

# A COMPARATIVE INTERNATIONAL LAW ANALYSIS OF THE CONVENTION ON ELIMINATION OF DISCRIMINATION AGAINST WOMEN AND THE MAPUTO PROTOCOL

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## Abstract

*To mitigate the oppression, abuse and violation affecting women, the Convention on Elimination of Discrimination Against Women (CEDAW) the number one global Human Rights tool for the protection of women was drafted. Maputo Protocol was introduced at the regional grade where it was well accepted by the African Women as it is closer to the grassroot. It is a known fact that women and children are usually the ones at the receiving end of various forms of violation and therefore they need to be protected. This work focuses on women's right, protection and promotion of same. It addresses a lot of issues faced by the African women especially issues that CEDAW did not address nor expatiate well on. Though CEDAW and the Maputo Protocol have the same agenda which is to protect women against every form of bias and promote equality, yet each differs in a unique way and addresses women's right issues in peculiar ways. It should be known that Maputo Protocol got its voice from CEDAW and therefore, the role of CEDAW cannot be undermined and relegated even in Africa. This paper analyses CEDAW and The Maputo Protocol. It went further to suggest ways by which these Women's rights instrument can be enhanced to serve their purposes better. The use of comparative and doctrinal methodology was applied in this paper as it considers the provisions of law in both instruments. It also discusses other relevant works.*

**Keywords:** Maputo, Women's Rights, Africa, Human Rights, CEDAW

## Introduction

Women have suffered various Human Rights oppressions and abuses which more often than not, starts from the home. To mitigate this, various Human Rights instruments were provided for which includes the Convention for the Elimination of Discrimination against Women (CEDAW).<sup>1</sup> It is the number one global pact that deals with rights of women. Its purpose was for promoting and protecting of gender equality. It also places duty on any member state that has ratified it to ensure its domestication at the municipal level of such state.

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<sup>1</sup> The Convention on the Elimination of all forms of Discrimination against Women, Dec 18, 1979, 1249 U.N.T.S 13 1980 (hereinafter CEDAW)

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) was provided for not to topple the CEDAW but to complement it within the African periscope<sup>2</sup>.

The provisions of CEDAW do not adequately address Human Rights violations experienced by African women. To address this issue within the African territory, various African women movement stood up to ensure that a more "home grown"<sup>3</sup> law for the benefits of African women would be made and after much deliberations, the Protocol was birthed<sup>4</sup>. The protocol ensures the provisions of extensive rights for African women so as to enjoy their Human Rights irrespective of their feminine status. This Paper examines CEDAW and analysis it in comparison with the Protocol. It also considers some of the provisions of both instruments. Like the CEDAW, some of the states that endorsed the Protocol have not domesticated it<sup>5</sup>. The Protocol has to be domesticated at the municipal level of member states jurisdictions without which it will have no force of law.

### **The History of CEDAW**

The adoption of CEDAW by the United Nations (UN) General Assembly in 1979. It came into force in 1981 with its main objective being to fight against every act of discrimination against women.<sup>6</sup>

CEDAW requests for special measures that are needed to bring an end to gender discrimination as it is easier to eradicate discrimination than to enact laws for the propaganda of equal rights for every person<sup>7</sup>. It is an important international instrument that plays its part in seeing to it that the entitlements of women are enhanced globally as it has been well ratified by various nations that are member states of the UN.<sup>8</sup>

CEDAW came to be after years of clamouring for the rights of women by various activists of rights for women, UN officials and other stakeholders to seek equal rights for women<sup>9</sup>. There

<sup>2</sup> Protocol to the African Charter on Human and People's Right on the Rights of Women in Africa, adopted July 11, 2003 (hereinafter Protocol)

<sup>3</sup> Leslye Amede, Chrystal Whalen, 'What is Right with Africa: The Promise of the Protocol on Women's Rights in Africa' (2015) *The Transnational Human Rights Review* 2

<sup>4</sup> *ibid*

<sup>5</sup> *ibid*

<sup>6</sup> Daniel W Hill Jr, K Anne Watson, 'Democracy and Compliance with Human Rights Treaties: The Conditional Effectiveness of the Convention for the Elimination of All Forms of Discrimination against Women', *International Studies Quarterly* (2019) 63, 127

<sup>7</sup> Aniekwu Nkolika, 'The Convention on the Elimination of all forms of Discrimination against Women and the Status Implementation on the Rights to Health Care in Nigeria' (2006) <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1279&context=hrbrief> accessed 3-9-2023

<sup>8</sup> Martha R. Vanegas, Lisa R. Pruitt, 'The Convention on the Elimination of all forms of Discrimination against Women and Rural Development: Empowering Women with Law from the Top Down, Activism from the Bottom Up' (2012) 41 *U. BALTL Rev.* 263, 266

<sup>9</sup> Christine Chinkin, 'Thoughts on the UN The Convention on the Elimination of all forms of Discrimination against Women' in Meena Shivdas and Sarah Coleman (eds), in *Without Prejudice: CEDAW and The Determination of Women's Rights in a Legal and Cultural Context* (2010).

was apprehension that Human Rights standards were not adequate and were gender biased towards women. As a result, CEDAW was birthed to be a voice for women.<sup>10</sup>

The Commission on the Status of Women (CSW) played a chief part to make sure that CEDAW came to existence was an outstanding one. The CSW had the responsibility of giving recommendations to make sure that women have access to equal rights<sup>11</sup>. The CSW drafted an antecedent to CEDAW and it was embraced in 1967. CEDAW requires that firm steps be taken to eradicate all acts of gender-based discrimination.

Based on the Declaration drafted by the CSW, the CSW and the third Committee of the General Assembly working group put together the body that is now CEDAW. As at December 2015, there were 189 states members to CEDAW and 104 were members to the optional the Protocol that makes it possible for individual complaints to be submitted against state members for contravention of CEDAW provisions.<sup>12</sup> As earlier stated, CEDAW has played a big role in giving a voice to women. It is the main international treaty that deals with eradicating gender-based bias globally and also safeguards women's entitlements.<sup>13</sup>

### **The Maputo Protocol**

The Protocol is one of the known international Human Rights tools which was brought into existence by the African Union (AU). It was embraced by the AU in 2003 in Maputo, Mozambique thereby giving it the name Maputo Protocol and it came into force in 2005.<sup>14</sup>

As at 2020, 49 nations have signed the Protocol and 42 have ratified it.<sup>15</sup> Some state, as a result of deficiency in political will and some other hindrances, the Protocol is yet to be domesticated into their municipal law. Some countries such as Benin, Burkina Faso, Rwanda etc. have taken steps to domesticate the Protocol in their municipal law.<sup>16</sup>

As far back as the 90s, the rights of women began to garner recognition with the African Commission. The need for additional Human Rights instrument in favour of women began to be propelled by various African women's right, Non-Governmental Organizations (NGOs) and

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<sup>10</sup> Vedna Jiran, Christine Forster, 'What would Ghandi Say. Reconciling Universalism, Cultural Relativism and Feminism through Women's Use of CEDAW' (2005) 9 Singapore Year Book of International Law 103, 105.

<sup>11</sup> Christine Chinkin, 'Thoughts on the UN The Convention on the Elimination of all forms of Discrimination against Women in Meena Shivdas and Sarah Coleman (eds), in *Without Prejudice: CEDAW and The Determination of Women's Rights in a Legal and Cultural Context* (2010).

<sup>12</sup> Johana E. Bond, 'CEDAW in Sub-Sahara Africa: Lessons in Implementation' (2014) Mich. St. L. Rev. 241

<sup>13</sup> Johana E. Bond, 'Gender, Discourse and Customary law in Africa' (2010) 509- 524, *Southern California Law Review* 83

<sup>14</sup> Romi Sigsworth, Liezelle Kumalo, 'Women, Peace and Security: Implementing the Maputo Protocol in Africa' (2016) ISS paper 295

<sup>15</sup> African Union, Maputo Protocol on Women's Rights in Africa available on <<https://au.int/en/newsevents/20201117/maputo-protocol-womens-rights-africa>> accessed 4-9-2023

<sup>16</sup> Lucy Asuagbon, 'Status of Implementation of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa' (2016) 60<sup>th</sup> Meeting-Commission on the Status of Women

movements as the rights of women have more often than not been marginalized and overlooked<sup>17</sup>.

As some were advocating for women's right instrument, some others were not in support of it. Despite all odds, it was in Lome, Togo in 1995 that a call was made by the Women in Law and Development in Africa (WILDAF) that the entitlement of women should be looked into and promoted<sup>18</sup>. AU then instructed that an applicable Protocol for that purpose be brought up<sup>19</sup>.

A first draft of the Protocol was issued in 1998 and the final draft in 1999. The Protocol was presented at the AU inaugural summit in 2002 and in 2003 the Protocol was adopted and in 2005 after ratification requirements of 15 member states, the Protocol came into force.<sup>20</sup>

The Protocol being the first Human Rights pact adopted by the AU has 25 main articles all providing for different rights for women<sup>21</sup>. The need for the adequate protection of African women brought about the development of the Maputo Protocol. The African Charter did not make specific provisions of necessary rights for women although it covers issues of non-discrimination, equality before the law, eradication of women's discrimination but they were not sufficient for the womenfolk.<sup>22</sup> For instance, Art 18 of the African Charter only by way of reference includes entitlements for women and children in its provision<sup>23</sup>.

The Protocol advocates for rights of African women by way of monitoring and evaluating to enhance implementation. But just like the CEDAW that has been endorsed by many States in Africa, women still go through the problem of discrimination.

The main purpose of the Protocol was to deal with the fact that African women were still victims of all sorts of bias.<sup>24</sup> The Maputo Protocol was enacted to see to it that women enjoy their entitlement to social and political equality as men, to bring a stop to female genital mutilation, to ensure that women participate in politics.<sup>25</sup> It was to be an instrument that would give room to access the actions of the government and bring about a sense of belonging to African women.<sup>26</sup> The Protocol augments the African Charter by marking out provided entitlements for women in

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<sup>17</sup> Frans Viljoen, 'An Introduction to the Protocol to the African Charter on Human and People's Rights on the rights of Women in Africa' (2009), J.C.R & SOC. Just 11, Washington and Lee 6

<sup>18</sup> Fareda Banda, 'Blazing a Trail: The African Protocol on Women's Rights Comes into Force' (2006) 50 *Journal of African Law* 72, 82.

<sup>19</sup> *ibid*

<sup>20</sup> Mary Wandia, 'Rights of Women in Africa: Launch of a petition to the African Union' (2004) *Pambazuka News* 162

<sup>21</sup> Protocol

<sup>22</sup> Karen Stefiszyn, 'The Impact of the Protocol on the Rights of Women in Africa on Violence against Women in Six Selected Southern African Countries: An Advocacy tool' (2009) <https://www.africaportal.org/publications/the-impact-of-the-protocol-on-the-rights-of-women-in-africa-on-violence-against-women-in-six-selected-southern-african-countries-an-advocacy-tool/> accessed 5-9-23

<sup>23</sup> African Charter

<sup>24</sup> Protocol

<sup>25</sup> Article 5 and 9 of the Protocol

<sup>26</sup> Winston Langley, 'The Rights of Women, the African Charter and the Economic Development of Africa' (1987) 215, 216-217, 7 *B.C, Third World L.J*

the Charter and promoting the importance and significance of same. It was to enhance the position of women in Africa.<sup>27</sup>

As applaudable as the Protocol is, it varies in some provisions with respect to the African Charter. It leaves out two (2) of the important provisions of the Charter which are that right beneficiaries are not limited to individuals but also “peoples” likewise, individual responsibilities and individual rights are mentioned side by side.<sup>28</sup> “Peoples” as used in the charter includes women but to avoid unnecessary twist of making a general classification of women as done by the charter, the Protocol desisted from following suit even though it reiterates an amount of “peoples” rights provided in the Charter but with focus on women.<sup>29</sup> The Protocol focuses and acts as a voice for the African woman especially on certain peculiar issues. The rights of women provided for by the Protocol covers more ground than those provided by CEDAW. Its explicitness on rights already provided for by CEDAW is laudable. It also reiterates the need for positive action.<sup>30</sup>

The issues covered by the Protocol are more in alignment with problems faced by African women and these issues are not covered by CEDAW. The Protocol recognises the position of African women and challenges faced by them.<sup>31</sup>

## **Legal Frameworks**

### **Convention on Elimination and Discrimination Against Women (CEDAW)**

There are thirty (30) articles provided for in CEDAW for safeguarding and for the furtherance of women’s entitlement and the girl-child.

CEDAW explains what bias entails. It provides for the definition of discrimination which was mainly made to protect women from being discriminated against. CEDAW forbids and is completely against any distinction that deliberately discriminate and also have the purpose of unfairness and prejudice against the womenfolk.<sup>32</sup> Article 2 of CEDAW makes it essential for the member states to condemn and fight every form of discrimination by using legal means. It also expects states to amend and where necessary scrap any law, statutes, acts and customs that is biased against women. Article 5 of CEDAW is completely against gender stereotyping and member states are to take necessary steps against such, as men are not superior to women neither are women superior men.<sup>33</sup> Article 16 also provides for discrimination in the family. Women and men should have the right to choose their spouses, women should also have personal rights and say over property. However, it should be noted that the discrimination against women starts from

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<sup>27</sup> Rachael Murray, ‘Women’s Rights and the Organisation of African Unity and African Union: The protocol on the Rights of Women in Africa’ in Doris Bass, Ambreena Marji (eds) *International Law: Modern Feminist Approaches* 253, 262

<sup>28</sup> Danwood Mzikenge Chirwa, ‘Reclaiming (WO)manity: The merits and demerits of the African Protocol of Women’s rights’ (2006) 63, 94-95, 53 *Netherlands International Rev.*

<sup>29</sup> Frans Viljoen, ‘An Introduction to the Protocol to the African Charter on Human and People’s Rights on the rights of Women in Africa’ (2009), J.C.R & SOC. Just 11, 6 Washington and Lee

<sup>30</sup> Ibid

<sup>31</sup> Danwood Mzikenge Chirwa, ‘Reclaiming (WO)manity: The merits and demerits of the African Protocol of Women’s rights’ (2006) 63, 94-95, 53 *Netherlands International Rev*

<sup>32</sup> Johana E. Bond, ‘CEDAW in Sub-Sahara Africa: Lessons in Implementation’ (2014) *Mich. St. L. Rev.* 241

<sup>33</sup> *ibid*

childhood when the girl-child is presumed inferior to the boy-child<sup>34</sup>. The girl is expected to stay at home taking care of the home while the boy is sent to school. As the girl child grows, and married off, she is presumed to be the property of her husband who is allowed to treat her as he pleases. As comprehensive as CEDAW is, it has no provision for the protection of the Lesbian, gay, bi-sexual, transgender and intersex (LGBTI) body. It also has no provision for gender-based violence but the General Recommendation NO.19 was issued by CEDAW Committee to address this<sup>35</sup>.

### **Maputo Protocol**

Art 1(f) of the Maputo Protocol is similar to Art 1 of CEDAW which defines discrimination and what it entails. Article 2 mandates all member states to fight against every form of discrimination against women. Art 3 accrues the right to dignity to women and protects women from sexual and verbal violence and every other form of violence. Art 4 provides for the right for life, uprightness and safe living of every woman. Art 4(2)(a) of the Protocol canvasses for legislative to be made against domestic violence and also that marital spousal rape becomes a punishable offence. The article also expects member states to make provisions for laws forbidding domestic and marital violence whether in private or in public. Article 6(c) provides that rights of women in polygamous marriages has to be protected and it goes further to encourage monogamy. By virtue of Art 9, Africa women can participate in politics<sup>36</sup>.

Art 10 provides for peaceful existence and right of participation in promoting and maintaining peace for African women<sup>37</sup>. Art 14(1)(d) makes provisions for women to be safeguarded against HIV and also gives the right to know partner's sexual status<sup>38</sup>. Art 14(2)(c) encourages State members to allow medical termination of pregnancies for women especially in instances of rape, incest, sexual assault and threat to the health and existence of the mother or unborn baby<sup>39</sup>.

Unlike the CEDAW, Art 11 of the Protocol ensures that women are protected in armed conflict and Article 11(3) canvasses the necessity of protecting refugee women under international law.

The Protocol provides in Article 11(4) that the girl-child shall not be recruited or participate in hostilities. It also provides in Article 6(b) and Art 6(d) that every nuptial has to be recorded in writing and the least age of marriage is set at 18 years<sup>40</sup>.

The Protocol is also specifically clear especially when words are used vaguely. It gives clearer interpretation to what such words denotes.<sup>41</sup> The Protocol gives a broad view and explanation on the purview of socio-economic rights than CEDAW as CEDAW only restricted certain socio-economic rights to women in the rural areas.<sup>42</sup> Article 20 of the Protocol also addresses issues

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<sup>34</sup> *ibid*

<sup>35</sup> *ibid*

<sup>36</sup> Protocol

<sup>37</sup> *ibid*

<sup>38</sup> Protocol

<sup>39</sup> Protocol

<sup>40</sup> Protocol

<sup>41</sup> Frans Viljoen, 'An Introduction to the Protocol to the African Charter on Human and People's Rights on the rights of Women in Africa' (2009), J.C.R & SOC. Just 11, 6 Washington and Lee

<sup>42</sup> See Article 14 of CEDAW

relating to vulnerability of women as a result of loss of spouse by laying out their rights as widows. Articles 21-22 lays out the entitlement of women to bequest including the safekeeping of older women. Women with disabilities are not left out. So also, women in distress have special protection available in Art 24 of the Protocol. From the above which are just some of the Protocol's provisions, it can be deduced that the Protocol canvasses against various forms of abuse and oppression meted out on women.

### **Positive Impacts of CEDAW in Africa**

In Africa, CEDAW has assisted in boosting the rights of women by legislative and constitutional means. A number of African countries have benefitted from the provisions of CEDAW. In 1995 Uganda constitution, the women were able to depend on CEDAW by using it as their "organizing tool" for the enshrinement of gender equality in it.<sup>43</sup>

Kenya also was not left out during the process of her constitutional reform. Reflections of CEDAW can be seen in same in her constitutional drafting process.<sup>44</sup>

Domestic laws of several nations were impacted by CEDAW. The gender policy drafted in South Africa by the department of Justice was done using CEDAW. Same goes for Zambia which followed the requirements of CEDAW in adopting a National Gender Policy.<sup>45</sup>

CEDAW has been used by many NGOs as a means of educating various communities on the rights of women. It has also been used as an instrument to create the realization of the rights of women. Public cognizance and education have been created by the use of CEDAW.<sup>46</sup> A number of training programmes and awareness of gender rights have been carried out using CEDAW as a yard stick.<sup>47</sup>

### **Constraints of CEDAW to African Women**

Notwithstanding the progress CEDAW has made in ensuring that the womenfolk enjoy basic rights, there have been issues of concern raised by intellectuals. Questions have been raised regarding CEDAW as it still has some constraints and limitations especially with regards to African women. It has been criticized that CEDAW is not culturally sensitive to some issues faced by African women especially in terms of certain harmful practices derived from certain African cultures and as a result some CEDAW provisions have been countered by referring to cross-culturalism and various beliefs/faith of the African indigenes.<sup>48</sup>

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<sup>43</sup> Johana E. Bond, 'CEDAW in Sub-Sahara Africa: Lessons in Implementation' (2014) Mich. St. L. Rev. 241

<sup>44</sup> Andrew Brynes, Marhsa A. Freeman, 'The Impact of the CEDAW Convention: Paths to Equality' (2011) <https://openknowledge.worldbank.org/bitstream/handle/10986/9219/WDR2012-0014.pdf?sequence=1&isAllowed=y> accessed 9-9-2023

<sup>45</sup> Johana E. Bond, 'CEDAW in Sub-Sahara Africa: Lessons in Implementation' (2014) Mich. St. L. Rev. 241

<sup>46</sup> CEDAW Success Stories, Unifem, available at [http://unifem.org/cedaw30/success\\_stories](http://unifem.org/cedaw30/success_stories) accessed 19-7-2023

<sup>47</sup> EU/UNDP Gender Programme on CEDAW implementation Comes to an End, U.N. Dev. Programme: Swaziland (Feb 10, 2011) available at <<https://www2.ohchr.org/English/bodies/cedaw/docs/CEDAW.C.SWZ.1-2.pdf>> accessed 9-9-2023

<sup>48</sup> Frans Viljoen, 'An Introduction to the Protocol to the African Charter on Human and People's Rights on the rights of Women in Africa' (2009), J.C.R & SOC. Just 11, 6 Washington and Lee

Despite the fact that African member states have signed and endorsed various Human Rights treaties for the protection of womenfolk, much impact has not been experienced in the protection of African women. African women still experience different forms of discrimination in form of religion, marital status, race etc. as some African countries do not include religion, customs and laws relating to family to guarantee gender equality in their Constitutions<sup>49</sup>.

CEDAW has a low level of efficiency as it has been countered and perceived as “a western woman’s instrument” thereby ineffective in addressing certain issues faced by African women.<sup>50</sup>

Many Judges still prefer to apply customary rules when it comes to matters that have to do with customs and cultures of the people thereby jettisoning the promotion of equality in gender.<sup>51</sup>

Also, there are some countries that have ratified CEDAW but yet to domesticate it in their legal system. Nigeria ratified CEDAW in 1985 and as a state member, Nigeria is saddled with the responsibility of exterminating all acts of bias against women within her legal system. However, due to the provision of S.12 of the Nigerian law which provides that international treaties must be domesticated before they can have the force of law that provides that, CEDAW has no enforcement power<sup>52</sup>.

### **The Difference between CEDAW and the Maputo Protocol**

Unlike the CEDAW that entails more of non-specific provisions that gives room for equality of male and female gender, the Protocol recapitulates the necessity for constructive action by placing such provisions under separate factors and circumstances.<sup>53</sup> According to Viljoen, it could be said that contrast in the Protocol and CEDAW are evident than actual in the sense that in “general comments, resolutions, concluding observations and findings, the CEDAW committee has expanded the scope of the relevant treaties”.<sup>54</sup>

The Protocol provides a better approach to the culture and tradition of the people. It is totally against harmful practices. It favours the practical and constructive parts of culture and customs and wars against the harmful and discriminatory practices meted out on feminine gender.<sup>55</sup> The Protocol understands the relevance of cultural identity and it has not sought to take that away from the African women who still need to feel and be part of their culture, ethnic and religion

<sup>49</sup> Jing Geng, ‘The Maputo Protocol and the Reconciliation of Gender and Culture in African’ in Susan Harris Rimmer et al (ed) *Research Handbook on Feminist Engagement with International Law* (Edward Elgar 2019)

<sup>50</sup> Rosemary S. Mukasa, *The African Women’s Protocol: Harnessing a potential Force for Positive Change* (Oxfam Publishing, 2009) 5.

<sup>51</sup> Johana E. Bond, ‘Gender, Discourse and Customary law in Africa’ (2010) 509-524, 83 Southern California Law Review

<sup>52</sup> Aniekwu Nkolika, ‘The Convention on the Elimination of all forms of Discrimination against Women and the Status Implementation on the Rights to Health Care in Nigeria’ (2006)  
<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1279&context=hrbrief> accessed 19-7-2023

<sup>53</sup> Frans Viljoen, ‘An Introduction to the Protocol to the African Charter on Human and People’s Rights on the rights of Women in Africa’ (2009), J.C.R & SOC. Just 11, 6 Washington and Lee

<sup>54</sup> *ibid*

<sup>55</sup> Johana E. Bond, ‘CEDAW in Sub-Sahara Africa: Lessons in Implementation’ (2014) Mich. St. L. Rev. 241



and simultaneously enjoy gender equality.<sup>56</sup> The Protocol offers full support to women by helping them play their roles in “shaping and re-shaping” the tradition of the people to showcase dedication to gender equality.<sup>57</sup>

### **Effectiveness of the Maputo Protocol**

The Maputo Protocol has been remarkably successful in defending and ensuring women's rights and eradicating discrimination. The Maputo Protocol has evolved into a mechanism for accountability and legal recourse when the rights of women and girls are infringed. Underlisted are some of the effectiveness of the Maputo Protocol:

In December 2020, a judge ruled that the Kenyan government had breached the Maputo Protocol and other human rights laws by failing to look into and bring charges in allegations of sexual and gender-based violence that occurred during the 2007 post-election unrest. Four of the survivors were ordered to receive compensation of KSh 4 million (or roughly US\$40,000) each from the government.<sup>58</sup>

The Sierra Leonean government's restriction on pregnant schoolgirls attending classes was declared to be discriminatory, a violation of girls' rights to an education, and a violation of Articles 2 and 12 of the Maputo Protocol by the ECOWAS Court of Justice in December 2019. The ban has been lifted by the Sierra Leonean government since the judgement.<sup>59</sup>

In 2019, the appeals court considered a challenge to Tanzania's Marriage Act's Articles 13 and 17, which set the minimum age of marriage for girls at 15 and for boys at 18. The court affirmed the earlier decision that marriage before the age of 18 was unlawful by citing the Maputo Protocol.<sup>60</sup>

### **Criticisms of the Maputo Protocol**

In as much as credit has been given to the Protocol, the treaty has some imperfection and this arises from criticisms by intellectuals regarding its drafting and applicability.<sup>61</sup> The language and voice of the Protocol has also been raised as an issue. It is reported that the voice of modern African women speaks louder in it as rural women would only draw experience of Human Rights as seen and spoken by the modern African women.<sup>62</sup>

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<sup>56</sup> *ibid*

<sup>57</sup> Johana E. Bond, ‘Gender, Discourse and Customary law in Africa’ (2010) 509-524, *Southern California Law Review* 83

<sup>58</sup> Human Rights Watch, ‘I had nowhere to go’ (2021) [https://www.hrw.org/report/2021/09/21/i-had-nowhere-go/violence-against-women-and-girls-during-covid-19-pandemic-kenya#:~:text=In%20a%20landmark%20judgment%20and,Kenyan%20Shillings%20\(KES%2C%20approximately%20USD](https://www.hrw.org/report/2021/09/21/i-had-nowhere-go/violence-against-women-and-girls-during-covid-19-pandemic-kenya#:~:text=In%20a%20landmark%20judgment%20and,Kenyan%20Shillings%20(KES%2C%20approximately%20USD) accessed 9-9-2023

<sup>59</sup> Laura Angela Bangnetto, *Sierra Leone Overturns Ban on pregnant Girls Attending School* (2020) <https://www.rfi.fr/en/international/20200330-sierra-leone-overturns-ban-on-pregnant-girls-attending-school-right-to-education-rape-maada-bio> accessed 9-9-2023

<sup>60</sup> Equality Now, *Tanzania: Landmark Ruling Against Child Marriage Upheld* (2019), [https://www.equalitynow.org/news\\_and\\_insights/tanzanian\\_attorney\\_general\\_appealing\\_2016\\_ruling\\_against\\_child\\_marriage/#:~:text=In%20October%202019%20the%20Tanzania,age%20of%20marriage%20to%2018.](https://www.equalitynow.org/news_and_insights/tanzanian_attorney_general_appealing_2016_ruling_against_child_marriage/#:~:text=In%20October%202019%20the%20Tanzania,age%20of%20marriage%20to%2018.) accessed 9-9-2023.

<sup>61</sup> Kristin Davis, ‘The Emperor is Still Naked: Why the protocol on the Rights of Women in Africa leaves Women Exposed to More Discrimination’ (2009) 949, *Vanderbilt Journal of Transnational Law* 42

<sup>62</sup> Jing Geng, ‘The Maputo Protocol and the Reconciliation of Gender and Culture in African’ in Susan Harris Rimmer et al (ed) *Research Handbook on Feminist Engagement with International Law* (Edward Elgar 2019)

## Challenges of the Maputo Protocol

Although the Maputo Protocol has a lot of promise to advance women's rights in Nigeria, issues such as poor domestication, cultural hurdles, the implementation of policies, and budget limitations make it less successful. Government, civil society, and foreign partners must collaborate to address these issues.

**Inadequate Domestication:** Despite the Maputo Protocol being in place for 20 years, it still faces considerable challenges in Nigeria. The protocol's provisions may not have been properly incorporated into Nigerian law and may not be successfully implemented as a result, which would restrict its practical effectiveness.

**Policy Implementation and Enforcement:** The protocol's effects on legislative activity, court rulings, and policy actions have all been studied in Nigeria. It continues to be difficult to ensure that the protocol's guiding principles are correctly applied and upheld at various levels of government.

Cultural and societal barriers exist in Nigeria, as they do in many other African nations, and they may prevent women from fully realising their rights as outlined in the Maputo Protocol. It will need teamwork and education to overcome these ingrained issues. The Protocol represents a significant advancement in the defence of the human rights of African women and girls, but there is still potential for development. This improvement can be made by listing some of the most repulsive cultural and religious practices that African women and girls must put up with in the Protocol. The right of the husband to correct his wife, early and forced marriages, and the trafficking of women and girls are only a few of the offensive cultural norms that oppress women.

Raising awareness of the Maputo Protocol and advocating for it are important but difficult undertakings. It may be difficult to effectively campaign for the protocol's adoption in Nigeria because many individuals may not be completely aware of its provisions and the rights it guarantees.

**Resource Constraints:** Allocating enough resources to implement the protocol's requirements can be difficult. It can be a constant battle to make sure that government organisations and agencies receive the funding they need to carry out projects and programmes connected to women's rights.<sup>63</sup>

Additionally, there has been uneven progress in the realisation of women's and girls' rights within and between nations. Civil, common, and customary law continue to exist in parallel with constitutional rules. This makes it possible to violate the rights of women and girls.<sup>64</sup>

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<sup>63</sup> Frans Viljoen, 'An Introduction to the Protocol to the African Charter on Human and People's Rights on the rights of Women in Africa' (2009), J.C.R & SOC. Just 11, 6 Washington and Lee.

<sup>64</sup> Jing Geng, 'The Maputo Protocol and the Reconciliation of Gender and Culture in African' in Susan Harris Rimmer et al (ed) *Research Handbook on Feminist Engagement with International Law* (Edward Elgar 2019)

Results related to sexual and reproductive health have also improved. However, the prevalence of female genital cutting, underage marriage, and sexual and gender-based violence is still high in the majority of African nations.

Poor sexual and reproductive health outcomes fall disproportionately on young people, particularly females. Their immediate and long-term (physical and mental) health, economical well-being, and empowerment are all impacted, which impedes their successful transition into adulthood.

### **Recommendations**

Despite the variance of ways adopted by the Protocol and CEDAW, both tools are for the protect and promote rights of women.

Gender equality and sustainable development are hampered by the Maputo Protocol's gross under-implementation, which has greatly increased violence against women. The convention should consequently be included in Nigerian domestic legislation so that it can be applied nationally, the study suggests. The Maputo Protocol might not be fully implemented, but the Nigerian government should express any concerns about reservations made by some other African nations and modify the Maputo Protocol to comply with local laws that support gender equality and outlaw violence against women.

The Maputo Protocol has been severely constrained in Nigeria despite the fact that it is not a stand-alone tool for advancing equal rights, as stipulated by sections 12 (1), (2), and (3) of the constitution from 1999.<sup>65</sup> However, by establishing the Maputo Protocol's legal frameworks on fundamental human rights laws, legal frameworks could be created to activate the Maputo Protocol and, consequently, increase women's political involvement. The issue of HIV is not well addressed in the Protocol. Bisexual and lesbian women, sex workers and women from minority regions were not provided for in these instruments.

At the national level, the Protocol should be domesticated by state members that are yet to so as to enhance a more efficient application of women's entitlements. The purpose of the instruments is to meet necessary provisions for the protection of African women. Not domesticating and applying the provisions therein would only make it words on paper without any action whatsoever.

Article 25 of the Protocol places responsibilities on member states to make certain that necessary remedies are provided for within their legal system and to see that the remedies are adjudged by competent authorities be it judicial, legislative or administrative powers. Also, by virtue of Article 8 (a) and (b), of the Protocol, women can access legal aid which is to be provided for by the member states.

Member states are expected to write reports on the Protocol as provided by Art 26 of the Protocol which mandates member states to always report but this is hardly done. To realize the full potential of the Protocol, The AU has to find a groundbreaking way to work with the

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national governments, and other stakeholders so as to ensure that the Protocol is well utilized adhered to.

### Conclusion

The importance and role of CEDAW cannot be overemphasized. It is the number one international treaty to advocate for the rights of women. According to Raday, “it brought the female half of humanity into focus of Human Rights concerns”.<sup>66</sup> In states where CEDAW has been ratified, it has yielded positive results in combating against discrimination.<sup>67</sup> The influence of CEDAW can be seen in the Protocol and the Protocol itself is one of the many ways by which CEDAW has helped women.

CEDAW and Africa Charter tools at international and regional grade have taken the advancement and defence of Human Rights to a higher level yet, they did not make full provisions to protect the African women.<sup>68</sup> The Protocol therefore became a more viable voice for African women. However, the Protocol is not to be seen and taken to have come to address concrete legal basis before it rather it came to deal with and ensure that the provided legal basis before it is adequately implemented according to the needs of the African women.<sup>69</sup>

Despite any defect raised regarding the Protocol, it has mobilized African women in consequential ways to tackle any dissension that may spring up between cultural diversity and equal gender. Another major fact of the Protocol is that it was mainly drafted by African women and this gives it certain regional holding and reputation.

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<sup>66</sup> Frances Raday, ‘CEDAW and the jurisprudence of UN Human Rights Mechanism: Women’s Human Rights in the Context of Religion and Culture’ (2018) file:///C:/Users/hp/Downloads/37757-43770-1-SM.pdf accessed 9-9-2023

<sup>67</sup> Neil Englehart, Melissa K. Miller, ‘Women’s Rights, International Law and Domestic Politics: Explaining CEDAW’s Effectiveness’ (2011) <https://ssrn.com/abstract=1902066> accessed 9-9-2023

<sup>68</sup> *ibid*

<sup>69</sup> Frans Viljoen, ‘An Introduction to the Protocol to the African Charter on Human and People’s Rights on the rights of Women in Africa’ (2009), J.C.R & SOC. Just 11, 6 Washington and Lee