocol recognizes that cultural and traditional practices must evolve when they constitute or lead to discrimination against women, including gender-based violence. Art. 2 of the Protocol

requires States parties to commit to take measures to modify the social and cultural patterns of conduct of women and men with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men. Culture can be used as a vehicle to promote more equal societies and respect for women's rights. A key strategy to this end is ensuring women's equal enjoyment of cultural rights including participating in and contributing to all aspects of cultural life without fear of punitive action, such as identifying and interpreting cultural heritage and deciding which cultural traditions, values or practices are to be kept intact, modified or discarded altogether.

Culture is not a static or unchanging concept, although some States tend to present it as such in order to justify discrimination and violent practices against women and girls. The Maputo Protocol recognizes that cultural and traditional practices must evolve when they constitute or lead to discrimination against women, including gender-based violence. Art. 2 of the Protocol requires States parties to commit to take measures to modify the social and cultural patterns of conduct of women and men with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

Secretary-General of the United Nations, several United Nations human rights experts, special procedures mandate holders and treaty bodies have established that neither cultural diversity nor freedom of religion may justify discrimination against women. Discriminatory, repressive and violent practices against women should be eliminated, whatever their origins, including those founded in culture or religion.⁸

Cultural justifications for systematic gender discrimination are recognized both in Africa and globally as entirely incompatible with human rights.

SITUATING THE MAPUTO PROTOCOL IN KEY ISSUES

Changing the narrative for women in Africa
by Letty Chiwara

“African countries and their governments have recognised that the vision for ‘The Africa We Want’ cannot be achieved until and unless women enjoy their full rights as equal partners in development. Accordingly, several normative and legislative protocols have been adopted, including the Maputo Protocol, the Solemn Declaration and Agenda 2063. While there has been some commendable progress with regards to adoption of legal and policy frameworks that promote women’s rights on the continent, much more needs to be done in terms of implementation and accountability, particularly where Economic, Social and Cultural Rights of women are concerned. Women still bear a disproportionate burden of poverty. They continue to be engaged in informal low-paying labour, unpaid care work, and face discriminatory land ownership and inheritance rights. Violation of these and other rights expose women to high risk of sexually-induced violence, while limited access to resources and services such as education and health condemns them to a life of poverty and deprivation.”

Moving forward, we need to change the narrative for women in Africa, we need to hear their voices, and celebrate their successes! During the AU Year for Women 2015, one key message that came out from the women of Africa is “Retire the Hoe to the Museum”, aptly presented in the moving stories of successful women farmers from Mozambique and Zimbabwe captured in a documentary series “African Women Changing the Narrative” proving that investing in mechanisation of agriculture will drive African economies and reduce time and labour for women farmers”

Letty Chiwara

The majority of countries on the continent have given effect to the principles contained in the Maputo Protocol through concrete and effective policies and programmes on gender equality. Yet, there continue to be significant gaps between the provisions of the Protocol, its domestication at the national level, and women’s enjoyment of their human rights in practice. This disconnect can be attributed to, inter alia: the patriarchal socio-cultural, economic, political and environmental context; rigid gender roles justified on the grounds of tradition, customs and religion; uneven educational attainment for women and girls; poverty; and political unrests and conflicts, which continue to be commonplace in many countries.

The following are illustrative examples of areas where there is a need for acceleration of full implementation of the Maputo Protocol’s norms, be it in the form of new laws to cover gaps in existing legislation or policies and programmes to ensure women are able to benefit and participate equally in all aspects of society. The following analysis draws upon the work of a large number of sources including African Union institutions, United Nations organizations, as well as national and international civil society actors. Reports from the Special Rapporteur on the rights of women in African have also been taken into account. The issues identified below are not exhaustive⁹.

⁹ For instance, the issue of multiple discrimination and intersectionality of violations are areas which also require further analysis but which is not the focus of this report.



SOURCE THE AFRICAN UNION FOUNDATION



According to the World Health Organization, developing regions account for approximately 99% of all maternal deaths. In 2015, roughly 66% of all maternal deaths occurred in sub-Saharan Africa.¹⁰

Sexual and Reproductive Health and Rights

SAFE AND HEALTHY PREGNANCY (MMM)

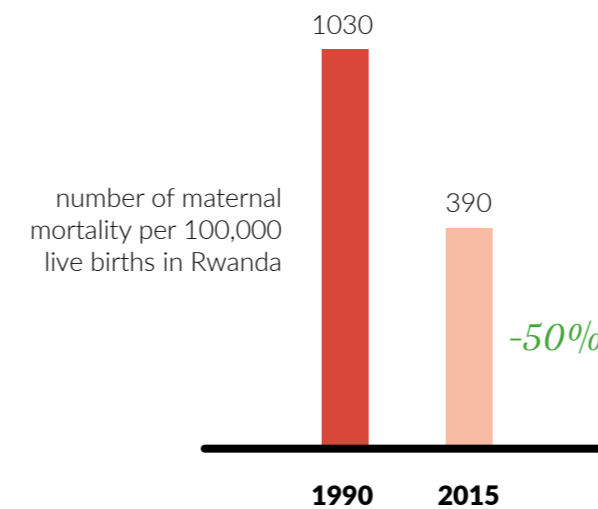
High rates of maternal mortality and morbidity on the continent can be attributed to proximal determinants such as hemorrhage, sepsis and unsafe abortion, as well as more distal determinants related to gender inequality. This includes a lack of autonomy of women to make informed decisions about whether to become pregnant in the first place or to seek medical care, a lack of access to contraception¹¹, as well as a lack of education including access to comprehensive sexuality education¹². It is also

related to broader issues such as inadequate infrastructure to ensure women's enjoyment of health rights in reality, such as insufficient roads and transportation systems for reaching health clinics, as well as a lack of access to water and sanitation, which is critical for maintaining good health, including during pregnancy. Once women access health facilities, they may still face problems and undue delays related to weak health systems, and gaps in quality of care, such as drug stock outs or inadequate human resources amongst health professionals which contribute to these high rates of maternal mortality and morbidity. Certain groups face particular stigma which deters them from seeking in accessing sexual and reproductive health goods and services, such as adolescents, unmarried women, and women seeking abortions, because of deeply held societal norms which disapprove of sex outside

¹⁰ <http://www.who.int/mediacentre/factsheets/fs348/en/>

¹¹ www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Contra_FamPlan_WEB.pdf

¹² TG MMM and the GC22 of CESCR



In Rwanda, the maternal mortality ratio has dropped drastically since 1990 where there were 1030 deaths per 100,000 live births and had by 2015, declined to 390 deaths.

marriage or for purposes other than procreation. The most at risk group of dying in pregnancy and childbirth is adolescent girls¹³ – the proportion of births taking place during adolescence in Sub-Saharan Africa is over 50 per cent, and a link can be made to a lack of access to accurate information on sexuality to prevent pregnancy and STIs. The higher death and life debilitating injuries faced by adolescent girls is related to biological factors, but also directly linked to other problems such as a lack of access to comprehensive sexuality education and information, a lack of access to sexual and reproductive health services, and harmful practices such as child and forced marriages.

The Commission in its resolution 135 has described preventable maternal mortality in Africa as a violation of women's right to life, dignity and equality as enshrined in the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.¹⁴ The Maputo Protocol requires States to ensure women's rights to health and safety, including women's equal access to health-care services as well as their rights to privacy, to seek and access information and bodily integrity. Art. 14 of the Protocol guarantee women's right to health, including sexual and reproductive health. This right includes: the right to control their fertility, the right to decide the number of children and the spacing of children, the right to choose any method of contraception, and the right to have family planning education. This obligation requires States to take all appropriate measures to ensure women have access to adequate and affordable health services, including information and education programs, and pre-natal and post-natal care. African states have

¹³ http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Adolescents_WEB.pdf

¹⁴ <http://www.achpr.org/sessions/44th/resolutions/135/>

taken measures towards the implementation of Art. 14, especially in the area of access to affordable and adequate health services, nonetheless on the continent, a wide range of both public and private actors continue to play a role that affects women's health and access to health care, and yet many of them are often not held accountable for their actions or inactions.

According to the World Health Organization (WHO), eighteen countries in sub-Saharan Africa, had reduced maternal death rates from about 999 to about 500 deaths per 100 000 live births in 2015, of which the majority of the deaths were among adolescents.¹⁵

In Rwanda, the maternal mortality ratio has dropped drastically since 1990 where there were 1030 deaths per 100,000 live births and had by 2015, declined to 390 deaths.¹⁶

African States have made progress since the Abuja Declaration in 2001 in which governments committed to increase domestic expenditures on health, and called for additional international partnerships. Since the Abuja Declaration, national governments have established dedicated offices, coordination mechanisms and national strategic plans for all major diseases—especially AIDS. Health funding has risen, from 2001 to 2011 health budgets in AU Member States has increased from 9% to 11% of public expenditures. Six countries (Liberia, Madagascar, Malawi, Rwanda, Togo and Zambia) have achieved the Abuja target of allocating 15% of public expenditure to health, and a number of other countries (e.g. Djibouti, Ethiopia, Lesotho and Swaziland) are within reach of the 15% target.

¹⁵ http://apps.who.int/iris/bitstream/10665/193994/1/WHO_RHR_15.23_eng.pdf

¹⁶ <http://data.worldbank.org/indicator/SH.STA.MMRT>

ACCESS TO SAFE ABORTION¹⁷

Art. 4 (2) (c) of the Protocol calls on States to protect the reproductive rights of women by allowing medical abortion in cases of rape, incest, and where continued pregnancy would endanger the mental and physical health of the woman or foetus. This necessarily means that access to safe termination of pregnancy must be guaranteed. Denial of access to essential health services with respect to termination of pregnancy has particularly serious consequences for women's health and lives, yet this right has been met with great resistance at the national level. These highly restrictive laws, sometimes even criminal laws, are maintained despite evidence from World Health Organization (WHO) that restrictions on abortion do not reduce the incidence of abortion, but drive the service underground, making it unsafe or even life threatening for women, and adolescent girls.

The Commission in its General Comment No. 2 on Art. 14.1 (a), (b), (c) and (f) and Art. 14. 2 (a) and (c) of the Protocol cites unsafe abortions as a factor in preventable maternal mortality and for women who undergo them a persistent disability factor which is often not listed as such. The Commission noted that in contexts where national laws allow therapeutic abortion where health services are available, accessible, acceptable and of good quality, the prevalence as well as complications arising from unsafe abortions are lower than in countries where the legal conditions for abortion are restricted.¹⁸ The Commission has articulated that States obligation to promote the right to health obliges State parties to create the legal, economic and social conditions that enable women to exercise their sexual and reproductive rights with regard to family planning/contraception and safe abortion, as well as to enjoy them. An essential step towards eliminating stigmatization and discrimination related to reproductive health includes, but is not limited to, supporting women's empowerment, sensitizing and educating communities, religious leaders, traditional chiefs and political leaders on women's sexual and reproductive rights as well as training health-care workers.

Out of the thirty-seven States who have ratified the Protocol, Kenya and Uganda have entered reservations that limit their obligations with regard to art. 14 (2)(c) 'the right to choose any method of contraception' and in the case of Uganda, also art.14 (2)(a) 'the right to control their fertility' on the grounds that the provision is incompatible with domestic laws, African customs and values.¹⁹

¹⁷ OHCHR Information series on sexual and reproductive health and rights : <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/HealthRights.aspx>

¹⁸ http://www.achpr.org/files/instruments/general-comments-rights-women/achpr_instr_general_comment2_rights_of_women_in_africa_eng.pdf.

¹⁹ Countries that have entered reservations on Art. 14 (2)(c) include: Cameroon, Kenya, Uganda and Rwanda.

According to the Commission's campaign to decriminalize abortion across Africa²⁰; in 2012, there were 22 million unsafe abortions globally; of these, 6.2 million or 29 per cent occurred in Africa and 60 per cent were reportedly performed on women under the age of 25. Over 47,000 women and girls died from complications resulting from unsafe termination of pregnancy. For the same period, there were 5 million disabilities which were directly linked to unsafe abortion. According to WHO data, in countries where women have gained the right to termination of pregnancy and are provided with access to information and to all methods of contraception have the lowest rates of termination of pregnancy.²¹ At the international level, human rights mechanisms have consistently called for the decriminalization of abortion.²²

There has been an increase in legal and policy reform initiatives in a number of countries to slightly ease restrictive laws and policies in relation to abortion, for example, in 2012, **Mauritius amended its Criminal Code allowing termination of pregnancy in specific circumstances such as when the life of the woman is in danger or pregnancy resulting from rape including statutory rape.**

Nonetheless, the continent has also witnessed challenges brought about by intensified opposition that has stalled policy advancements in for example Kenya, Uganda and Sierra Leone.

²⁰ The Commission campaign is to mobilize National Human Rights Institutions (NHRI) as well as civil society organizations to advocate for law and policy reform on sexual and reproductive health and rights.

²¹ A/HRC/29/40

²² http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf
See also CESCR, General Comment 22 on the right to sexual and reproductive health. WHO, Safe abortion: technical and policy guidance for health systems, http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf



In a number of countries, pregnant women have been asked to sign consent forms for sterilization procedures in situations of duress, such as during labour and while in severe pain.

Women Living with HIV

In 2013, an estimated 24.7 million people were living with HIV in sub-Saharan Africa, accounting for 71% of the global total. HIV prevalence for the region is 4.7% but varies greatly between sub-regions as well as in individual countries. For example, Swaziland has 27.4 per cent HIV prevalence while HIV prevalence in West and East Africa ranges from 0.5 per cent in Senegal to 6 per cent in Kenya.²³ While many countries have large, generalised epidemics, research has shown that young women are particularly at risk of HIV. High HIV incidence and prevalence among women and girls are often the result of structural factors, such as stigma, discrimination, relationships between young women and older men which is associated with low condom use, violence and other human rights violations that women face. These human rights violations contribute to making women particularly vulnerable to HIV while at the same time hindering their access to and uptake of HIV prevention, testing and treatment services.

Similar to any other contraceptive method, sterilization should only be provided with the full, free and informed consent of the individual.²⁴ However, in some countries, a large proportion of women living with HIV are coerced to undergo the sterilization without their free and informed consent. It has been documented that women living with HIV have been coerced to sign consent forms for sterilization procedures as a condition of receiving antiretroviral and other HIV treatment and prenatal care for a current pregnancy, or other reproductive health services. In a number of countries, pregnant women have been asked to sign consent forms for sterilization procedures in situations of duress, such as during labour and while in severe pain.²⁵

Art. 14 of the Maputo Protocol guarantees women's right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS; to be informed on their health status and on the health status of their partner, particularly if affected with sexually transmitted infections, including HIV/AIDS in accordance with internationally recognized standards and best practices. Forced and coerced sterilization of women living with HIV is a serious violation of women's fundamental human rights to bodily integrity and a form of violence against women

and is a part of a wider practice of coercive practices that violate the sexual and reproductive rights of women living with HIV.

The continent is still dealing with high numbers of women who are living with HIV. African States have made significant progress in combatting new HIV infections. However, statistics indicate that women have remained at a much higher risk of HIV infection than men, the highest rates of new infections are among young women. More than 4 in 10 new infections among women are in young women aged 15-24, emphasizing the need for ensuring better access to contraceptive methods to prevent the spread of HIV, as well as to empower women and girls to be able to negotiate safe sex. Women and girls living with HIV continue to face high rates of forced sterilization. Forced sterilization of women can have severe and negative impact on women's physical and mental health and in the case of forced sterilization of women based on their HIV status, it can contribute to creating an environment of fear that drives women living with HIV away from sexual and reproductive health services and can negatively impact HIV prevention efforts as well as result in high maternal mortality and morbidity.

In Namibia, a 2014 from Supreme Court decision in the case of the Government of the Republic of Namibia v. LM and Others upheld a lower Court decision that the government had subjected women with HIV to coercive sterilization and that the practice of coerced sterilization violated the women's legal rights.²⁶

²³ <http://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/overview>

²⁴ Eliminating forced, coercive or otherwise involuntary sterilization, An interagency statement, http://apps.who.int/iris/bitstream/10665/112848/1/9789241507325_eng.pdf

²⁵ Footnote: Eliminating forced, coercive and otherwise involuntary sterilization An interagency statement OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, 2014

²⁶ <http://hrp.law.harvard.edu/sexual-and-reproductive-rights/namibias-highest-court-finds-government-forcibly-sterilized-hiv-positive-women/>



“In a continent where the majority are pigmented, a person with albinism stands out.”

Persons with Albinism in Particular Women

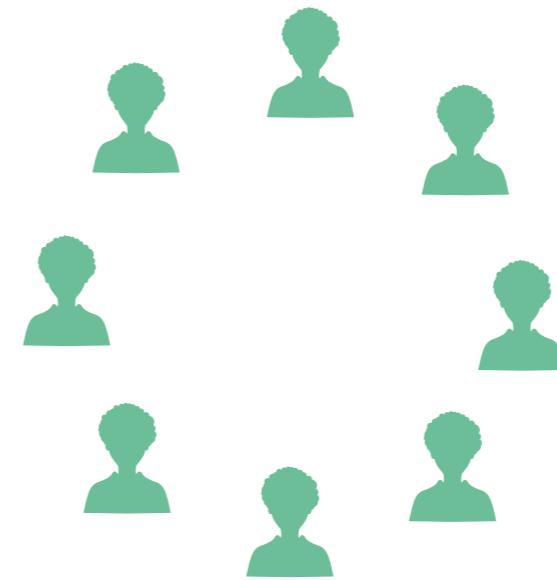
Albinism in Africa: A simple but important test of our commitment to human rights
by **Ikponwosa Ero, United Nations Independent Expert / Albinism**

Albinism is the absence or near absence of pigmentation in any or all of the skin, hair and eyes. In a continent where the majority are pigmented, a person with albinism stands out. With white skin, light coloured hair and eyes, the appearance of most persons with albinism has been stigmatized for centuries in the region. As a consequence, this group has faced discrimination, neglect and violence both within the family and in their communities. This context recently came to a head in the misbelief that the body parts of persons with albinism can bring wealth and good luck when used in witchcraft. The body parts of persons with albinism reportedly have monetary value on the black market including a clandestine trade in body parts within and across borders. These forms of violence against persons with albinism have only been reported in the Africa region. The majority of victims of this tragedy are women and children. Further women in particular – both with and without albinism – are disproportionately affected by such violence. More than half the reported attacks are against women and girls. In addition, mothers of children with albinism are often abandoned and ostracized

The situation has revealed layers of intersecting issues. First, it raises a question of treatment of others based on colour and appearance, in a continent where the majority have themselves historically been a victim of such prejudice. The fact that “racial discrimination” is applicable to intra-racial discrimination based on colour as recently highlighted by the United Nations committee on the Elimination of Racial

Discrimination is yet to be applied to people with albinism. Second, albinism raises the question of witchcraft. What exactly is it? Why is it so rampant in the region? Why does it have so many victims particularly women and children? Why has relatively little attention been paid to it as a harmful practice – traditional, cultural or contemporary? The need to map out the phenomenon, to condemn and dissuade its harmful aspects is crucial to addressing the root causes of violence against persons with albinism amongst other vulnerable groups.

Third, the situation of persons with albinism has highlighted gaps in the journey of disability rights on the continent. Albinism often results in vision impairment owing to the fact that sufficient pigmentation is necessary for eye formation. While the impairment in each person with albinism varies in severity, the impact on their lives generally can be well accommodated if disability rights are actualized. The continent has been relatively slow to adapt to the new approach to disability as enshrined in the United Nations Convention on the Rights of Persons with Disability. These include the fundamental understanding that disability encompasses far more than certain more-well known long-term physical impairments and that it is the duty of the State to provide reasonable accommodation where such impairments exist. The mainstreaming of disability is only very slowly actualizing. These contexts often cause exclusion of support to persons with albinism when – as in nearly all cases – vision impairment exists.



“The continent will do well to see the issue for what it is: a litmus test of its commitment to all human rights for the most vulnerable of the vulnerable.”

Fourth is the inclusion of albinism care into mainstream healthcare. The absence of pigmentation in the skin exposes persons with albinism to skin cancer, to which most reportedly succumb mid-life. Skin cancer is preventable with basic interventions. The presumption that everyone has the pigmentation to protect themselves from the climate in the region and a general lack of information on the condition tends to underline health care particularly early intervention to mothers of children with albinism, public activities including the education system and other state sponsored rehabilitative institutions.

Women and girls with albinism and mothers who give birth to children with albinism are exposed to extreme forms of violence such as the hacking of their limbs while alive. This violence is the result of erroneous beliefs including the myth that sexual intercourse with a woman with albinism can cure HIV/AIDS, that giving birth to a baby with albinism is a curse, and that body parts of people with albinism can bring wealth and power if used as part of witchcraft potions. Women are often blamed after giving birth to a child with albinism and are accused of being unfaithful or of bringing a curse to the family. As a result they are rejected by their husbands and abandoned by their communities. They are confined to poverty and further exposed to attacks and other forms of violence and discrimination. Last, one cannot discuss the issues facing persons with albinism without raising the problems of poverty and challenges in the realization of economic, social and cultural rights. While efforts to lift women out of poverty have yielded much fruit, unrelenting efforts must continue in this regard. Since poverty and related economic, social and cultural

challenges increases the chances of vulnerability of women and children with albinism to attacks, the need to improve their socio-economic and cultural rights is of utmost priority if violence is to be prevented.

Widespread condemnation of violence on persons with albinism, particularly women and children, has emerged from various key voices in the African human rights system including the African Commission on Human and Peoples’ Rights, and the African Committee of Experts on the Rights and Welfare of the Child. These complement similar voices in the United Nations system. However, there is much more to be done. The situation of persons with albinism is one which can be successfully improved over a relatively short period of time. With estimates of 1 in 1,500 to 1 in 5,000 persons with the condition, quality service to this group is manageable and deliverable at relatively low cost. Their comparatively small number should persuade not dissuade an investment of resources. The continent will do well to see the issue for what it is: a litmus test of its commitment to all human rights for the most vulnerable of the vulnerable.

More than 1 in 3 women (36.6%) in Africa report having experienced physical, and/or sexual partner violence or sexual violence by a non-partners²⁷

Sexual and Gender Based Violence

Women in all countries in the world regardless of race, class, ethnicity, religion or belief, health, marital status, age, and other statuses continue to experience violence in all spheres of life, whether in the home, at school, at work, on the street, in government institutions, or in times of peace or conflict. Often, violence is exacerbated by the intersection of many socio-economic factors. For instance, women with disabilities, migrant women, women with non-binary gender identity and sexual minorities can be particularly vulnerable to violence.

The CEDAW Committee has articulated the principle of due diligence in the context of gender-based violence. In its General Recommendation 19, the Committee notes that the Convention imposes a due diligence obligation to prevent, investigate, prosecute and punish such acts of gender-based violence, "State parties must take reasonable steps to prevent human rights violations, investigate, impose the appropriate punishment and provide adequate redress to the victims." While the Maputo Protocol does not explicitly use the term 'due diligence', the content of the due diligence obligation is incorporated in several provisions, including in art. 4(2)(a) which calls on States to enact and enforce laws to prohibit all forms of violence against women, including unwanted or forced sex, whether the violence takes place in private or public. Art. 4(2)(b) directs States to adopt any other measures necessary to ensure the prevention, punishment and eradication of all forms of violence against women. Arts. 4(2)(c) and (d) of the Protocol places a positive obligation on States to study the causes of violence and to promote awareness and other measures to eliminate these causes, while paragraph 2(i) calls on States to fund all appropriate measures. Paragraph 2 (e) and (f) refer to punishment and effective reparations and art. 25 sets out the positive obligation of States to provide all appropriate remedies for women whose rights have been violated. The Commission has issued several decisions on the failure of States in protecting women from violence such as decision Doc. Ex.cl/981(xxix) add.1 on combatting violence against women and girls in Africa, particularly the

role of Security organs in ending it.²⁸ These decisions have made valuable a contribution towards ensuring that States are held accountable when they fail to protect women from violence.

At the national level, several national laws and policies contain provisions against violence against women including domestic violence, gender-based violence in conflict situations and in a number of countries marital rape and provisions for services for women victims of violence. These include support services that empower victims and survivors, and access to appropriate civil remedies and redress.

However, in many contexts, a comprehensive legal framework to eliminate all forms of violence against women is often lacking and where do they exist, are often not implemented. In several countries, legislations do not address the whole spectrum of violence that women experience particularly those deemed to take place in the private sphere.

On the continent, in six countries there is no legal protection for women against domestic violence, these are Burkina Faso, Cote d'Ivoire, Egypt, Lesotho, Mali and Niger.²⁹

Across the continent, there are also challenges related to among others, issuance and enforcement of gender-sensitive preventive and protective measures, such as emergency, restraining orders and or protection orders. There is also little resources dedicated to the investigation of incidents of sexual and gender based violence and when cases do reach courts, there are often inappropriate punishment of perpetrators.


²⁷ WHO, London School of Hygiene and Tropical Medicine, South African Medical Research Council, - Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence (2013)

²⁸ http://www.au.int/en/sites/default/files/decisions/31275-ex_cl_dec_919_-_925_and_928_-_938_xxix_e.pdf

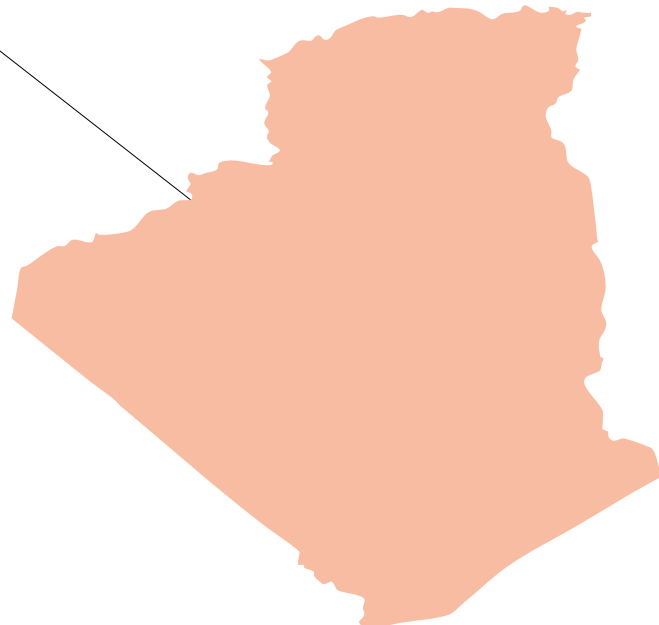
²⁹ World Bank Group, Women, Business and the Law 2016.



Swaziland adopted "Sexual Offences and Domestic Violence Bill" in 2015. The country is also running a "One Stop Center" for women and girls who have experienced violence. The Center offers a variety of services including psychosocial support, legal counseling, court preparing, and access to Post Exposure Prophylaxis, and pregnancy tests.



Liberia has amended its Penal Code to expand the definition of what constitutes "rape", to include "intentionally penetrates the vagina, anus, mouth or any other opening of another person (male or female) with his penis, without the victim's consent" or "intentionally penetrates the vagina or anus of another person with a foreign object or with any other part of his body ... without the victim's consent or if the victim is less than 18 years old.



In 2015, Algeria's parliament adopted a law criminalising domestic violence. The law also safeguards the financial interests of married women and introduces the concept of harassment. Under the law, any husband injuring his wife can be punished by up to 20 years in prison, depending on the extent of injuries, and allows a judge to hand down life sentences for attacks resulting in death.



UNITED NATIONS PHOTO/JC
MCLWAINÉ

Harmful Practices³⁰

Focus on Child Marriage by Commissioner Lucy Asuagbor

Child marriage is a scourge that robs girls of their inherent dignity, health, education, opportunity and general wellbeing. In Africa, the problem of child marriage is highly nuanced as it is not only a human rights violation but also one that intersects with several other attributing factors and detrimental consequences. Harmful traditional and cultural practices and low social economic factors are the biggest drivers of child marriage in Africa; girls from rural areas or poor backgrounds are twice as likely to marry before the age of 18 compared to those from urban or rich households. Gender inequalities across Africa are also at the heart of this scourge with an indisputable frequency and disproportionate effect of child marriage evident among women and girls. The consequences of child marriage include domestic violence, sexual violence, compromised reproductive health rights and unequal access to education and economic opportunities.

The African human rights system has made attempts to counter the challenge of child marriage via legal norms. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) in Art. 6(b) provides that the minimum age of marriage for women shall be 18 years and calls upon States to enact appropriate national legislative measures with this guarantee. The African Charter on the Rights and Welfare of the Child similarly prohibits child marriage.

In practice, the African Commission on Human and Peoples' Rights (African Commission) has found that despite the ratification by the majority of African States of these relevant legal instruments, child marriage remains a common practice in many countries. In response, ranges of continent wide measures have been taken including by the African Union. In 2014, the AU launched the first ever Campaign to End Child Marriage in Africa aiming to increase awareness; resulting from this initiative, some States have subsequently launched their own national campaigns to end child marriage such as Mali, Zimbabwe, Madagascar, Burkina Faso, Niger etc. The AU has likewise appointed a Good Will Ambassador for Ending Child Marriage and a Special Rapporteur on Child Marriage (selected from the African Committee of Experts on the Rights

and Welfare of the Child). These initiatives and appointments have raised awareness on the harmfulness of child marriage and stirred regional and national discussions on strategies to combat this vice.

The African Commission through my mandate; the Special Rapporteur on the Rights of Women in Africa (SRRWA) has also undertaken different interventions towards addressing child marriage. Some of these measures are outlined below:

In 2014, the African Commission adopted a Resolution asking the SRRWA to conduct a study on child marriage in Africa. The objective of the study was to identify the root causes, prevalence and practices that perpetuate child marriage, the levels of compliance to the Maputo Protocol as well as document best practices for addressing child marriage.

My mandate is currently involved in the development of a General Comment on child marriage. The General Comment aims to enhance compliance to Art. 6(b) of the Maputo Protocol by providing clarity, interpretive assistance and practical guidance to States on how to fulfill their obligations towards the eradication of child marriage and the increased protection of women and girls in Africa.

As a grassroots effort, in collaboration with the University of Pretoria's Centre for Human Rights, my mandate has also been undertaking national and sub-regional child marriage dialogues. These dialogues target stakeholders such as religious and traditional leaders towards identifying practical challenges and strategies for eliminating child marriage.

While a lot remains to be done, the foregoing steps are evidence that the commitment towards ending child marriage has gained traction. In order to maintain this momentum, future plans must include continued regional efforts driven by the African Union, the African Commission and other AU organs. These efforts should go beyond time-bound campaigns and instead take the form of long term and sustainable plans. In this regard from the African Commission's point of view, the Maputo Protocol represents a practical starting point. Those States that have not ratified the Maputo Protocol should do so while those that have ratified should work towards genuine implementation. This includes putting into place legal and other appropriate domestic measures towards enhancing the equality of women and girls and thereby also addressing the drivers of child marriage.³¹

³⁰ This section focuses on child marriage and female genital mutilation. The report notes the recognition of polygamy as a form of harmful practice. The Maputo Protocol "encourages monogamy as the preferred form of marriage". United Nations human rights mechanisms including the working group on discrimination against women has called for the non-recognition of those forms of marriage that discriminate against women and/or fail to ensure equality and justice for women, whatever the legal system, religion, custom or tradition. This refers to, among others, early and/or forced marriage, temporary marriage and polygamy. The Committee on the Elimination of Discrimination against Women and the Human Rights Committee have recommended that States should prohibit polygamy on the grounds that it contravenes women's right to equality with men and can have serious emotional and financial consequences for women and their dependents (see A/HRC/29/40).

³¹ Commissioner Lucy Asuagbor as at August 2016.

Malawi's Gender Equality Act which prohibits harmful practices and defines it as a social, cultural, or religious practice which, on account of sex, gender or marital status, does or is likely to – (a) undermine the dignity, health or liberty of any person; or (b) result in physical, sexual, emotional, or psychological harm to any person.

In the ten countries with the highest rates of child marriage, nine are in Africa. If current trends continue, almost half of the world's child brides in 2050 will be African.³³

CHILD MARRIAGE

Child marriage adversely impacts on the rights of girls, boys, women and men; however it has a disproportionately negative impact on women and girls and is often justified on traditional, religious, cultural or economic grounds. The practice is a violation of the rights of women and girls and is among the underlining and contributory factors for intimate partner sexual violence and sexually transmitted infections including HIV as well as denial of girls' access to education and to vocational and life skills. The practice exposes girls to the risks of early pregnancy, child bearing, and motherhood before girls are often physically and psychologically ready.³³

The Maputo Protocol requires States to adopt legislative measures to ensure that marriage only takes place with the full and free consent of both parties and sets the minimum age of marriage at 18. The African Charter on the Rights and Welfare of the Child while embracing African tradition and values prohibits traditional practices and customs that are harmful to the child and prohibits both child marriage and the betrothal of girls and boys below the age of 18. It also requires that legislative and other measures be taken to protect these rights.³⁴

International human rights treaties and UN human rights treaty monitoring bodies and mechanisms have also clearly articulated the legal obligations of States regarding marriage. Both parties must be at least 18 years old, and both must give free and full consent to the union. States are required by international law to prohibit the various forms of child and forced marriage and related harmful practices, and should ensure criminal penalties for violation of the law, as well as remedy for victims. Yet, of the only six countries in world which do not specify a minimum age of marriage, four- Equatorial Guinea, Gambia, Somalia and South ully 96% of countries have laws that specify when people can legally marry. Only six countries – Equatorial Guinea, Gambia, Saudi Arabia, Somalia, South Sudan are in Africa.³⁵

³² UNICEF, http://www.unicef.org/media/media_68114.html

³³ Preventing and eliminating child, early and forced marriage, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/26/22, Child, Early, and Forced Marriage: Report of the Secretary-General, A/71/253.

³⁴ African Charter on the Rights and Welfare of the Child (1999), art.2

³⁵ Pew Research Center <http://www.pewresearch.org/fact-tank/2016/09/12/many-countries-allow-child-marriage/>



Similar to Female Genital Mutilations (FGM), a number of countries have enacted legislation proscribing the marriage of children. These include amendments to laws to raise the minimum age of marriage to 18 for both girls and boys, although often with exceptions. Only five countries in Africa have an absolute legal prohibition on child marriage, all other legislation contains exceptions permitting the marriage of children below the age of 18,³⁶ with either parental consent, judicial oversight, under religious or customary law or in cases of pregnancy. Several countries also provide sanctions against perpetrators of child, early and forced marriage and require compulsory registration of all marriages. Consequently, there has been a rise in the number of birth registrations following the enactment of legislation in a number of countries. Implementation is however lagging, as are appropriate measures to address the root causes of the practice.

Malawi's Gender Equality Act which prohibits harmful practices and defines it as a social, cultural, or religious practice which, on account of sex, gender or marital status, does or is likely to – (a) undermine the dignity, health or liberty of any person; or (b) result in physical, sexual, emotional, or psychological harm to any person.

Child marriages are declining on the continent, however the reduction has not been equitable; there are high levels of child marriage among the poorest have persisted, with declines in the richest. **African child brides are most likely found in rural areas and among the poorest segment of the population.³⁷ There is also a wide variation in the prevalence of child marriage between and within countries.**

³⁶ World Policy Analysis Center

³⁷ UNICEF, A Profile of Child Marriage in Africa

36

FEMALE GENITAL MUTILATIONS (FGM)

Art. 1 of the Protocol defines harmful practices as all behaviours, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity. Art. 5 calls on States to enact measures to prohibit through legislative measures backed by sanctions all forms of FGM, scarification, medicalization and para-medicalization of FGM and to undertake activities to raise public awareness on harmful practices as well as to provide support for victims of harmful practices. It further request States to ensure protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

FGM is a form of gender-based discrimination and violence. It is a violation of the right to physical and mental integrity. It violates the right to be free from torture and other cruel, inhuman and degrading treatment. Because it is almost always practised on young children, it is also a violation of the rights of the child. FGM violates the right to the highest attainable standard of health, including sexual and reproductive health. And when it results in the death of the person who is mutilated, it violates the right to life.

This practice is not based on any valid premise and has no health benefits. It generates profoundly damaging, irreversible and life-long physical damage. It also increases the risk of neonatal death for babies born to women who have survived it.³⁸

As of 2013, more than 24 countries on the continent had enacted legislation against FGM. On 28 December 2015, the Gambia, a country with one of the highest prevalence rate of female genital mutilation criminalized the practice. This law provides a fine of about \$1250 or three years in prison for offenders

³⁸ Good practices and major challenges in preventing and eliminating female genital mutilation, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/29/20)

37

Statistics by the Demographic and Health Surveys Programme³⁹ indicate significant reductions of FGM practice in cases where States have enacted and enforced comprehensive criminal sanctions against female genital mutilation.

In Senegal for example, FGM prevalence has been reduced from 28% in 2005 to 25% in 2014.

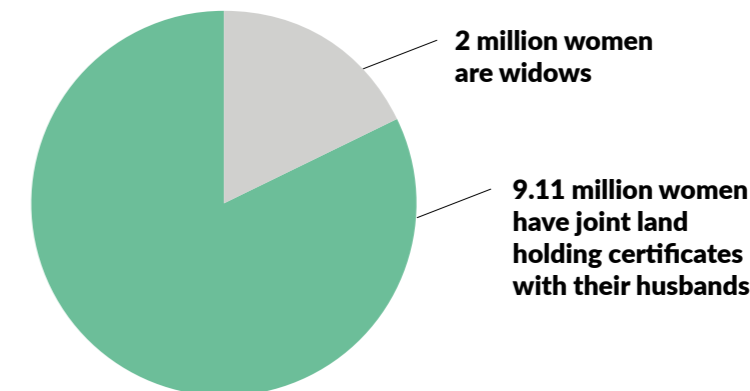
Eradicating FGM from the continent remains a challenge. And where laws have been accompanied by culturally sensitive education and public awareness outreach, the practise has declined. Harmful practices are often hidden phenomenon, as they often relate to the family private sphere and therefore difficult to quantify.

In a number of countries due to cultural taboos, legislations have not been accompanied with culturally sensitive education and public awareness outreach despite evidence showing that the practice has declined in countries where laws are accompanied by awareness raising activities. There is also further evidence that where communities that have adopted collective processes of decision-making are much more likely to abandon the practice of mutilating women and where political and religious leaders have championed the fight against FGM, mind-sets have rapidly changed, and support for the practice has declined.

³⁹ (<http://dhsprogram.com>)



11.11 million women with land holding certificates in **Ethiopia**



ACCESS TO LAND

On the continent, women’s access to, use of and control over land and other productive resources are essential to ensuring their right to equality and to an adequate standard of living. These resources help to ensure that they are able to provide for their day-to-day needs and those of their families, and to weather some of life’s most difficult challenges. Women’s access to land and other productive resources is integrally linked to food security, sustainable economic development, as well as the fight against the HIV epidemic and prevention of and responses to gender-based violence. On the continent, gender inequality when it comes to land and other productive resources is often related to women’s poverty and exclusion. The proportion of women negatively affected by climate-related crop changes is reportedly as high as 73 per cent in the Democratic Republic of the Congo to 48 per cent in Burkina Faso.⁴¹ The obstacles which prevent women’s access to, control and use of land and other productive resources often include inadequate legal standards and/or ineffective implementation at national and local levels, as well as discriminatory cultural attitudes and practices at the institutional and community level.

share in the inheritance of the property of her husband, and that woman and men have the right to inherit, in equitable shares, their parents’ properties (art. 21). In addition, the Protocol requires that State parties “take appropriate measures to ... provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food” in the context of women’s right to food security (art. 15). The Framework and Guidelines on Land Policy in Africa, adopted by the African Union in 2009, contains a specific section on strengthening the land rights of women.

Through the African Union’s Declaration on Land Issues and Challenges in Africa, African States have resolved to “strengthen security of land tenure for women [who] require special attention.”

In Ethiopia, a little over 11.11 million women now have land holding certificates, of which 9.11 million women have joint land holding certificates with their husbands, while 2 million women are widows. To date 60 per cent of Ethiopian rural women own land, a significant improvement to a very contested issue.

In 2013, Rwanda adopted a law guaranteeing women equal rights with men on land access, ownership and utilization.

Regardless of some of these achievements, statistics in almost all countries on the continent indicate that women continue to have to fight to be treated equally to their male counterparts in all areas of economic, social and cultural rights.. For example, in the economic sphere, women face inequalities in accessing resources and services, including access to and control over natural resources, and are particularly vulnerable in situations of conflict and disasters. Global developments such as climate change have further exacerbated the vulnerability of women in particular in accessing land. Women also continue to bear heavy and disproportionate unpaid care workloads, and face unacceptably high levels of discrimination as a result of stereotypical notions of gender performance.

⁴¹ Realizing Women’s Rights to Land and Other Productive Resources, OHCHR-UNWOMEN <http://www.ohchr.org/Documents/Publications/RealizingWomensRightstoLand.pdf>

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Women in Africa are making substantial contribution to Africa’s development. Women are more economically active in Africa particularly as farmers, workers and entrepreneurs than anywhere else in the world. They perform the majority of agricultural activities, and in some countries, make up some 70 per cent of employees.⁴⁰ Women are also central to the household economy and the welfare of their families, and they play a vital leadership role in their communities, yet women often have limited access to credit facilities and market. It is critical that the economic, cultural and social rights of women are upheld.

International and regional human rights law has firmly established the obligation of States to ensure the exercise of women’s economic and social rights under conditions of equality and free from any form of discrimination. The Convention on the Elimination of All forms of Discrimination against Women (CEDAW) and the

International Covenant on Economic, Social and Cultural Rights (ICESCR) are the two key human rights instruments guaranteeing women’s human rights in the fields of economic and social rights including, inter alia: the right to work; the enjoyment of just and favourable conditions of work; an adequate standard of living; the right to food; enjoyment of the highest attainable standard of physical and mental health; and the right to take part in cultural life. The Maputo Protocol guarantees women’s economic, social, and cultural rights including the right to work, rights relating to marriage, the right to an adequate standard of living, the right to health, the right to education, and rights relating to culture and science. It obligates States to eliminate discrimination against women in social, economic and cultural fields.

Burkina Faso has found ways to encourage greater participation of women in the economy. Since 2008, the Ministry for Agriculture provides free improved seeds and subsidizes fertilizers to producers. Free seeds for *niebe* are provided to rural women.

Laws that Discriminate against Women

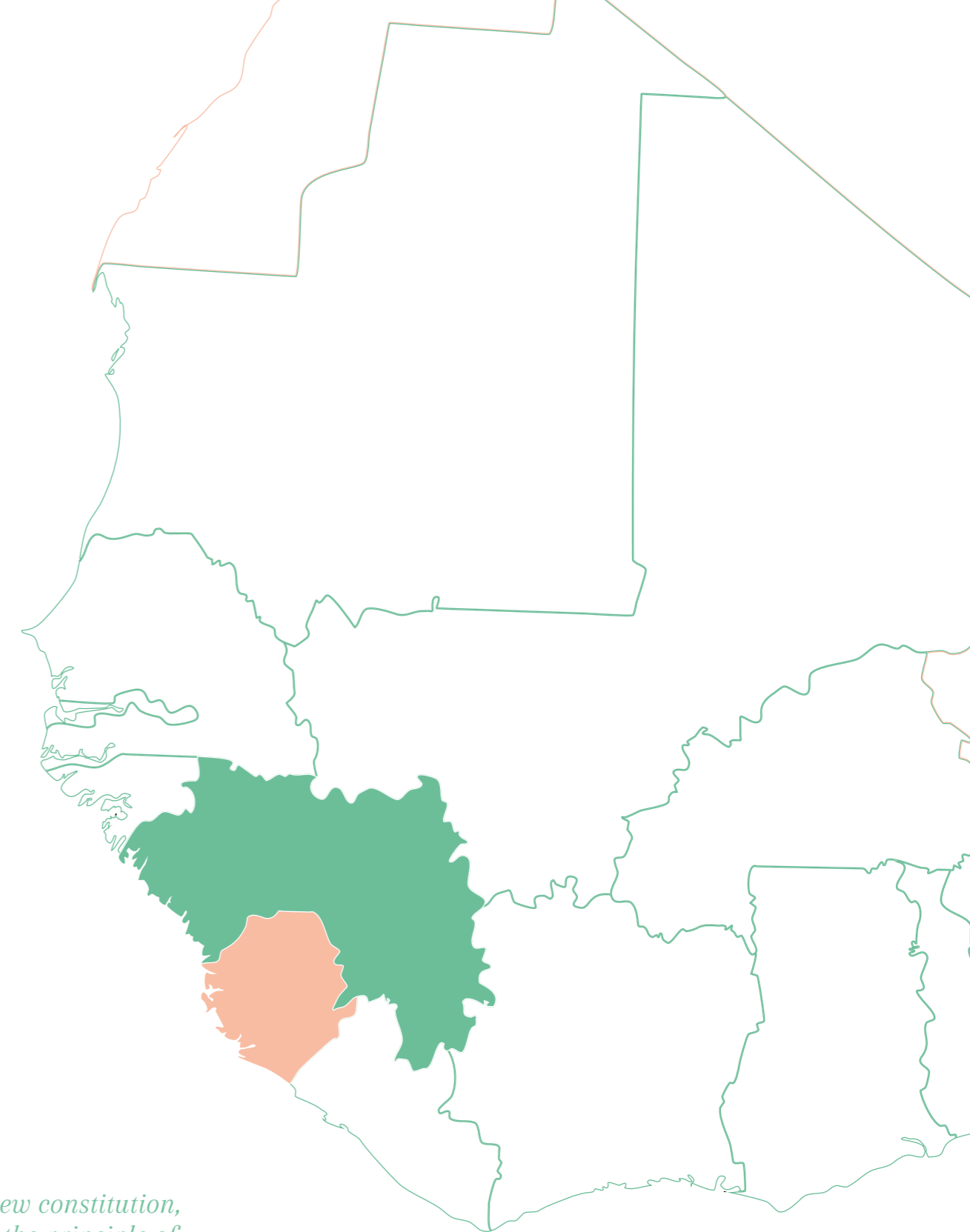
It is now widely recognized that gaps in legislations and polices as well as lack of implementation and enforcement of legislation perpetuates and reinforces de jure and de facto discrimination against women. Art. 2 of the Charter prohibits discrimination, including on the basis of sex, and art. 18 (3) of the Charter obliges States to eliminate all discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions. Art. 2 of the Protocol require States to take positive measures to address inequalities between women and men in State efforts to ensure that women enjoy their rights. The Protocol acknowledges the need to address both de jure and de facto discrimination and specifically to challenge gender stereotyping.⁴²

Several countries have amended their laws or abolished laws that discriminate against women on the basis of sex. Sierra Leone has recently removed discriminatory clauses against women in its Constitution. A number of countries are also using temporary special measures as one of the ways to accelerate women's participation in public bodies especially the legislature, a requirement under art. 2. of the Protocol. This has been particularly successful; the continent has the highest participation of women within their legislatures globally.

Plural legal systems with various customary laws on personal status and family continue to provide the basis for discrimination against women in law. While plural legal systems are often adopted as a way of acknowledging cultural diversity, its application can be prejudicial to women. For example, in some countries where adultery is penalized, laws expressly discriminate against women: either solely penalizing women for committing adultery or penalizing women more severely than men. Even where the law is gender-neutral criminal adultery provisions have discriminatory effects on women in practice, for instance women are charged and found guilty more frequently than their male counterparts.⁴³

Furthermore, discriminatory legislation particularly in family, civil, penal, labour and commercial laws or codes, or administrative rules and regulations still persist. For instance, in a number of countries, nationality laws still do not grant women equal rights with men to acquire, change and retain their nationality and some laws contain discriminatory provisions that do not allow women to transfer nationality to their spouses on the same basis as men. Several countries including Burundi, Liberia, Sudan and Togo have enshrined gender equality in their Constitutions but have yet to reform their nationality laws. In Lesotho, Nigeria, Malawi, Ethiopia, Central Africa Republic, Cameroon, Benin and Guinea, women are not allowed to transmit nationality to their spouses on the same basis as men. In Madagascar, Swaziland, Mauritania, Sierra Leone and Somalia women cannot confer nationality onto their spouses.⁴⁴ **Burundi, Guinea, DRC, Kenya, Mali, Sudan and Tanzania all have family and personal codes that discriminate against women in issues of marriage.**

Even where legal reforms have taken place, they are often not enforced and institutional mechanisms to promote the human rights of women are often underfunded.



Guinea's new constitution, recognizes the principle of equality between men and women under the law.

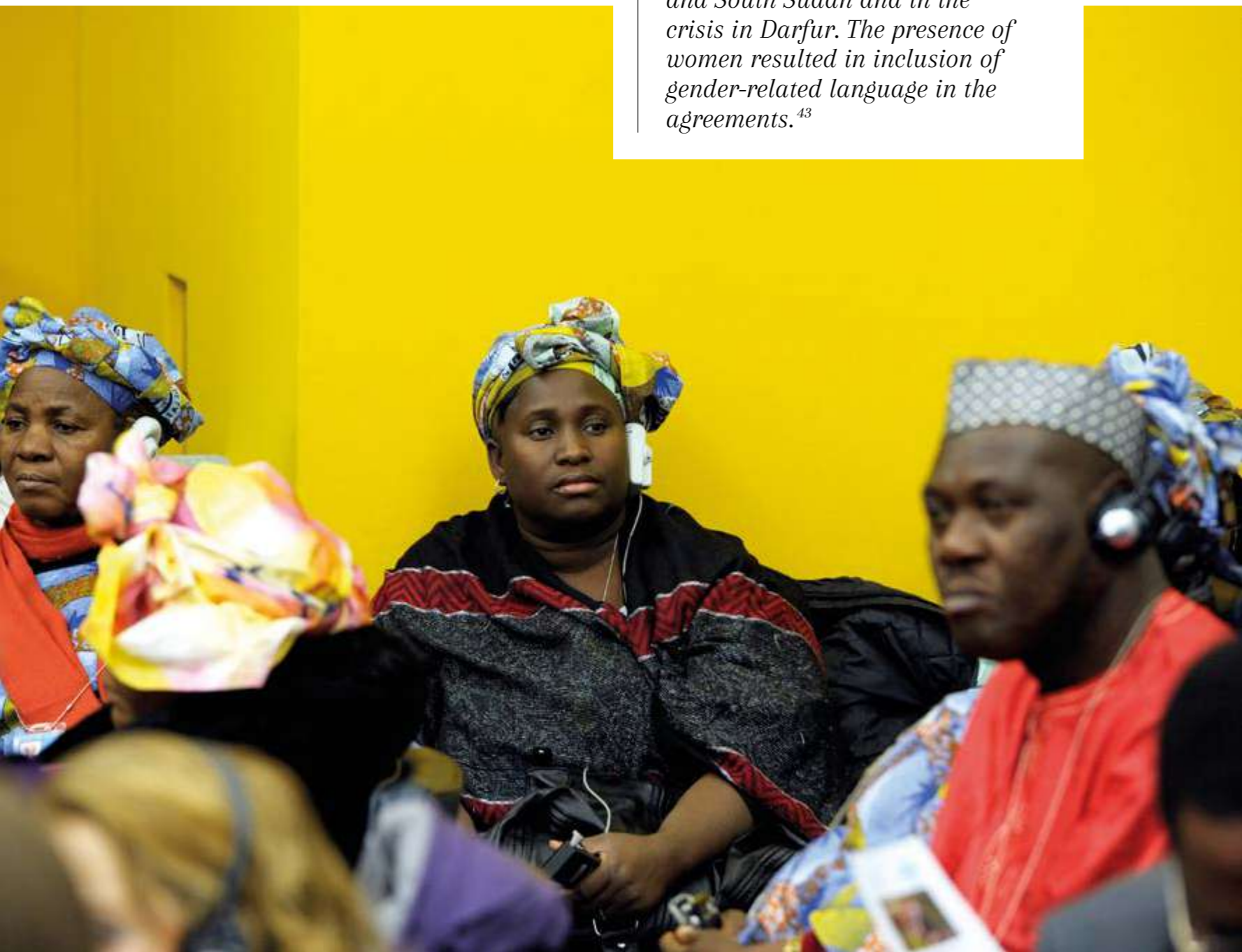
Sierra Leone has recently removed discriminatory clauses against women in its Constitution.

⁴² Art. 2(2).

⁴³ Human Rights Council, Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention, A/HRC/13/39/Add.5 (2010) para. 219; Secretary General, Pathways to, conditions and consequences of incarceration for women A/68/340 (2013), para. 16.

⁴⁴ <http://equalnationalityrights.org/countries/sub-saharan-africa>

...Women took part in both the 2006–2008 Juba peace talks between the Government of Uganda and the Lord's Resistance army (LRA) and the various rounds of negotiations to end the conflict between North and South Sudan and in the crisis in Darfur. The presence of women resulted in inclusion of gender-related language in the agreements.⁴³



Women, Peace and Security

Violations of human rights, exclusion, discrimination and structural inequality are among the structural root causes of instability and violence. Moreover, conflict exacerbates pre-existing patterns of discrimination based on sex and put women and girls at heightened risk of sexual, physical and psychological violence.

The women, peace and security agenda emphasizes women's full and meaningful participation in all peace efforts, protection from human rights violations, HIV/AIDS, and access to justice and services, including sexual and reproductive health. It also highlights the differential impact of armed conflict on women, girls, men and boys. Furthermore, it notes that women should not only be seen as victims of conflict and instability and acknowledges the role of women as combatants, as part of organized civil society, as human rights defenders, as members of resistance movements and as active agents in both formal and informal peace building and recovery processes.

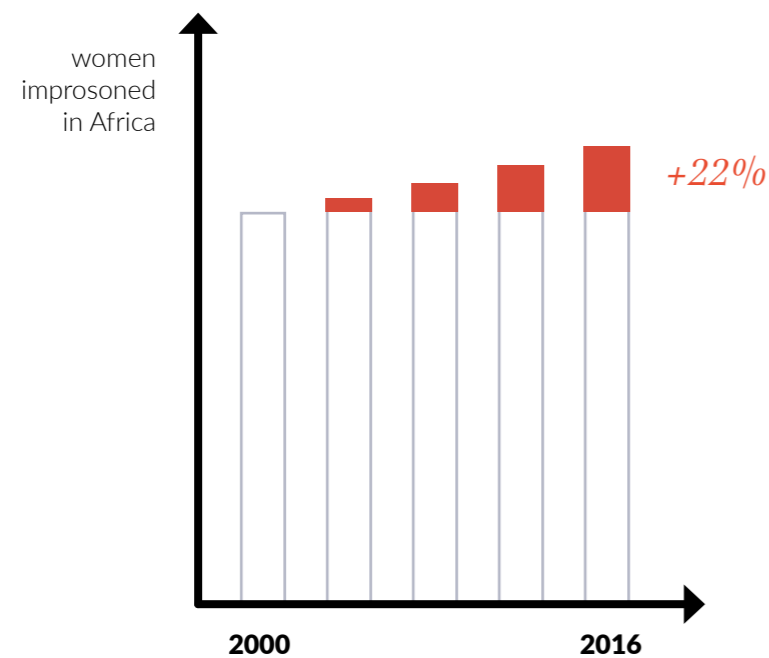
Human rights is central to the women, peace and security agenda. Maputo Protocol Art. 2 on non-discrimination; Art. 3 on the right to dignity; Art. 4 on the right to life, integrity and security of the person, Art. 8, the right to access to justice and equal protection before the law and Art. 9 on, the right to participation in political and decision-making processes are particularly relevant to the women, peace and security agenda. Arts. 10 and 11 makes specific link between the peace and security and the human rights of women. Art. 10 on the right to peace affirm women's rights to a peaceful existence and to participate in the promotion and maintenance of peace. Art. 11 expresses the right to protection in armed conflicts, and commits governments to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations that affect the population, particularly women. Other key reference points for the women, peace and security agenda are the work of the AU Special Envoy on Women, Peace and Security, the AU's Gender, Peace and Security Programme (2015-2020), a program of the Department of Peace and Security (PSD) and the African Peace and Security Architecture Roadmap (2016-2020) adopted in May 2016 to monitor performance and delivery on gender, peace and security outcomes.

United Nations Security Council resolution 1325 adopted in 2000 highlights the differential impact of armed conflict on women, their exclusion from conflict prevention and resolution, peacekeeping and peace building, and the complex links between gender equality and international peace and security. The Council and regional organizations has since made great efforts to bring visibility to the situation of women in conflict situations particularly on the issue of sexual violence during in conflict and in the context of violent extremism. UN Security Council Resolution 1820 of June 2008 stressed that "sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or

as a part of a widespread or systematic attack against civilian populations" may constitute an impediment to international peace and security. In resolution 1888 of 30 September 2009, the Council decided to establish the post of a special representative of the Secretary-General. Subsequent resolutions established a monitoring, analysis and reporting mechanism on conflict-related sexual violence in situations on the Council's agenda and addressed women's roles in countering violent extremism terrorism, and ensuring accountability for perpetrators of sexual violence in conflict. They have also highlighted the importance of women's political and economic empowerment among others.

At the regional level, countries have taken several measures aimed at addressing the role of women in these settings. 16 countries on the continent have enacted 1325 national action plans (NAP) and in January 2014, the AU appointed its first special envoy for women, peace and security. The Africa Union Commission Peace and Security Department in 2015 launched a five year 2015-2020 Gender, Peace and Security Program with the aim of developing effective strategies and mechanisms for gender mainstreaming and women increased participation in peace and security in Africa. In July 2016, the Special Envoy presented a report on the implementation of the women, peace and security agenda in Africa. So far, 19 countries on the continent and two regional Regional Economic Communities (RECs) have developed relevant action plans. The African Union Commission (AUC) has also embarked on a continental results framework to facilitate regular monitoring of and reporting on women, peace and security and is undertaking a number of activities to empower women. These include the establishment of a Network of African Women Mediators; efforts to change narratives on women to recognize their roles in peacebuilding; work to mobilize and support Member states and RECs to develop action plans on women, peace and security; and training of military personnel on women's rights in line with the African Union's zero-tolerance policy on sexual and gender-based violence.

The international peace and security responsibilities shouldered by the AUC and sub-regional organizations in Africa have grown enormously in recent years. Yet, women involvement in peace and security on the continent in peace and security has been mixed. Women peacemakers, however, continue to be at the center of the peace making process. Furthermore, despite resolution 1325 and subsequent resolutions, insecurity and conflict on the continent continues to take an unacceptably high toll on women. The reality on the ground is in a number of contexts, women and girls continue to be targeted for rape, sexual slavery and forced marriage



Africa has the lowest proportion of women in prison, but in 15 years the number of women imprisoned on the continent has grown by 22%.⁴⁴

Women in Prison

African countries have the lowest proportion of women and girls within the total prison population but in 15 years the number of women imprisoned on the continent has grown by 22 per cent. Furthermore, **according to researchers, prisons in Africa are worse in comparison to prisons globally.**⁴⁶

Women face higher rates of imprisonment than men in some circumstances, commonly for non-violent offences.⁴⁷ Poverty, discriminatory laws, lack of enjoyment of economic, social and cultural rights and related obstacles in accessing justice are all contributory factors for women imprisonment. For instance, women offenders often do not have the financial resources to pay for legal representation or alternative to custodial sentences such as fine or to obtain bail.⁴⁵ In addition, women are disproportionately affected by offences that are discriminatory in its intent and application, such as adultery, or for violations of dress codes, or witchcraft. A number of countries imprison women for obtaining abortions, including in cases of rape. Furthermore, in a number of counties, women's political activism has given rise to arrests and detentions where they may be subjected to ill-treatment, threats of rape, touching, invasive body searches, insults and humiliations of a sexual nature or even rape. Once imprisoned, women may be subjected to several forms of violence such as rape by guards.

Prison systems and prison regimes in Africa are designed for men – from the architecture of prisons, to security procedures, to facilities for healthcare, family contact, work and training. As a consequence, prisons often do not provide gender-appropriate rehabilitation services including sexual and reproductive health services, mental health services and counselling for victims of physical and sexual abuse, all of which are often the cause of women offending in the first place.

Many of the problems women face after release from prison are similar to those faced by men, however women are more likely to suffer specific discrimination due to

their status in particular pregnant women, women living with mental health problems, drug problems or HIV and AIDS, women who are detained in armed conflict, women who are foreign nationals or from indigenous and minority communities.

Art. 24 of the Maputo Protocol recognizes the special protection of 'women in distress' including women in detention specifically pregnant women. International standards on prisons including the 2010 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) and the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) are also applicable to African States.⁴⁸ The Bangkok Rules together with international standards obligate States to address the pathways that lead women to prison and the consequences of their incarceration. Currently, there is no government which collects and maintains comprehensive statistics on women offenders, who they are, why they offend and the nature of support they need. While most prison institutions in Africa have endeavored to provide vocational training for inmates, the majority of vocational programs target men and where it exists, vocational training programs for women have been constructed around the traditional role of women in society such as the art of making handcrafts, sewing and hair dressing. Although learning such skills may in itself be a positive achievement, they are not linked to market demand for such skills.⁴⁹

Kenya has introduced a Remote Parenting Programme in one women prison as a means to mitigating the impact of incarceration on the family while enhancing the likelihood of a successful reintegration upon release.

⁴⁵ World Female Imprisonment List, <http://venturesafrica.com/africa-has-the-lowest-proportion-of-women-in-prison-but-in-15-years-the-number-of-women-imprisoned-has-grown-by-22/>

⁴⁶ <http://listverse.com/2014/07/17/10-gripping-facts-about-women-in-prison/>

⁴⁷ Handbook on Women and imprisonment, 2nd edition, with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules) United Nations Office on Drugs and Crime (UNODC)

⁴⁸ In 2016, the ACHPR adopted Resolution 348(LVIII) on the Collaboration between the African Commission on Human and Peoples' Rights and Partners on Promoting The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) - ACHPR/Res. 348(LVIII) 2016.

⁴⁹ <http://www.ohchr.org/EN/NewsEvents/Pages/WomenRightsInDetentionInSenegal.aspx>

AU HUMAN RIGHTS STRUCTURES

All the AU human rights organs are also involved in work on the human rights of women. The following is a brief description of these organs and their focus areas.

African Commission on Human and Peoples' Rights (The Commission)

The African Commission on Human and Peoples' Rights (The Commission) in addition to performing any other tasks which may be entrusted to it by the Assembly of Heads of State and Government, monitors the implementation States obligations as set out in, among others, The Charter and in the Maputo Protocol.⁵⁰ The Commission is mandated to receive and examine State party reports, consider communications and fulfill other protective and promotional responsibilities. It is composed of Commissioners who are also designated as Special Rapporteurs on various thematic areas. The Commission also elaborates 'General Comments' on specific Art.s under The Charter and the Maputo Protocol.⁵¹ The General Comments provides interpretive guidance on the overall and specific obligations of States Parties towards promoting the effective domestication and implementation of the Maputo Protocol and may also be used by States when preparing their periodic reports.

Special Rapporteurs are part of subsidiary mechanisms in the Commission that investigate and report on specific human rights issues. The Special Rapporteur on Rights of Women in Africa was established in 1999, the Special Rapporteur serves as a focal point for the promotion and protection of the rights of women in Africa, amongst the 11 Members of the African Commission.

⁵⁰ In November 2009, the ACHPR adopted 'Guidelines for State Reporting' for the Maputo Protocol. Since it came into effect, States reporting and compliance with the Protocol has been somewhat patchy, thus far only five States, Malawi, Burkina Faso, Namibia, Nigeria and South Africa have submitted reports under art. 26.

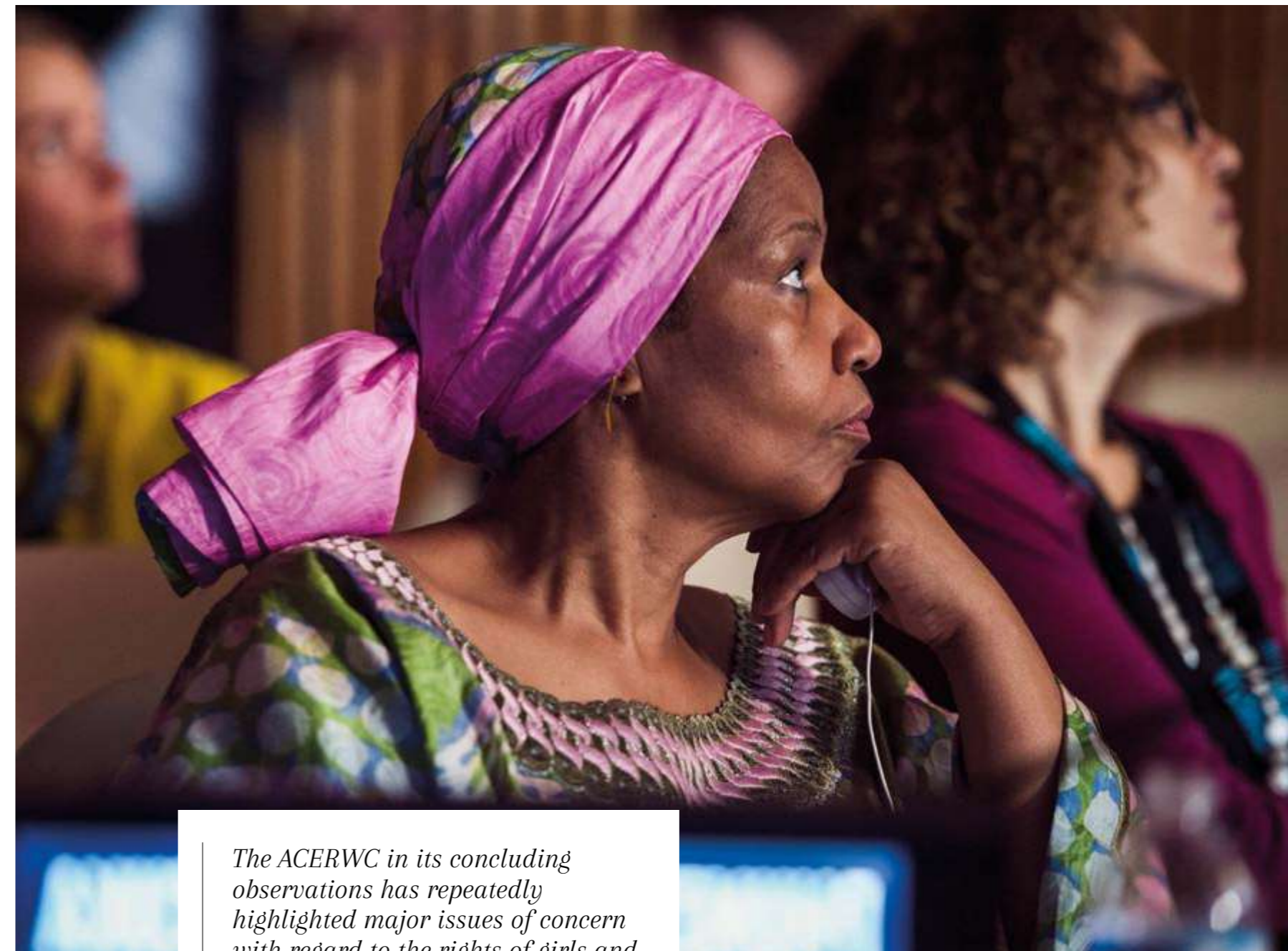
⁵¹ <http://www.achpr.org/mechanisms/rights-of-women>.

African Committee of Experts on the Rights and Welfare of the Child (ACERWC)

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) monitors the implementation of the African Charter on the Rights and Welfare of the Child.⁵² A vital part of the ACERWC mandate is to examine reports submitted by States on child rights situation in their country. The ACERWC in its concluding observations has repeatedly highlighted major issues of concern with regard to the rights of girls and has made recommendations to State parties on measures that can be implemented to meet their obligations. For instance, in its concluding observations to several countries including Egypt and Ethiopia, the ACERWC has urged the respective governments to strengthen efforts to combat harmful traditional and cultural practices such as female circumcision, female genital mutilation and child marriage. The Committee has also called on States to take appropriate legislative and administrative measures, against the damaging effects of harmful practices which include child marriage and killing of children with albinism.⁵³

⁵² <http://www.acerwc.org/the-charter/#>

⁵³ All the concluding observations of the Committee can be accessed at: <http://www.acerwc.org/concluding-observations/>



The ACERWC in its concluding observations has repeatedly highlighted major issues of concern with regard to the rights of girls and has made recommendations to State parties on the measures that can be implemented to meet their obligations.



In September 2016, the Court received an application from the Association pour le Progrès et la Défense des Droits des Femmes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) against Mali challenging the Malian Code of Persons which provides for marriages to be concluded with persons under the age of 18.

African Court on Human and Peoples' Rights

This year marks the 10th Anniversary of the operationalization of the African Court on Human and Peoples' Rights. The African Court of Justice and Human Rights was established by the Protocol on the Statute of the African Court of Justice and Human Rights and merges the African Court of Justice and the African Court on Human and Peoples' Rights. The preamble of the Protocol states that the objective of the Court is to secure the rights contained in The Charter, the African Charter on the Rights and Welfare of the Child, the Protocol and any other legal instrument. The Court also has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of any other relevant human rights instrument that States have ratified. The Protocol on the Statute of the African Court of Justice and Human Rights has significantly expanded the mandate of the Court beyond instruments found in the African human rights system.⁵⁴

the Court has reinforced human rights principles on the continent. The Court has enjoyed support from Member States and cooperating partners, however there are still relatively small number of States Parties to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol). 17 years since the adoption of the Protocol by the then OAU, only 30 of the 54 African Union Member States have ratified it. There are even fewer number of declarations made in accordance with Arts. 34(6) of the Protocol⁵⁵: Out of the 30 ratifications, only seven have made the declaration required under Art. 34(6) of the Protocol⁵⁶ The Court has so far only received one case on women's rights. In September 2016, the Court received an application from the Association pour le Progrès et la Défense des Droits des Femmes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) against Mali challenging the Malian Code of Persons which provides for marriages to be concluded with persons under the age of 18.

Since becoming operational in 2006, the jurisprudence of

⁵⁴ <http://en.african-court.org/index.php/12-homepage1/1-welcome-to-the-african-court>

⁵⁵ Art. 34(6) of the Protocol allows direct access to the Court for individuals and non-governmental organizations (NGOs).

⁵⁶ These countries are: are Burkina Faso, Ghana, Malawi, Mali, Tanzania, Rwanda, and Côte d'Ivoire. In February, Rwanda deposited withdrawal to art. 34(6) of the Protocol to the African Charter on Human and Peoples' Rights. The government asserts that the withdrawal is intended to prevent exploitation of the individual complaint procedure by criminals, particularly individuals who took part in the 1994 genocide and have subsequently fled the country.

RELEVANT AU POLICES AND DIVISIONS

Solemn Declaration on Gender Equality in Africa

On July 2004, the AUC adopted the Solemn Declaration on Gender Equality in Africa (SDGEA), in which all 54 AU Member States committed to sign and ratify the Maputo Protocol by the end of 2004 and to harmonize their national laws with the Protocol and international and regional commitments for the promotion of gender equality. The SDGEA has played an important role in influencing developments in the gender equality policy of the AU, particularly in the area of gender parity within the AU.

African Union Specialized Technical Committee on Gender Equality and Women's Empowerment

The African Union Specialized Technical Committee on Gender Equality and Women's Empowerment was inaugurated in April 2006 as an advisory committee to the Chairperson of the AU Commission and the Commission as a whole, on issues of gender and development. "The AUWC is composed of African women proposed by the Directorate of Women, Gender and Development (WGDD) and appointed by the Chairperson of the AU Commission, taking into account the principle of equitable regional representation and rotation; importance of expertise in different disciplines covered by the SDGEA; and representation of young women, women with disabilities and African Diaspora in Europe and the United States. The AUWC works closely with the WGDD, which is its Secretariat. Some members have represented the Committee on peace missions jointly with the WGDD."⁵⁷

Directorate of Women, Gender and Development (WGDD)

The Directorate of Women, Gender and Development (WGDD) promotes gender equality on the continent and within the AU. It designs programs and projects based on policies adopted by Member States. The Directorate has two divisions: Gender Policy and Development Division (GPDD) and Gender Coordination and Outreach. It also acts as the Secretariat for the Specialized Technical Committee on Gender Equality and Women's Empowerment.⁵⁸

AU Gender Policy

The AU Gender Policy was adopted in 2009 and is aimed at "the achievement of gender equality and women's empowerment in Africa". Through time bound goals contained in the AU Gender Policy, Member States agreed to achieve full ratification and enforcement of the Maputo Protocol by 2015 and to its domestication by 2020, the deadline for full ratification has not been met.



CHALLENGES TO IMPLEMENTATION

The impact of the Maputo Protocol together with other AUC policies and institutions on the promotion and protection of women human rights and gender equality has been far reaching and significant, and not only in stable countries but also in post conflict countries. The Protocol is described as arguably the most progressive instrument on women and human rights in the world and this can be evidenced by its provisions in among others, women sexual health and reproductive rights. The principles contained in the Protocol have been incorporated in national legislations, constitutions and policies in countries across the continent, even those that are not State Party to the Protocol.

The AU human rights organs together with CSOs in particular women groups through their work have promoted the universality of human rights in African terms. This has led to, in many contexts the acceptance of women rights especially as it becomes increasingly apparent that wherever there are enabling environments in which women are able to exercise and enjoy their rights including access to education, to skills, to jobs, there is a surge of prosperity, positive health outcomes, and greater freedom and wellbeing of not only women but the society as whole.

There are certainly challenges in a number of areas which requires renewed efforts by countries on the continent. These include the continued contestation of the universality of human rights vis-à-vis African values and how this relates to the role of women; the use of religion and or culture to justify harmful and violent practices and slow implementation of certain provisions of the Protocol; lack of awareness of human rights instruments, including the Protocol, lack of reporting under Art. 26 of the Protocol and lack of progress on women's rights due to state-specific conditions and events such as natural hazards, conflict and health pandemics among others.

Nonetheless, there is a momentum towards gender equality on the continent, from every walk of life, and every corner of the continent, African people and not only African women are taking action to promote gender equality and empower women and girls. It is time for government on the continent to reflect these changes in their legislations and policies. The frameworks on human rights across the international, regional and national levels are robust, what is needed is for more coordinated engagement at the local, national and regional levels to ensure that women are able to claim and exercise their rights as provided for under these frameworks.



“...there is a momentum towards gender equality on the continent, from every walk of life...”

RECOMMENDATIONS

To accelerate ratification and domestication of the Maputo Protocol, it is recommended for States to:

Ratify without reservations the Maputo Protocol.

Adopt a comprehensive national human rights action plan to domesticate the Maputo Protocol.

Lift reservations to the Maputo Protocol and to lift reservations in particular those that reinforces the notions of inequality of women in the home or denies women autonomy in decision-making about their own bodies.

Make use of existing analysis and reports to the international human rights mechanisms (including the United Nations human rights treaty monitoring bodies, the UPR and special procedures) for reporting under art. 26 of the Maputo Protocol.

Establish a multisectoral mechanism with a mandate to track progress on domestication and to call on different ministries to account in line with the Maputo Protocol or at the minimum include tracking and monitoring in the mandate of the existing National Mechanism for Reporting and Follow-Up

To advance women's rights in at the regional and national levels, governments may wish to consider:

Strengthen support for institutions in relation to gender equality and the empowerment of women including the systematic integration of a gender perspective in all Ministries as well as National Human Rights Institutions.

Adopt and enforce targets to end all forms of discrimination and violence against all women and girls, including domestic and sexual violence as well as harmful practices such as child and forced marriage and FGM.

Repeal any law which discriminates against women and hinders gender equality in all spheres of life: in the family, in economic and social life, in public and political life and in the area of health.

Repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine access by individuals or a particular group to sexual and reproductive health facilities, services, goods and information. At the very least, bring laws into compliance with the Protocol

Adopt targets to ensure women full and productive employment, and decent work and to recognize and value unpaid care and domestic work, and give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources.

Expand sex disaggregated data collection to capture amongst others, multiple and intersecting forms of discrimination for advocacy and gender-responsive programming.

Strengthen domestic criminal accountability, responsiveness to victims and judicial capacity.

Affirm the primacy of international and regional human rights law and constitutional laws over religious, customary and indigenous laws as a means to ensuring women's emancipation and autonomy.

Establish legal protection of the rights of women on an equal basis with men and raise public awareness on all forms of discrimination against women, including violence against women and girls, and ensure awareness-raising campaigns address the needs of women with albinism.

Work with all partners and women's groups to create a dialogue between different stakeholders and engagement with the human rights mechanisms.

Create a space for CSOs including women human rights defenders to concretely contribute to the promotion of human rights on the continent; and encourage and strengthen networks among these

groups to support the process of implementation of the Agenda 2063 and its related document as well as the outcome document of the African Year of Human Rights.

Ground all efforts for the promotion and protection of women's rights including the context of the Agenda 2030 and Agenda 2063 in human rights norms and standards – particularly the Maputo Protocol and the Convention on the Elimination of Discrimination against Women as well as the work of Special Procedures, in particular of the Working Group on discrimination against women in law and in practice and the Special Rapporteur on violence against women, its causes and consequences.

African Union Commission

Women, Gender & Development

Tel: +251-115-182112

<http://www.au.int/en/wgd>

**United Nations Office of the High
Commissioner for Human Rights**

P.o. Box 3001

Telephone:+251-115 44 35 85

<http://www.ohchr.org>