

MAPUTO PROTOCOL

@20

a celebration of
20 years of
women's rights

A NEWSLETTER
BY THE SPECIAL
RAPPORTEUR
ON THE RIGHTS
OF WOMEN IN
AFRICA

VOLUME 2

MAY
2024



ACHPR
African Commission on
Human and Peoples' Rights

Table of contents

From the desk of the Special Rapporteur on the Rights of Women	5
Celebrating 20 years of the Maputo Protocol and 25 years of the mandate of the Special Rapporteur on the Rights of Women in Africa: Susan C Mutambasere and Irene Desiree Mbengue	8
CLARION CALL TO HALT REGRESSION IN THE GAMBIA – THE FGM DEBACLE The Female Lawyers Association of The Gambia (FLAG)	11
Of Hope and Despair: The Gambia’s FGM Law & the Implementation of the Maputo Protocol Ngenarr-Yassin Jeng	14
FGM IN SIERRA LEONE: The Battle continues Farouk Sulaiman Taiwo Adedoyin	16
The positive contribution of the Maputo Protocol to the rights of women in Africa Maat for Peace, Development and Human Rights	18
The Maputo Protocol and Violence against Women in Africa Dr. Adetokunbo Johnson	21
From Protocol to Power: South Africa's Progress in Combating Gender-Based Violence and Femicide Sharna-Lee Clarke	26
Beyond Legislation: The Role of Civil Society in Advancing Article 8 of the Maputo Protocol in Malawi Lindiwe Sibande and Immaculate Maluza	28
Women's right to a healthy and sustainable environment: Innovation of the Maputo Protocol Ajabu mastaki gabriel; Professor Nzohabonayo Anacleit ; Professor Nicolas de Sadeleer	31
Zimbabwe’s Experiences in Implementing Maputo Protocol provisions on Women’s Right to Participation in the Political and Decision-Making Process Clayton Hazvinei Vhumbunu	34
Celebrating the Unsung Heroes: Women supporting the mandate of the Special Rapporteur on the Rights of Women in Africa	39
Scenes from around the continent deliberating on the elimination of FGM in Africa	40



Acknowledgments

The Office of the Special Rapporteur on the Rights of Women in Africa, on behalf of the African Commission on Human and Peoples' Rights, would like to thank the generous support of its partners in the collation and publishing of this commemorative newsletter. The newsletter has been in two parts, with Volume 1 launched in October 2023 and Volume 2 in May 2024.

The newsletter was made possible with the generous support of the following:

UN Women

Centre for Human Rights, University of Pretoria

Special thanks also go out to all the contributors to both volumes.

Graphic design and layout by DN Ikpo.

Dedication

This edition of the Newsletter is dedicated to all the girls and women of Africa who have been and are at the threat of being victims of FGM. May we find the courage to fight for their rights, always.

Editors

Susan Mutambasere

Irene Desiree Mbengue

Meron Eshetu Birhanu

From the desk of the Special Rapporteur on the Rights of Women



I extend a warm welcome to all our readers to the Second Volume of the Newsletter, marking the end of the celebration of the 20th anniversary of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) in July 2024.

The Maputo Protocol, with its progressive and innovative provisions, has been an instrumental document for the rights of African women and girls since its adoption on 11 July 2003 in Maputo, Mozambique. Notably, 20 years after its adoption, we convened in Nairobi, Kenya, on 11 July 2023 to celebrate the 20 years of the



Maputo Protocol and the progress made in safeguarding women's rights since then. Following this significant event, in my capacity as a Special Rapporteur on the Rights of Women in Africa (SSRWA), I published the 1st Volume of the Newsletter on Maputo Protocol@ 20: A celebration of 20 years of women's rights, which was launched during the 77th Ordinary Session of the African Commission on Human and Peoples' Rights (the Commission). This also comes as we commemorate 25 years since the decision to establish the mandate of the Special Rapporteur on the Rights of Women in Africa.

This Second Volume of the Newsletter comes at a time when the great continent of Africa is once again faced with great challenges of regression on the gains made on advancing women's rights. While regression is noted in other aspects of women's rights, I specifically want to highlight the issue of female genital mutilation (FGM) which in 2024 and 20 years after the adoption of the Maputo Protocol we expected to have been well on the way to universal elimination.

I speak directly to the issue of the regression of the banning of FGM in The Gambia, and the continued impunity in Sierra Leone regarding the same matter. I know in several other African countries

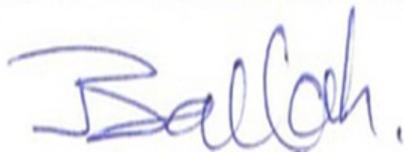
FGM remains a serious threat to the health, welfare and rights of women and girls, but I highlight these specifically in light of the on-going regression happening, like the Bill in The Gambia to revoke the ban. I condemn in the strongest sense the threats of regression and urge the states to re-consider using the law as a tool to oppress women. This harmful practice impugns the dignity and integrity of women and girls and fuels inequality against them. I urge all stakeholders to join forces to push back against this violation in The Gambia, in Sierra Leone and in all the African states where women and girls are still being subjected to this barbaric act.

The Newsletter while dedicated to the current battle against FGM, includes a collection of other articles penned by passionate women's rights advocates and organizations. It transcends being merely a collection of articles. Instead, it reflects the progress and challenges we face in the realm of women's rights across the continent. Each article within this publication is a compelling testament to the ongoing struggle for gender equality and the tireless efforts of individuals dedicated to advancing women's rights. It highlights both the victories and the impact the Protocol has on the lives of African women. Moreover, it reminds us of the work that remains to be done to realize

the Protocol's potential fully.

At this point, I wish to extend my sincere gratitude to the contributors of this Newsletter, who have generously shared their time, expertise, talents, and personal experiences. I would also like to thank the editorial team for their tireless efforts editing this Newsletter. Lastly, I am grateful to our partners for their assistance in translating the document into different languages and facilitating its printing.

It is my privilege and honor to invite all of you to enjoy reading this Newsletter and glean insights that can contribute to protecting and promoting women's rights across the continent. Please consider this a call to action, to improve on the good already being done and to find ways to stop the violations that persist.



Hon. Janet Ramatoulie Sallah-Njie

Special Rapporteur on the
Rights of Women in Africa,
African Commission on
Human and Peoples' Rights



Celebrating 20 years of the Maputo Protocol and 25 years of the mandate of the Special Rapporteur on the Rights of Women in Africa:

Susan C Mutambasere* and Irene Desiree Mbengue**

**Centre for Human Rights, University of Pretoria*

*** Senior Legal Officer, African Commission on Human and Peoples' Rights*

July 2024 marks the end of the yearlong celebrations to commemorate the adoption of the Maputo Protocol. It has been a year of reflection and celebration. Still, most importantly, it has been re-strategizing the ideal ways to continue fostering a culture of respect for women's rights on the continent. It is only fitting that the commemoration of Maputo at 20 dovetails into the celebration of 25 years since the adoption of the resolution to set up the first special mechanism dedicated to the rights of women in Africa and the custodian of the Maputo Protocol, the Special Rapporteur on the Rights of Women in Africa. The Resolution ACHPR/res.38 (XXV) 99 was adopted in May 1999 making it 25 years of commitment to women's rights in Africa. The mandate was established to, among others, be the focal point for women's rights in Africa and aid member states in implementing effective policies for women in their domestic jurisdiction.

It is important to acknowledge that the journey is predicated upon the giant shoulders of our foremothers, whose dedication to the cause paved the way for many of the freedoms women in Africa now enjoy. Therefore, this article celebrates the brave women who have steered the mandate and their contribution to the Maputo Protocol's effectiveness since its adoption.

The inaugural mandate holder was Commissioner Julienne Ondziel Gnelenga from the Republic of Congo, who held the mandate until her retirement in 2001. She became the pioneer of a special mechanism for women in Africa, a role that recognized the need for special protection for women on the continent.

She handed over the baton to Commissioner Angela Melo from Mozambique, who took the reins from 2001 to 2007; thus, she was the mandate holder when the Maputo Protocol was finalized and adopted. Her contribution is fondly remembered as she steered the adoption and coming into force of the Maputo Protocol, a process that spanned an unprecedented two years.



When her tenure ended, Commissioner Soyata Maiga from Mali steered the mandate from 2007 to 2015. She will be remembered for forging ahead with strengthening the Maputo Protocol through interpretative documents. It was during her tenure that the African Commission adopted the very first General Comment in 2012 on article 14(1) (d) and (e) of the Maputo Protocol. Two years later, General Comment no. 2 was also adopted, this time on Article 14 (1) (a), (b), (c), and (f) and Article 14 (2) (a) and (c) of the Maputo Protocol. In addition, Commissioner Maiga oversaw the adoption of the African Commission's guidelines on State Reporting under the Maputo Protocol in 2009.

Commissioner Lucy Asuagbor took over the mandate in 2015 and lasted until 2020, when she retired from the Commission. During her illustrious tenure, Commissioner Asuagbor continued the great work of the mandate and saw the adoption of the Guidelines on Combatting Sexual Violence and its Consequences in Africa in 2017. In the same year, she concluded the work that had started during Commissioner Maiga's tenure to draft and adopt a Joint General Comment on Child Marriage with the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee). Towards the end of her term in office, Commissioner Asuagbor also oversaw the adoption of the General Comment on article 7(d) of the Maputo Protocol, which is on equitable distribution of marital property at the dissolution of a marriage, adopted in 2020.

Commissioner Zainabo Sylvie Kayitesi from Rwanda succeeded Commissioner Asuagbor, who held the mandate for less than a year in 2020, after which she resigned from the Commission. Within the same year, the mandate was placed under the caretaker role of Commissioner Maria Theresa Manuela from Angola, who also held the mandate for approximately a year. While these powerful women were in office briefly, the mandate's work continued to thrive under their leadership. The drafting of the Guidelines for Shadow Reporting to the African Commission began during this period under the guidance of these mandate holders.

In December 2021, the current mandate holder, Commissioner Janet Ramatoulie Sallah-Njie, was appointed. She has been working tirelessly to improve the situation of African women on the continent. She oversaw the finalization and adoption of the Guidelines on Shadow Reporting, which were adopted in 2022. In August 2022, she spearheaded the adoption of a resolution on the protection of women from violence that occurs within the digital space, an emerging issue within the fast-changing digital world. In 2023, under her guidance, the Joint



General Comment on Female Genital Mutilation was adopted with the African Children's Committee. She continues to aid Member States to fulfill their obligations under the Maputo Protocol.

While this article highlights the most significant notable outputs of the mandate, there have been several other efforts through resolutions and recommendations over the years to ensure that Member States improve the status of women in their countries. In the 25 years of the mandate, through the tireless efforts of mandate holders, the Maputo Protocol was adopted, came into force, and garnered 45 ratifications, which is a feat in itself. It is hoped that universal ratification will be achieved and universal domestication and implementation will become a reality in Africa.

This celebration of the Maputo Protocol and the mandate is a bittersweet one, as both mechanisms currently face violent opposition to their values in the form of the regression on FGM, which this newsletter recognizes and calls for an immediate stop to.

CLARION CALL TO HALT REGRESSION IN THE GAMBIA – THE FGM DEBACLE

The Female Lawyers Association of The Gambia (FLAG)

The practice of Female Genital Mutilation/Cutting (FGM/C) in The Gambia is an entrenched cultural phenomenon especially for those within practicing communities. The 2019-20 Demographic and Health Survey (DHS) cites the prevalence rate among adolescent girls and women aged 15-49 at 73%, with 65% of women experiencing FGM/C when they were younger than age 5. The DHS Report further states that 18% were circumcised between the ages of 5 and 9, 6% at ages 10-14, and 1% at age 15 or older.¹ Currently, 46% of girls aged 0-14 have been circumcised.² Despite the decades' long widespread awareness raising campaigns about the physical, psychological, and health consequences of FGM/C, and its criminalization through the Women's (Amendment) Act 2015, the rights of girls and women in The Gambia continue to be violated through the practice.

In September 2023, three women were convicted for practicing FGM on eight children between the ages of 4 months and 1 year in direct violation of section 32A and 32B of the Women's (Amendment) Act 2015. They were fined only 15,000 Gambian Dalasis (approximately USD 220) or in default to serve one year imprisonment, a sentence that is not consistent with the prescribed punishment of three years imprisonment or a fine of 50,000 Gambian Dalasis (approximately USD 750) or to both under the law.³ This conviction reignited discussions on the FGM law in The Gambia.

Imam Abdoulie Fatty, a religious leader in The Gambia, paid the fines levied on the convicted women, amidst calls for the repeal of the ban for cultural and religious reasons. Imam Fatty has since then rallied support of other religious leaders through the Gambia Supreme Islamic Council,⁴ as well as some members of the National Assembly, and some members of the public. The Bill to repeal the Women's (Amendment) Act 2015 known as the Women's (Amendment) Bill 2024, was introduced to the National Assembly as a private member bill by Hon. Almameh Gibba.

1 DHS Report 2019-20 page 15 accessed at <https://dhsprogram.com/pubs/pdf/SR268/SR268.pdf>

2 Ibid

3 <https://africlaw.com/2024/03/22/threats-to-endfgm-law-in-the-gambia/>

4 <https://thepoint.gm/africa/gambia/headlines/gsic-supports-repeal-of-fgm-ban>

While the Women's (Amendment) Act 2015 and other similar legislations protecting women's rights were passed during former President Jammeh's regime, it is pertinent to note that the battle for the protection of women's rights, in The Gambia, in particular prohibition of all harmful practices, like FGM, had been raging since the early 80's. Dr Satang Nabaneh opines "that Jammeh's ostensible compliance with gender equality norms was selective and intended for the international gallery rather than a genuine commitment to women's rights and democracy."⁵ This apparent lack of genuine commitment is observed in both the previous and current administrations, evidenced by the failure to prosecute two reported cases of FGM, one of which involved a 5-month-old baby who died as a result of FGM in Sankandi Village.⁶

The Women's (Amendment) Bill 2024 cites violation of the right to engage in religious practices as reason for the proposed repeal. It fails to take into consideration that, the perception of the religious basis of the practice is not well grounded and is not shared by all religious scholars in The Gambia and globally, and indeed the practice predates Islam. Moreover, the proponents of the Bill also fail to take into consideration the overriding principles of human rights relating to children, women, and other vulnerable groups, namely, the principles of best interest and welfare of the child, non-discrimination, life, survival and development, respect for bodily integrity and intersectionality of rights. The WHO describes FGM as lacking any health benefits and associates the practice with increased risk of health complications in girls and women.⁷ An observational study on the obstetric outcome of FGM in The Gambia also associates FGM/C in The Gambia with adverse obstetric outcomes, risk of postpartum haemorrhage, unplanned caesarean section, risk of perineal tears and episiotomy, risk of need for neonatal resuscitation, and associates FGM/C type II with increased perinatal death.⁸

This constitutes a violation of the right to health of women and girls protected under the CEDAW, the Maputo Protocol, the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and the Convention on the Rights of Persons with Disabilities. These charters and conventions place an obligation on the Government of The

5 <https://theconversation.com/the-gambia-may-allow-female-genital-mutilation-again-another-sign-of-a-global-trend-eroding-womens-rights-226632>

6 Ibid 4

7 <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>

8 Patrick Idoko, Alice Armitage, Momodou T. Nyassi, Lucas Jatta, Neneh Ba, Awa Jah, Dado Jabbie, Mustapha Bittaye, 'Obstetric Outcome of Female Genital Mutilation in The Gambia - an Observational Study', African Health Sciences, Vol 22 Issue 4, December, 2022, page 10



Gambia to ensure the protection of women and girls from all forms of harm to their health. While recognizing the Executive's limitations in interfering with parliamentary proceedings and processes, the State must also uphold its duty to enforce existing legal provisions. Vigorous measures should be taken to enforce the law, particularly section 32B which prohibits all forms of promotion of FGM.

Allowing violations of the FGM law to persist while the Women's (Amendment) Act remains in force sets a dangerous precedent for other forms of GBV and discrimination, especially child and forced marriage. The erosion of legal protections for women and girls will lead to a cascade of rights violations, perpetuating cycles of inequality and injustice that have proven detrimental effects on the lives of women and girls.

The Female Lawyers Association of The Gambia, remains firmly committed to protecting the rights and dignity of women and girls in The Gambia. It is crucial that the Government enforces existing laws and international treaties and conventions aimed at safeguarding the health and well-being of women and girls. We will persist in our dedication to ensuring that the rights of women and girls are not only articulated in written laws but also effectively implemented. We therefore urge the Government of the Gambia in particular the National Assembly to carefully consider the negative impacts of repealing or making any changes to FGM law

Of Hope and Despair: The Gambia's FGM Law & the Implementation of the Maputo Protocol

Ngenarr-Yassin Jeng

In August 2023, a significant milestone was achieved in The Gambia as the nation secured its first convictions under the law against Female Genital Mutilation (FGM). The Kaur/Kuntaur Magistrates Court successfully charged and convicted three individuals for procuring and conducting the practice of FGM. These convictions mark a momentous victory for The Gambia's tireless anti-FGM movement, which has dedicated years of effort to advocating for the enforcement of the FGM law and, by extension, the Maputo Protocol.

Nestled as the smallest country on mainland Africa, The Gambia is renowned for its warm and hospitable people, as well as its breath-taking sandy beaches, earning it the well-deserved moniker "the Smiling Coast of Africa." Behind those radiant smiles, however, lie the stories of countless women and girls who persistently work towards ensuring that their rights are not only acknowledged but also safeguarded and upheld by the State. The country stands firmly committed to the cause of women's and girls' rights, with a comprehensive set of laws in place for their protection. Notably, The Gambia ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) in 2005 and subsequently incorporated it into domestic law through the Women's Act. It is worth mentioning that earlier reservations on various aspects of the Protocol, including harmful practices, marriage, and reproductive rights, were later rescinded by the government without formal explanation. Additionally, specific provisions were added to domestic legislation, such as the prohibition of FGM in the Women's Amendment Act 2015 and the prevention of child marriages, which were incorporated into the Children's Act.

While the enactment of these laws is undoubtedly a positive step, their effective implementation within the country is seriously lagging, as women and girls continue to grapple with numerous challenges, including systemic inequalities and discrimination. Furthermore, there has been a distressing surge in cases of sexual and gender-based violence (SGBV), with recent instances of technology being used to marginalize women and girls, particularly survivors of sexual violence and women's rights defenders. Both online and offline spaces have become arenas for abuse, making it increasingly daunting for young women to step



forward and assert their rightful demands, particularly in contentious matters like FGM, where some individuals responsible for enforcing the laws may still hold beliefs in favor of the practice.

The crusade to ensure that women and girls are treated in accordance with the provisions of the Maputo Protocol has largely been led by feminists, survivors and women-led organisations. With formidable challenges encountered on this path, many remain resolute, believing that there is still a lot of work that needs to be done towards realising the Protocol's objectives. In a significant turn of events, the FGM criminal convictions which were supposed to serve as a beacon of change in the broader social movement against FGM has been met with significant backlash that threatens to take Gambian women back to the stone age. Although the convictions are supposed to signify a significant stride towards adopting a more concerted approach to implementing the Women's Act and fully realizing the promises of the Maputo Protocol, it has in turn resulted in a campaign to repeal the law with the pro-FGM group vowing to target the law against child marriage next. The Bill seeking to repeal the anti-FGM law has survived a second reading at the parliament and has been sent to the committee stage for review. The Bill has garnered support from influential religious clerics notorious for their fundamentalist views and, in general, advocating against the rights of women. Part of the campaign to repeal the anti FGM law has been centred on the premise that if more people openly support the repeal of the ban and actively practice it, the government will not be able to imprison them all. This is cause for concern seeing as the government of The Gambia has remained silent despite the blatant disregard of the law against advocating for the practice of FGM.

The Assembly Business Committee has 16 weeks to review the Bill, consult stakeholders, propose amendments and submit a report before a third reading of the Bill and final voting. It is poignant to note that if the FGM ban is repealed, Gambia would be the first country to repeal such a law thereby setting a dangerous precedent. Perhaps this current climate will provide the impetus needed for civil society and international partners to re-engage the public in discussions surrounding the rights of women and girls as well as government's role in safeguarding them in line with the Maputo Protocol.

FGM IN SIERRA LEONE: The Battle continues

Farouk Sulaiman Taiwo Adedoyin

Sierra Leone, one of five countries that legally turns a blind eye to female genital mutilation (FGM), is facing renewed pressure to make it a crime after the deaths of three girls from the procedure on the same day made international news.⁹ Adamsay Sesay, 12; Salamatu Jalloh, 13; and Kadiatu Bangura, 17, died in January 2024, after being cut on the first day of the Bondo initiation, a two or three-week ritual that takes place in the bush, in which adolescent girls or young women are inducted into Sierra Leone's secretive, women only Bondo Society. Bondo Society is a secretive tradition of women in Sierra Leone that is steeped in mythology, but it has the genital mutilation of young girls and women as a central pillar. Even talking about the Bondo Society, women believe, puts them at risk of 'curses' and 'demons'.¹⁰

FGM has been classified as a human rights violation under international law. FGM violates a woman's right to health and bodily integrity (Article 25 of the Universal Declaration of Human Rights). It is also considered a form of violence against women under the UN Convention on the Elimination of All Forms of Violence Against Women. The practice falls under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. FGM also violates the Convention on the Rights of the Child (CRC).

Regional treaties also identify FGM as a harmful practice. These include the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, known as the Maputo Protocol, which came into effect in 2005 and to which Sierra Leone is a signatory.

However, there is currently no legislation in Sierra Leone that bans, punishes, or prevents FGM itself, nor its role in the Bondo Society's initiation process. In the past few years, a number of traditional chiefs have started to put in place by-laws within their communities to ban 'child bondo' or initiation of girls under 18 years.¹¹

"The lack of a dedicated and enforceable legislation that expressly criminalises and punishes female genital mutilation is hindering judicial or other investigation into, and persecution of, these harmful

9 <https://www.bmj.com/content/384/bmj.q382#:~:text=In%20Sierra%20Leone%2C%2061%25%20of,women%20in%20their%20early%2020s>.

10 <https://www.forwarduk.org.uk/wp-content/uploads/2019/06/Forward-Bondo-Report-2017-Updated-Branding-WEB.pdf>

11 <https://www.forwarduk.org.uk/wp-content/uploads/2019/06/Forward-Bondo-Report-2017-Updated-Branding-WEB.pdf>



practices and unlawful killings,” United Nations Experts have said (Reem Alsalem, Special Rapporteur on violence against women and girls, its causes and consequences; Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions; Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. “Laws and policies need to provide clear accountability frameworks and disciplinary sanctions with respect to female genital mutilation,” they indicated.¹²

A major challenge in the abolition of FGM in Sierra Leone is that some parents prefer to put their daughters through the Bondo process while still young (below the age of 18 years) because it would be easier to influence them to go into the initiation process (which includes the cutting), compared to when they are older. However, this process is likely to result in girls being resentful of their parents and their actions.

In 2019, Awoko Newspaper reported that over 60 women became the first initiates of the Bondo Society and underwent the initiation process without cutting.¹³ The initiation which was done in Port Loko, North West Region of the country catered for seventy women although four of the women were unable to make it. Among the initiates are pregnant women, lactating mothers, university graduates, and students who became the first initiates for the alternative rites of passage. Nenneh Turay, an Anti-Female Genital Mutilation (FGM) activist and head of the Amazonian Initiative Movement (AIM) said the sixty-six women went through a screening process before they were accepted to be part of the process – “all of them went through HIV and other sexual disease tests before they were accepted.” She added that they were working alongside the Ministry of Health and Sanitation and that officials from the Ministry were also allowed to speak to the initiates on why they were ‘trying to protect their clitoris.’ “Because most of the time the midwives are complaining about the type of constraints women are going through while giving birth because the thing that should help them to deliver safely is no longer there,” she pointed out.

It is hoped that these alternative forms of initiation rites are adopted formally, coupled with clear legislation that bans FGM so as to achieve the harmony between respect for cultural identity and protection of the human rights of women and girls in Sierra Leone.

12 <https://www.ohchr.org/en/press-releases/2022/08/sierra-leone-end-impunity-female-genital-mutilation-say-un-human-rights>

13 <https://awokonewspaper.sl/over-60-women-become-first-initiates-of-bondo-without-cutting/>

The positive contribution of the Maputo Protocol to the rights of women in Africa

Maat for Peace, Development and Human Rights

The Maputo Protocol came as an affirmation of the principle of promoting equality based on gender as stated in the Constitutive Act of the African Union and a declaration of commitment to eliminate all forms of discrimination and harmful practices against women in Africa. The importance of the Protocol lies in 32 articles that guarantee wide-ranging rights for women, including the right to participate in political processes, social and economic equality with men, and improved autonomy in their decisions regarding marriage, separation, and reproductive health. The Protocol sets forth the reproductive right of women to medical abortion when pregnancy results from rape or incest or when the continuation of pregnancy endangers the health or life of the mother. It explicitly calls for the legal prohibition of female genital mutilation (FGM) and prohibits the abuse of women in advertising and pornography. It covers a wide range of civil, political, economic, social, cultural, and environmental rights, including ensuring those rights for women with disabilities and elderly women.¹⁴ This instrument highlights issues not effectively covered in other instruments but which have particular relevance to African women, including HIV and AIDS, trafficking, widow inheritance, and property grabbing.¹⁵

Since its adoption 20 years ago in 2003, the Maputo Protocol has contributed to shifting the trajectory of promoting and protecting women's human rights in Africa. In the first instance, it challenges the old stereotypes about the role of women in society. It places women as full, effective, and equal partners with men in developing their communities. It places a moral obligation on African Union Member States to promote equal opportunities for men and women to play meaningful societal roles. Many African Union Member States have established special national machinery to promote and protect women's rights.¹⁶ The following examples are instructive;

14 MAPUTO PROTOCOL ON THE RIGHTS OF WOMEN IN AFRICA: COMMEMORATING 20 YEARS, African Union, <https://bitly.ws/T3aB>

15 African Women's Organizing for the Ratification and Implementation of the Maputo Protocol, awid, <https://bitly.ws/T3MS>

16 Maputo Protocol on Women's Rights: A Living Document for Women's Human Rights in Africa, WGDD, <https://bitly.ws/T3Hh>



Cabo Verde has made several efforts in recent years to strengthen its institutional and policy framework to support gender equality. Such efforts have included the establishment of the Ministry of Family and Social Inclusion in 2016 and the Interministerial Commission for Gender Mainstreaming in 2018. As of November 2022, 38.9% of parliamentary seats (lower chamber) were held by women, thus ranking Cabo Verde 32nd out of 187 ranked countries for political equality.¹⁷

Benin: In January 2023, more women were elected as members of parliament. The number of women is 28 out of 109 parliamentarians, which is far less than the accepted number for gender equality in leadership; it, however, represents a jump from 10% to 25% for women's leadership in the country.¹⁸

Liberia: Towards striving to achieve what was stipulated in the Maputo Protocol, the President of the National Council of Leaders and Elders of Liberia announced on February 6, 2023, the ban on FGM in Liberia.¹⁹

17 The Republic of Cabo Verde, Ocean Risk, <https://bitly.ws/T3z5>

18 Special Rapporteur on the Rights of Women in Africa (SRRWA) - 75OS, ACHPR, <https://bitly.ws/T3fH>

19 Ibid



Lesotho: In July 2022, the Parliament of Lesotho unanimously passed the Harmonization of the Rights of Customary Widows with Legal Capacity of Married Persons Act of 2022, which seeks to strengthen the economic status of customary widows in securing their property status.²⁰

Sao Tome and Principe: In July 2022, Sao Tome and Principe passed the Political Parity Law, which provides a minimum of 40% of seats in elected bodies to be reserved for women, including Cabinet positions.²¹

All of these developments indicate a move in the right direction in protecting and promoting women's rights and reflect the spirit and objective of the Maputo Protocol.

20 Special Rapporteur on the Rights of Women in Africa - 73OS, ACHPR, <https://bitly.ws/T3e3>

21 *ibid*

The Maputo Protocol and Violence against Women in Africa²²

Dr. Adetokunbo Johnson

Lecturer in the Politics of the Global South, School of Geography,

Politics and Sociology, Newcastle University, UK

Recent calls for an African regional treaty to end violence against women (VAW) have gained momentum. Manjoo, the former United Nations (UN) Special Rapporteur on Violence Against Women and Girls, Its Causes and Consequences, is one of the foremost proponents of this idea.²³ She has mainly argued that an African regional treaty will be consistent with other regional treaties on the subject and will draw the much-needed response that the violence experienced by African women deserves. The idea for a stand-alone treaty makes sense given VAW's record as one of the most universally widespread human rights infringements and the well-documented evidence of the continued rise of incidences of VAW globally and especially in Africa.²⁴ For instance, at least one-third of African women experience some form of violence from cradle to death. These VAW statistics have been further exacerbated by the emergence of the global Coronavirus (COVID-19) pandemic in 2019.²⁵ The emergence of the COVID-19 pandemic and its resulting negative implications that disproportionately affect African women and girls have reversed projected declines in distinct forms of VAW. Specifically, to illustrate the increased incidence rates during COVID-19, VAW was dubbed the 'shadow pandemic.'

Indeed, in response to these calls, the African Union (AU) has begun significant efforts to develop a proposed treaty known as the African Treaty on Violence Against Women and Girls (Draft Treaty) specifically designed to tackle VAW in Africa.²⁶ These efforts are ongoing even though two decades earlier, on 11 July 2003, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) was adopted

22 Adapted from African Law Matters Original article: <https://www.africanlawmatters.com/blog/fthe-maputo-protocol-and-violence-against-women-in-africa>

23 R Manjoo and R Nekura ' Does Africa need a regional treaty on violence against women? A comparative analysis of normative standards in 3 regional human rights systems' (2020) Acta Juridica.

24 WHO 'Violence Against women prevalence estimates 2018' <https://iris.who.int/bitstream/handle/10665/341338/9789240026681-eng.pdf>

25 A Budoo-Scholtz and A Johnson (eds) Covid 19 and women's intersectionalities in Africa (2023).

26 A Budoo-Scholtz and LN Murungi ' Evaluating the (in)sufficiency of Africa's response towards economic and psychological violence against women' (2021) African Human Rights Yearbook 73.



and, two years later, was enforced on 25 November 2005. The Maputo Protocol guarantees women's human rights with 45 ratified member states. These member-states commit to ending discrimination and VAW.

The Protocol's explicit prohibition of VAW continues to be lauded in scholarship.²⁷ However, despite its explicit VAW prohibition, this violence continues and has been a rationale for drafting the new Draft Treaty. Against this background and considering that 2023 marks the Maputo Protocol's twenty-year milestone adoption, it is critical to reflect on the innovation of the Maputo Protocol's explicit VAW prohibition. This reflection is crucial considering that VAW elimination is arguably integral to achieving the treaty's objectives to; 'promote, realize and protect' African women's rights. It is in tackling VAW that the Protocol shows its innovation. For instance, ending VAW is a central theme throughout the Maputo Protocol's text. This attention is significant given its absence in the topmost global Bill of Rights for Women. The UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) omits VAW in its text. In CEDAW's text, women are only protected from violence in the context of trafficking and exploitation of prostitution. Despite its afterthought clarification in General Recommendations, this VAW oversight in CEDAW has been extensively criticized and documented.

The Protocol corrects this oversight by explicitly banning VAW, thus earning accolades in scholarship.²⁸ Similar to the CEDAW, special attention is given to preventing and condemning trafficking in women. Concerning the latter, member states are expected to prosecute perpetrators while protecting women vulnerable to these violent acts. However, the Maputo Protocol goes further than the CEDAW by drawing attention to often unacknowledged and distinct forms of violent acts such as verbal violence, economic and psychological harm, pornography, and marital rape.

Ending VAW in Africa is addressed comprehensively under Article 4 of the Maputo Protocol. This article upholds and protects women's entitlement and right to life, integrity, and security of person responding to the widely established reality that VAW threatens women's lives in Africa. Where it concerns VAW, Article 4 outlines three fundamental state obligations:

27 F Banda 'Blazing a trail: The African Protocol on Women's Rights Comes into force' (2006) *Journal of African Law* 72-84.

28 As above.



First, promulgation and enforcement of laws. While states must enact and enforce laws prohibiting VAW, member-states are urged not to rely on laws alone but to take other critical administrative, social, and economic steps to prevent, punish perpetrators, and ultimately end VAW. Second, prevention. It is not enough to promulgate laws that are reactionary; member states must anticipate, prevent, and abolish these violent acts. Thus, prevention involves identifying the causes and consequences of violence, which could inform the right preventive steps.; adopting an active response using education and communication strategies. Third, punishment of perpetrators and rehabilitation of survivors: This involves establishing prosecution mechanisms and ensuring accessible services for effective information, rehabilitation, and reparation for survivors. Beyond these three obligations, there is an emphasis on allocating and providing sufficient budgetary and other resources, recognizing their importance for fulfilling, monitoring, and enforcing them.

Aside from Article 4, the need to end VAW is evident and scattered throughout the treaty. For instance, under Article 1, an explicit definition of VAW is provided. This significant definition leaves little room for doubt on what constitutes violent actions or threats targeted at African women. The definition expands VAW to include violent acts and threats; it encompasses everyday physical or sexual acts of violence but also emphasizes the often subtler psychological and economic harm.

By upholding women's control over their fertility and authorizing medical abortion in violent situations such as sexual assault, rape, and incest, the treaty confirms the violence African women often experience concerning their sexual and reproductive health. This includes mandating the prohibition of all non-consensual and forced medical or scientific experiments on women and ensuring that the death penalty is not extended to pregnant or nursing women. Additionally, by upholding women's right to live in a positive cultural context, there is an implicit acknowledgment that a negative cultural context perpetuates violent acts and harm against women.

Moreover, by outlawing violence that occurs in private, the Maputo Protocol recognizes distinct forms of violence that can be perpetuated, for instance, by private actors, such as marital rape and verbal violence. Additionally, by prohibiting sexual harassment in educational and workplace settings, the treaty acknowledges public and community-based

violence, and by protecting women in armed conflicts, it recognizes that violence could also be state-sanctioned. Notably, the novelty that underlies the Maputo Protocol's VAW explicit ban is evident in multiple ways. For instance, by expressly forbidding VAW both in private and the public, especially "forced violence that occurs in private" interpreted to include marital rape,²⁹ the Maputo Protocol criminalizes this act often undetected as a crime because it is still almost unbelievable that a husband can rape his wife in most African countries.³⁰ Again, criminalizing marital rape removes the false distinction between the private and public domains and brings to the forefront VAW and its distinct forms that had historically been exempted in human rights architecture.

Furthermore, the Maputo Protocol text lacks the language 'due diligence.' However, by requiring member states to prevent and investigate all acts of VAW, prosecute and punish perpetrators, rehabilitate, and offer reparations to survivors, the due diligence obligations concerning VAW are implicit and thus can be invoked. Similarly, intersectionality is also not explicitly mentioned.³¹ Nonetheless, the Maputo Protocol recognizes VAW as an intersectional reality, showing its immense ability to tackle it. For instance, by explaining that 'women' as used in the treaty includes girls, the treaty arguably recognizes how the violence experienced is significantly impacted when gender intersects with age.

Additionally, by protecting women with disabilities, older women, and women in distress from violent acts, the treaty recognizes how women with multiple and intersecting identities are increasingly susceptible to distinct and increased forms of violence. The severity of the violence occurs not only because they are women but also because, following Crenshaw's reasoning, their gender intersects and is mutually constitutive with other identity categories that African women embody. Likewise, protecting women in armed conflicts, asylum-seeking women, refugees, and internally displaced women against all forms of violence makes it possible to speculate the treaty's acknowledgment of the intersectional complexities of VAW that could occur in conflict contexts or because of unrecognized migration status.

The Maputo Protocol's explicit VAW prohibition has inspired and fuelled the enactment of

29 As above.

30 <https://www.voanews.com/a/in-africa-criminalizing-marital-rape-remains-controversial/1786061.html>

31 K Crenshaw 'Demarginalizing the intersection of race and sex: A black feminist critique of anti-discrimination doctrine, feminist theory and anti-racist policy' (1989) University of Chicago Legal Forum.



progressive laws focused on ending VAW in African countries.³² Moreover, the Economic Community of West African States (ECOWAS) Court of Justice's Dorothy Njemanze case,³³ arguably the first regional body and case to which the Maputo Protocol was first applied, coupled with the Kenyan case of Kamau,³⁴ is a testament to the progressive judicial pronouncements that have held governments accountable for acts of VAW. Also, the treaty's explicit VAW prohibition has inspired legal advocacy and judicial training that strengthen women's rights on the continent.³⁵

Conclusively, with less than a decade left, strengthening the Maputo Protocol's VAW response by adopting a robust and coordinated monitoring mechanism is vital if there is a seriousness to eliminate VAW and meet timelines set under the Goal 5 mandate of the 2030 Sustainable Development Goals.

32 Intersession Report of the Special Rapporteur on the Rights of Women in Africa at 71st Ordinary Session of the ACHPR

33 https://repository.up.ac.za/bitstream/handle/2263/74924/OConnell_Reconceptualising_2019.pdf?sequence=1&isAllowed=y

34 <http://kenyalaw.org/caselaw/cases/view/209223/>

35 https://equalitynow.org/news_and_insights/9_ways_maputo_protocol/

From Protocol to Power: South Africa's Progress in Combating Gender-Based Violence and Femicide

Sharna-Lee Clarke

Deputy Head: School of Law IIE Varsity College; PhD Candidate (UCT); LLM, LLB (UWC).

The Maputo Protocol, a landmark legal instrument adopted 20 years ago and ratified by South Africa in 2004, has played a pivotal role in shaping South Africa's response to gender-based violence (GBV).³⁶ This article explores the progress made by South Africa in addressing GBV, underpinned by and owing to the contribution of the provisions of the Maputo Protocol. The article highlights how the Protocol has catalyzed progress and empowered the nation's fight against GBV by examining key legislative reforms, policy initiatives, and grassroots efforts.

South Africa's commitment to addressing GBV is evident in its legislative and policy reforms influenced by the Maputo Protocol. The Domestic Violence Act was a crucial early step before adopting the Maputo Protocol, offering legal protection to victims and survivors.³⁷ Subsequently, the Criminal Law Sexual Offences and Related Matters Amendment Act broadened definitions of sexual offenses and established harsh penalties.³⁸ In addition, the Minister of Women, Youth, and Persons with Disabilities, based within the South African President's office, formulated a comprehensive National Policy Framework for Women's Empowerment and Gender Equality, advocating for affirmative action within the government, ensuring the integration of a gender perspective into all policies and programs, facilitating collaboration among government departments on gender-related matters, and organizing gender sensitivity training.³⁹ Supporting these efforts is the Commission for Gender Equality (CGE), which plays a central role in advancing and safeguarding gender equality through research, education, policy development, monitoring, and litigation.⁴⁰ Moreover, the CGE is dedicated to creating a society free from violence by notably reducing GBV. South Africa is also developing a draft National Strategic Framework on GBV and Femicide, fostering a coordinated approach to addressing these critical issues through widespread stakeholder

36 <https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf>

37 Domestic Violence Act 116 of 1998.

38 Criminal Law (Sexual Offences and Related Matters) Amendment Act 13 of 2021.

39 Available at https://www.gov.za/sites/default/files/gcis_document/201409/gender0.pdf.

40 The CGE was established under Section 187 of the Constitution.



engagement.⁴¹ These collective initiatives are a testament to South Africa's resolute commitment to aligning with the protocol and its unwavering pursuit of ending gender-based violence.

The Maputo Protocol's emphasis on awareness-raising aligns with South Africa's efforts to encourage reporting and reduce the stigma associated with GBV. Awareness campaigns, such as the '16 Days of Activism for No Violence Against Women and Children,' amplify the Protocol's call for widespread social mobilization. By fostering open dialogue, these initiatives help victims break their silence and access support, reflecting the protocol's spirit of empowerment.⁴² Furthermore, the Protocol's provisions on victim support align with South Africa's establishment of specialized support services. Shelters, counselling centres, and legal aid services have emerged to aid survivors in their journey toward healing and justice. The country's Policy Framework to address GBV in the Post-School Education and Training System also focuses on providing comprehensive rehabilitation, a cornerstone of the Protocol's commitment to holistic recovery.⁴³ It addresses the high levels of GBV and femicide experienced in higher education settings, where 25% of female students had experienced GBV in the past year.⁴⁴

While progress is evident, challenges persist in eradicating GBV in South Africa. Implementation gaps, characterized by limited resources and coordination, hinder the effective enforcement of laws and policies. Underreporting remains a concern due to stigma and mistrust in the justice system. Lengthy legal processes and insufficient support hamper access to justice, while deeply rooted cultural norms and societal attitudes that normalize violence continue to fuel the issue. Economic dependence, technology-mediated violence, and inadequate services further compound the challenge. Addressing these issues requires comprehensive strategies encompassing awareness campaigns, data-driven approaches, and a commitment to changing entrenched norms to create a safer society.⁴⁵

As South Africa marks two decades since the adoption of the Maputo Protocol, the journey and call to action to eradicate GBV continues. The Protocol's vision of a society free from violence should remain

41 Available at https://www.gov.za/sites/default/files/gcis_document/202006/stratplan-gbvs.pdf .

42 See <https://www.parliament.gov.za/project-event-details/3> .

43 Available at <https://www.dhet.gov.za/Social%20Inclusion/DHET%20GBV%20Policy%20Framework%2030July2020.pdf> .

44 See <https://www.news24.com/news24/southafrica/news/gbv-at-higher-institutions-of-learning-needs-to-be-addressed-urgently-warn-experts-20230501> .

45 Buqa W 'Gender-based violence in South Africa: A narrative reflection' (2022) HTS Theological Studies 78(1) pg 1-8.

at the forefront of national aspirations. By building on past achievements, South Africa is poised to elevate its commitment to gender equality, championing the rights and dignity of women and girls.

Beyond Legislation: The Role of Civil Society in Advancing Article 8 of the Maputo Protocol in Malawi

Lindiwe Sibande* and Immaculate Maluza**

**Southern Region Coordinator and **DPP Lawyer, Irish Rule of Law International (IRLI)*

Malawi's ratification of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol)⁴⁶ marked a significant milestone in the country's dedication to advancing women's rights and promoting gender equality. With a focus on article 8 of the Maputo Protocol, which is dedicated to granting women access to justice and ensuring equal legal protection, this article provides an overview of the impact of the Maputo Protocol on legislative reforms in Malawi. It delves into the instrumental role of non-governmental organizations (NGOs) in ensuring access to justice for women.

Article 8 of the Maputo Protocol is vital for safeguarding women's rights, dismantling structural barriers, and promoting gender equality. It mandates state parties to take comprehensive measures to ensure access to legal services, building upon the rights enshrined in Malawi's Constitution.⁴⁷ Section 20 of the constitution guarantees equality and non-discrimination, while section 24 protects women's rights. NGOs and activists hold the government accountable through legal actions and demonstrations.

A significant constitutional change raised a child's age from 15 to 18⁴⁸ due to a challenge by the Institute for Human Rights Defenders and Development in Africa (IHRDA) on behalf of Malawian children aged 16 to 18 against the Government⁴⁹. Court decisions like the 2015 Kashuga case⁵⁰ also extended the definition of a child to be anyone below the age of 18.⁵¹

46 On May 20th, 2005

47 Act No 20 of 1994

48 Constitutional Amendment Act Number 36 (2017).

49 IHRDA on behalf of children of Malawi v The Republic of Malawi Communication 4/Com/001/2014 ACERWC.

50 The State v the Second Grade Magistrates Court (Thyolo) and Malawi Prisons Service ex Parte Stanford Kashuga (4 February 2015) Miscellaneous Civil Cause Number 129 of 2012.

51 Invalidating section 2 of the Child Care, Justice and Protection Act Chapter 26:03, Laws of Malawi



The “Nsundwe⁵² case” further tested women's access to justice and condemned abuse by the Malawi Police Service (MPS). An advocacy campaign secured compensation for the affected women and girls, marking a historic instance of MPS accountability for abuse and extortion. Beyond the realm of legal frameworks, NGOs play a pivotal role in translating Article 8's principles into tangible results for women. They advocate for women's rights, bridging gaps between marginalized women and government entities. NGOs act as intermediaries through advocacy, awareness campaigns, and legal support, ensuring Article 8's provisions become a reality.

For human rights to be effectively enforced, the intended beneficiaries must clearly understand those rights. Legal awareness campaigns emerge as a linchpin in realizing the objectives of Article 8, especially in contexts where laws are primarily written in English, excluding those whose first language is not English. By leveraging their expertise, NGOs amplify the impact of legal reforms through awareness raising.

Since the Maputo Protocol is a source of law under the Malawian constitution, many of its principles have catalyzed the enactment of various laws, including the Marriage Divorce and Family Relations Act,⁵³ the Deceased Estates Wills and Inheritance Act,⁵⁴ and the Gender Equality Act,⁵⁵ which aim to provide women with enhanced equity in matters of inheritance, child custody, and maintenance, amongst other considerations. Additionally, the enactment of the Prevention Against Domestic Violence Act⁵⁶ criminalizes different forms of violence and harmful practices.

To further the goals of the Constitution and the Maputo Protocol, Irish Rule of Law International (IRLI), an access to justice organization, has collaborated with the government's Legal Aid Bureau to conduct sensitization workshops. These workshops are designed to ensure that the most vulnerable individuals, particularly those in hard-to-reach areas, are informed about their rights. They also ensure that women are given the tools and ability to use the law where their rights have been violated.

52 Malawi Police Service, 6 The State v The Inspector General of Police, the Clerk of the National Assembly and the Minister of Finance ex-parte MM and 18 others – Judicial Review Cause Number 7 of 2020 (High Court of Malawi, Lilongwe District Registry) before the Honourable Justice Kenyatta Nyirenda

53 Chapter 25:01, Laws of Malawi

54 Chapter 10:02, Ibid

55 Chapter 25:06, Ibid

56 Chapter 7:05, Ibid



The knowledge component of one's rights is essential, but as with any systemic change, empowerment requires support. NGOs provide legal aid, counseling, and guidance to women facing discrimination. This breaks barriers, enabling women to navigate legal systems and seek justice.

IRLI, in collaboration with the Gender and Justice Unit (GJU), exemplifies this approach through its strategic initiatives focused on legal empowerment. The GJU's GBV Response Unit ensures that women in the peri-urban areas of Lilongwe have access to secure legal and trauma counseling by providing critical support to survivors of GBV. The mobile clinics aim to target women struggling with legal problems and equip them with knowledge of court procedures when obtaining different orders like maintenance orders and protection orders. While progress in implementing Article 8 is evident, ongoing collaboration among NGOs and government entities remains vital for sustained empowerment. Strategic litigation, data collection for evidence-based decision-making, and capacity building are key for lasting change. However, many initiatives depend on donor funding, making sustainability challenging. Adequate funding and government commitment are crucial for lasting transformation toward justice and equality for women in Malawi.

Women's right to a healthy and sustainable environment: Innovation of the Maputo Protocol

AJABU MASTAKI Gabriel*; Professor NZOHABONAYO Anaclet** ;

Professor Nicolas de Sadeleer ***⁵⁷

Climate change, like environmental degradation, is caused by human activity. Humans are thus the perpetrators of environmental deterioration but, simultaneously, the victims of global warming. Environmental issues, therefore, seem to concern us all, and their repercussions are unavoidable. Natural disasters constantly cause enormous damage, which is passed on unevenly to human beings. This leads to climatic injustices, including the worsening of gender inequalities⁵⁸. A school of thought has quickly acknowledged this according to which climate change exacerbates inequalities and affects mainly the most vulnerable populations, who often lack the means to adapt. Women, who represent 60% of the world's population living below the poverty line in 2021, are therefore disproportionately affected⁵⁹. Having recognized the right to a healthy environment⁶⁰, the African political sphere was thereafter quick to understand this inequality linked to climate change. Inspired by the concept of ecofeminism⁶¹, it enshrined women's right to a healthy environment in Article 18 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women. According to this provision, "Women shall have the right to live in a healthy and sustainable environment." The fact that women's vulnerability to environmental issues has been recognized in the African context is to be welcomed. Recognizing women's right to the

57 *AJABU MASTAKI Gabriel is a PhD student in Law at the University of Burundi, and holds a Master's degree in International Public Law and a Master's degree in Law and Judicial Careers. He also holds an ARES scholarship to specialize in Human Rights at the Université Catholique de Louvain;

** NZOHABONAYO Anaclet is Associate Professor at the Faculty of Law, University of Burundi. He teaches at the Doctoral School. He teaches at several foreign universities and is Vice-Chairman of Burundi's Independent National Human Rights Commission.

*** Nicolas de Sadeleer is Professor in the Faculty of Law at Saint Louis University, and also teaches at several foreign universities. He holds the Mounet Chair.

58 UNESCO, « Le changement climatique et l'égalité des genres », Sciences et égalité des genres, 2017, available online on <http://www.unesco.org/new/fr/natural-sciences/priority-areas/gender-and-science/cross-cutting-issues/climate-change-andgender-equality/> (accessed on 01 September 2023).

59 Oxfam France, Les principes de l'écoféminisme, 2021, online [https://www.oxfamfrance.org/inegalites-femmes-hommes/principes-ecofeminisme/#:~:text=Un%20mouvement%20n%C3%A9%20dans%20les%20ann%C3%A9es%201970&text=De%20la%20contraction%20des%20mots,hommes%20inh%C3%A9rente%20au%20syst%C3%A8me%20patriarcal](https://www.oxfamfrance.org/inegalites-femmes-hommes/principes-ecofeminisme/#:~:text=Un%20mouvement%20n%C3%A9%20dans%20les%20ann%C3%A9es%201970&text=De%20la%20contraction%20des%20mots,hommes%20inh%C3%A9rente%20au%20syst%C3%A8me%20patriarcal.). Accessed on 31 September 2023

60 Article 24 of the African Charter on Human and Peoples' Rights

61 Ecofeminism would be understood as an ideology that allows us to analyse the different forms of oppression suffered by certain populations as belonging to the same type of violence. The ecofeminist perspective views violence against women (economic exploitation, gender-based violence, etc.) as well as violence against living things (exploitation of resources, destruction of land, etc.) as a single form of oppression.

environment means recognizing all its constituent elements. Its procedural elements include access to information, public participation, and access to justice and effective remedies. Its substantive elements include clean air, a safe climate, potable water, adequate sanitation services, healthy food produced using sustainable methods, non-toxic environments where everyone can live, work, study, and play, and healthy biodiversity and ecosystems⁶². These elements place several obligations on the State.

The standstill obligation: Article 18 of the Protocol to the Charter imposes a standstill obligation⁶³ on the State. According to Isabelle Hachez, the standstill obligation, also known as the “ratchet effect” or the theory of non-return, prohibits state authorities from legislating against guaranteed rights and thus reducing the level of protection acquired⁶⁴. The standstill principle, inferred, on the other hand, from the progressive nature of the positive obligations expressly enshrined or implicitly contained in fundamental rights, prohibits States, in the absence of compelling reasons, from reducing the highest level of protection conferred on these rights from the moment the international or constitutional norm enshrining said rights became binding on them, or from significantly reducing it when States make use of the flexibility conferred upon them by this principle by choosing to guarantee said level of protection differently⁶⁵. The rationale behind this standstill obligation is that, apart from prohibiting any form of decline in the implementation of the right to a healthy environment⁶⁶, it thus acts as a mitigating measure to the absence of direct effect⁶⁷.

Obligation to Protect, including acts: The responsibility to protect the right to a healthy environment implies that States adopt the necessary measures to guarantee the implementation of Article 18. States are thus obliged to protect the environment and women's

62 Introduction of the resolution in Annexure A/HRC/43/53

63 This is provided for in Article 26, which stipulates that States shall ensure the implementation of the Protocol at the national level and shall include in their periodic reports submitted in accordance with the terms of Article 62 of the African Charter, information on the legislative or other measures they have taken for the full attainment of the rights recognised in the Protocol.

64 Isabelle Hachez, ‘Le principe de standstill: le pari des droits économiques, sociaux, culturels ?’, Administration Publique, 1, 2000, 30 <<https://dial.uclouvain.be/pr/boreal/object/boreal:126521>> Accessed on 29 September 2023.

65 I. HACHEZ, Le principe de standstill dans le droit des droits fondamentaux : une irréversibilité relative, Bruxelles, Bruylant, 2009, p. 111, CELINE ROMAINVILLE, op cite, p18.

66 Céline Romainville, L’essor du droit à l’environnement sain en droit belge et ses défis. In: Bräen, André (eds.), Droits fondamentaux et environnement. Proceedings of the conference titled « Regards croisés sur les rapports entre les droits fondamentaux et l’environnement : Perspectives de la Belgique, du Canada et de la France » held at the Civil Law Section of the University of Ottawa, on 25 January 2013, Wilson & Lafleur : Montreal, 2013, pp. 79-106, p.18

67 Ibidem, note 106



health. Failure to comply with this obligation would be a violation of a constitutional norm, which could lead not only to sanctions but also to compensation. States must prevent any person, company, or other state from hindering and/or undermining a woman's right to a healthy environment. States must make provision (in their legislation) for compensation in cases this right was infringed upon; they must also take effective measures to ensure the preservation and sustainable use of ecosystems and biological diversity, on which the full enjoyment of this right depends. Failing this, States shall exercise due diligence to prevent damage, limit it as far as possible, and provide compensation for damage that could not be avoided.

Zimbabwe's Experiences in Implementing Maputo Protocol provisions on Women's Right to Participation in the Political and Decision-Making Process

Clayton Hazvinei Vhumbunu

*Senior Lecturer, Department of Political Studies and Governance,
Faculty of Humanities, University of Free State (UFS), South Africa*

When the African Heads of State and Government adopted the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (popularly known as the Maputo Protocol) at the 2nd Ordinary Session of the African Union (AU) Assembly in Maputo, Mozambique on the 11th of July 2003; the *raison d'être* was to ensure that the rights of women are promoted, realized and protected to enjoy fully all their human rights. The former United Nations (UN) Secretary-General Asha-Rose Migiro stated in March 2010, "Gender equality and the empowerment of women and girls is not just a goal in itself, but a key to sustainable development, economic growth, and peace and security." Thus, guaranteeing women's rights is integral to the 17 Sustainable Development Goals (SDGs) as this facilitates greater justice, inclusion, and shared development outcomes for now and future generations. The AU Agenda 2063, Aspiration 6 calls for "An Africa whose development is people-driven, relying on the potential of African people, especially its women, and youth, and caring for children."⁶⁸ This article reflects on Zimbabwe's experiences in promoting Maputo Protocol's Article 9 provisions on women's right to participation in the political and decision-making process.

One of the fundamental rights of women provided under Article 9 of the Maputo Protocol is the right to women's participation in the political and decision-making process. With regard to the right to participate in the political and decision-making processes, Zimbabwe adopted the Constitution of Zimbabwe Amendment (No. 20) Act of 2013,⁶⁹ which has progressive Constitutional provisions to promote women's rights and aims for gender parity in elected positions in the National Assembly and the Senate as well as other public institutions as

68 African Union Agenda 2063: The Africa We Want, pp.8 Available online at https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf

69 Constitution of Zimbabwe Amendment (No. 20) Act of 2013, Available online at <https://www.dpcorp.co.zw/assets/constitution-of-zimbabwe.pdf>



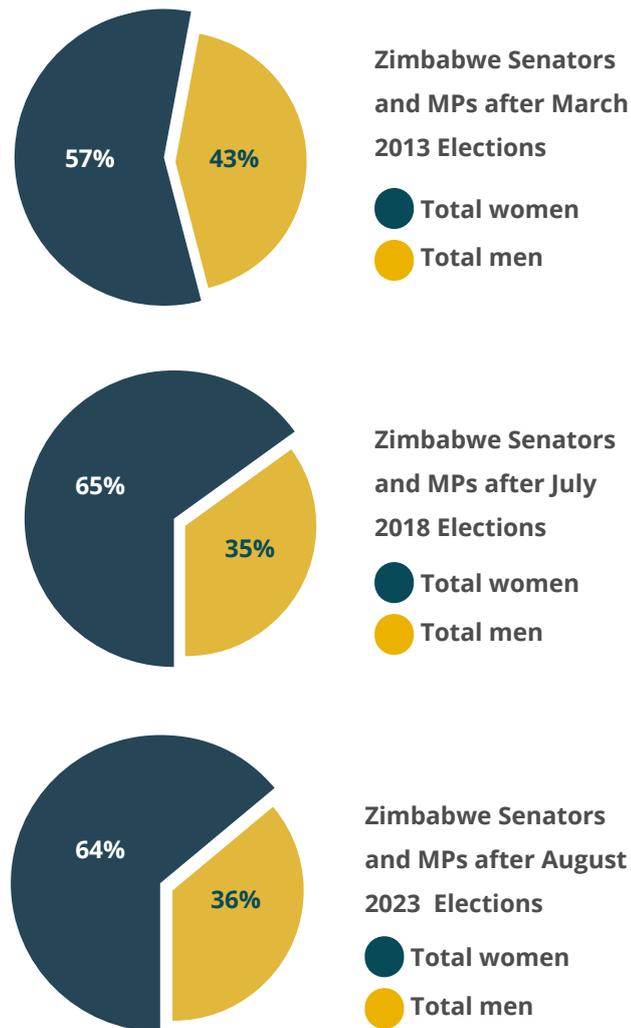
aspired in the National Gender Policy of 2017. Specifically, Section 120(1) of the Constitution of Zimbabwe Amendment (No. 20) Act of 2013 provides that the Senate (Upper House of the Bicameral Parliament) consists of 80 Senators, six from each of the country's ten provinces) shall be elected into the Senate under a party-list system of proportional representation based on the votes cast for candidates representing political parties in each province in the general election for Members of the National Assembly. In addition, Section 124(1) of the Constitution of Zimbabwe Amendment (No. 20) Act of 2013 further provides that over and above the 210 members elected to the National Assembly (Lower House of Parliament) by secret ballot from the 210 constituencies into which Zimbabwe is divided, an additional 60 women members (six from each of the ten provinces of Zimbabwe shall be elected under a party-list system of proportional representation based on the votes cast for candidates representing political parties in a general election for constituency members in the provinces. Section 120 and Section 124 of the Constitution of Zimbabwe also align with provisions of Section 17 (on gender balance), Section 56 (on equality and non-discrimination), and Section 80 (on rights of women) of the same Constitution, over and above various international instruments⁷⁰ on women's rights.

Since Zimbabwe gained its political independence in 1980, women have generally been under-represented in Parliament, Ministerial positions, and high decision-making positions in parastatal and other public and private sector institutions.

70 United Nations (2023). 'International standards: Working Group on discrimination against women and girls.' Available online at <https://www.ohchr.org/en/special-procedures/wg-women-and-girls/international-standards>

Figure 1 below depicts the gradual progression towards gender equality from 2013 and 2018 to the latest harmonized local government and parliamentary elections held on the 23rd of August 2023.

Figure 1: Women Representation in Zimbabwe's Parliament (2013-2023)



Source: Author's construction based on data from the Zimbabwe Electoral Commission (ZEC), Available at <https://www.zec.org.zw/download-category/election-results/>

Although consistency is challenging, there is substantial representation of women in the Zimbabwe Parliament, as shown in Figure 1 above, with 124 women Members of Parliament (MPs) in 2013, 121 women MPs in 2018, and 118 women MPs in 2023. This is way above the regional average of women MPs in the Southern African Development Community (SADC), which is 30.9 percent, Africa's average 23.7 percent, and the world average 24.5 percent.⁷¹ There is, however, room for improvement in Zimbabwe, considering that the country has progressive legislation on women's parliamentary representation.

The challenge, however, is the widening gender gap in the Presidium, Government Ministerial positions, and parastatals. In Government Ministries, the post-March 2013 elections Cabinet comprised only three women (12 percent) out of 26 Ministers, while the post-July 2018 elections Cabinet had only six women (30 percent) out of 20 Ministers.⁷² In terms of Presidency, Zimbabwe has never had a woman President since 1980. The country only had a woman Vice President (from 2004 to 2014) and a woman Deputy Prime Minister (from 2009 to 2013) as for Parastatals, out of the total of 63 parastatals in Zimbabwe⁷³, only eight (13 percent) are led by women as Chief Executive Officers/Director Generals/Managing Directors/ Executive Directors, namely Zimbabwe Broadcasting Holdings (ZBH), Zimbabwe Revenue Authority (ZIMRA), Small and Medium Enterprises Development Corporation (SMEDCO), Competition and Tariff Commission (CTC), Printflow, National Library and Documentation Services (NLDS), National Railways of Zimbabwe (NRZ), and the Pig Industry Board (PIB). The rest of the parastatals (87 percent) are led by men.

As Zimbabwe continues to implement measures in pursuit of the country's commitment to the Maputo Protocol, it may also be propitious and appropriate to adopt a women's quota for parastatal leadership. While some gender scholars and policymakers consider women quotas as a "patchwork approach" to gender equality, the reality is that they are effective in promoting women's right to participation in political and decision-making processes. Women's quotas are justifiable and understandable considering that Africa is fighting against gender inequality, which is primitive and one of the oldest forms of inequality that humanity is still battling with against fierce resistance and contestation from some sections of society.

71 Inter-Parliamentary Union (2019). 'Women in National Parliaments'. Available online at <http://archive.ipu.org/wmn-e/arc/world010119.htm>

72 The Herald, September 2018. Available online at <https://www.herald.co.zw/wp-content/uploads/sites/2/2018/09/cabinet-appointments-sept-2018.pdf>

73 Government of the Republic of Zimbabwe. Available online at <http://www.zim.gov.zw/index.php/en/my-government/government-ministries/parastatals>



For more effective women representation and impactful women participation, the selection criteria for candidates to fill the quota system must be based on meritocracy, competence, performance, capacity, capability, productivity, and delivery.

While Zimbabwe has taken commendable measures and positive action in the form of Constitutional amendments relating to promoting participative governance and the equal participation of women in Parliament in line with the state commitments and obligations arising from the Maputo Protocol, there is scope to increase political representation of women in Ministerial positions and parastatal. African countries are, therefore, encouraged to adopt similar legislation and policy measures. In contrast, the 11 African countries still need to ratify and sign the Maputo Protocol⁷⁴ are encouraged to do so.

74 African Union (2019). Maputo Protocol Ratification Status. 16 October 2019. Available online at <https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf>

Celebrating the Unsung Heroes: Women supporting the mandate of the Special Rapporteur on the Rights of Women in Africa

As we conclude this Newsletter, it is crucial to recognize the remarkable women who work tirelessly behind the scenes to support the mandate of the Special Rapporteur on the Rights of Women in Africa. These unsung heroes play a vital role in supporting the mechanism, advancing women's rights, and ensuring gender equality across the continent. Their tireless efforts in research, advocacy, legal support, capacity building, and documentation have been instrumental in advancing gender equality and safeguarding women's rights under the leadership of the mandate holder.

Let us honor and celebrate these unsung heroes whose commitment and dedication contribute significantly to the realization of women's rights in Africa!



Irene Desiree Mbengue
*Senior Legal Officer African Commission on
Human and Peoples' Rights*



Susan Mutambasere
*Project Officer- Centre for Human Rights,
University of Pretoria*



Meron Eshetu Birhanu
*Legal Assistant African Commission
on Human and Peoples' Rights*

Scenes from around the continent deliberating on the elimination of FGM in Africa:





© International Women's Day 2024
Invest in Women Safety and Empowerment









ACHPR
African Commission on
Human and Peoples' Rights

