

DRAFT ADVOCACY FRAMEWORK FOR WITHDRAWING RESERVATIONS TO THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA

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Abbreviations and Acronyms

ACDEG:	African Charter on Democracy, Elections and Governance
ACHPR:	African Charter on Human and Peoples' Rights
ACRWC:	African Charter on the Rights and Welfare of the Child
Advocacy Framework:	Advocacy Framework for Withdrawing Reservations to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
African Commission:	African Commission on Human and Peoples' Rights
African Court:	African Court on Human and Peoples' Rights
APRM:	African Peer Review Mechanism
AU:	African Union
AUC:	African Union Commission
CEDAW:	Convention on Elimination of All Forms of Discrimination against Women
Committee of Experts:	African Committee of Experts on the Rights and Welfare of the Child
CSOs:	Civil society organisations
EAC:	East African Community
ECOSOC:	Economic, Social and Cultural Council of the African Union
ECOWAS:	Economic Community of West African States
FGM:	Female genital mutilation
ICCPR:	International Covenant on Civil and Political Rights
ILC:	International Law Commission
Maputo Protocol:	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
NANHRI:	Network of African National Human Rights Institutions
NGOs:	Non-governmental organisations

NHRIs:	National human rights institutions
PAP:	Pan-African Parliament
PRC:	Permanent Representatives Committee
RECs:	Regional economic communities
SADC:	Southern Africa Development Community
SADR:	Sahrawi Arab Democratic Republic
Solemn Declaration:	Solemn Declaration on Gender Equality in Africa
Special Rapporteur:	Special Rapporteur on the Rights of Women in Africa
UN:	United Nations
UNDP:	United Nations Development Programme
UPR:	Universal Periodic Review
VCLT:	Vienna Convention on the Law of Treaties

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PART ONE

Chapter 1: Introduction

Background

1. The African Commission on Human and Peoples' Rights (African Commission) is developing the Advocacy Framework for Withdrawing Reservations to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Advocacy Framework), in conformity with ACHPR Res. 632: "Resolution on the Need to Raise Awareness for States to Withdraw Reservations on Some Provisions of the Maputo Protocol".¹ The African Commission adopted Resolution 632 in accordance with Article 45 of the African Charter on Human and Peoples' Rights (African Charter), which empowers the Commission to formulate and lay down principles and rules to solve legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation.²
2. In conformity with Res. 632, the Special Rapporteur on the Rights of Women in Africa (Special Rapporteur) is developing the Advocacy Framework, in collaboration with relevant partners and other stakeholders. This draft Advocacy Framework has been prepared by the Special Rapporteur in collaboration with Equality Now,³ and the Solidarity for African Women's Rights Coalition (SOAWR).⁴

¹ ACHPR/Res.632 (LXXXII) "Resolution on the Need to Raise Awareness for States to Withdraw Reservations on Some Provisions of the Maputo Protocol" <https://achpr.au.int/en/adopted-resolutions/632-achprres632-lxxxii-2025> accessed 28 April 2025.

² African Charter on Human and Peoples' Rights (Organisation of African Unity, 1981) <https://au.int/en/treaties/african-charter-human-and-peoples-rights> accessed 8 January 2025.

³ <https://equalitynow.org/> accessed 28 April 2025.

⁴ <https://soawr.org/> accessed 28 April 2025.

3. The Advocacy Framework responds to the mandate of the Special Rapporteur, conferred by the African Commission,⁵ assisting African governments to develop and implement policies on the promotion and protection of the rights of women, in line with the domestication of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).
4. Specifically, the Special Rapporteur is mandated by the African Commission to:
 - Assist governments to develop and implement policies on the promotion and protection of the rights of women in Africa, particularly in line with the domestication of the Maputo Protocol and the general harmonisation of national legislation to the rights guaranteed in the Protocol;
 - Undertake promotion and fact-finding missions in AU Member States, to disseminate the AU's human rights instruments, and to investigate the situation of women's rights;
 - Follow up on the implementation of the African Charter on Human and Peoples' Rights (ACHPR) and the Maputo Protocol in relation to the rights of women in Africa, notably by preparing reports on the situation of women's rights and proposing recommendations to be adopted by the African Commission;
 - Propose resolutions for adoption by the Commission on the situation of women in various countries, as appropriate;
 - Undertake comparative studies on the situation of women's rights in various African countries; and
 - Collaborate with relevant actors responsible for the promotion and protection of the rights of women internationally, regionally and nationally, including national government departments responsible for gender issues, intergovernmental organisations, non-governmental organisations (NGOs) and national human rights institutions (NHRIs), and other Special Rapporteurs from the United Nations (UN) and other regional human rights systems.⁶

⁵ ACHPR/res.38 (XXV) 99 "Appointment of a Special Rapporteur on the Rights of Women in Africa" <https://achpr.au.int/en/mechanisms/special-rapporteur-rights-women-africa> accessed 7 January 2024.

⁶ Ibid.

Justification

5. The Maputo Protocol,⁷ the first binding regional legal framework on women's rights in Africa, was adopted by the African Union (AU) on 11 July 2003 in Maputo, Mozambique, and entered into force on 25 November 2005. 45 of the 55 Member States of the AU are party to the Protocol.⁸ Nine states have reservations to various provisions of the Protocol, i.e. Algeria, Cameroon, Ethiopia, Kenya, Mauritius, Namibia, Sahrawi Arab Democratic Republic (SADR), South Africa and Uganda.⁹ The Gambia and Rwanda, which previously had made reservations to certain provisions of the Maputo Protocol, withdrew them, respectively, in 2006 and 2012.
6. When Member States of the AU ratify or accede to the Maputo Protocol, they agree to be bound in law to implement the obligations established in the instrument. The past two decades have seen significant advances on the rights of women established in the Protocol. These include historic judicial decisions affirming the prohibition of female genital mutilation (FGM); finding states accountable for failing to protect women from gender-based violence; protecting girls from child-marriage; and affirming the right to education for pregnant girls.¹⁰
7. Yet, the impacts of reservations to the Maputo Protocol on the lives of women are grave. Women in states with reservations cannot exercise fully the rights guaranteed to them under the Protocol, covering matters such as the right to marry, the rights to divorce, separation and annulment, and the right to sexual and reproductive health. These adverse impacts are even more aggravated when gender intersects with the grounds of

⁷ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Union, 2003)

https://au.int/sites/default/files/documents/31520-doc-maputo_protocol_on_womens_rights_a_living_document_for_womens_human_rights_in_africa_submitted_by_the_women_gender_and_development_directorate_wgdd_of_the_african_union_commission.pdf accessed 11 January 2025.

⁸ African Union, List of Countries which have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa" https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL_TO_THE_AFRICAN_CHARTER_ON_HUMAN_AND_PEOPLES_RIGHTS_ON_THE_RIGHTS_OF_WOMEN_IN_AFRICA.pdf accessed 8 January 2025.

⁹ Ibid.

¹⁰ "Maputo at 20: Undimmed Resolve - Advancing and Protecting the Rights of Women and Girls in Africa" (Equality Now) <https://equalitynow.org/tag/maputo-at-20/> accessed 9 January 2025.

age (girls, youth and older women), disability (women with disabilities), ethnicity, race, indigenous women, and sexual and gender minorities.

8. Studies across the nine states with reservations to the Maputo Protocol highlight how policy, laws and regulations justified on the reservations have undermined women's prospects for the full exercise of rights. For example:
 - Algeria's reservations to Article 6(g) and (h) of the Protocol promote sexism in its nationality laws, thereby denying women and girls their basic human rights. The reservations foster damaging stereotypes and outdated gender norms, impeding progress to a more inclusive and equitable society.¹¹
 - One impact of Ethiopia's reservation that marital separation does not require a judicial order disadvantages women during separation negotiations as they wield lesser economic and social power.¹²
 - The impacts of Kenya's reservation against medical abortion leaves women and girls to procure unsafe abortions, increasing cases of maternal mortality in the country.¹³ Unsafe abortions are the leading cause of maternal mortality with an estimated 266 women dying per 100,000 unsafe abortions.¹⁴
 - Uganda's reservation against medical abortion in situations of rape limits the choices of survivors who become pregnant as a consequence of assault. Rape survivors who are compelled to carry their pregnancies to term face additional physical and mental health

¹¹ "The State We're In: Ending Sexism in Nationality Laws (Equality Now, 2022) 17 <https://equalitynow.storage.googleapis.com/wp-content/uploads/2022/07/06182936/The-State-Were-In-2022-Equality-Now-EN-Online.pdf> accessed 3 January 2025.

¹² "Combined Fourth and Fifth Periodic Reports of States Parties, Ethiopia, Committee on the Elimination of Discrimination against Women, 3-4 <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/ETH/4-5&Lang=E> accessed 3 January 2025.

¹³ "The Right to Choose: A Report on the Impact of Government Reservations on Reproductive Rights under the Maputo Protocol in Kenya" (Coalition on Violence against Women, 2024) 28 <https://covaw.or.ke/wp-content/uploads/2024/03/Right-to-Choose-A-Report-on-the-Impact-of-Government-Reservation-on-Reproductive-Rights-under-the-Maputo-Protocol-Final.pdf> VIII.

¹⁴ "Advisory on the Removal of Kenya's Reservation on Article 14 (2) (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa" (Kenya National Commission on Human Rights, 2021) 6 <https://www.knchr.org/Portals/0/Final%20KNCHR%20Advisory%20on%20removal%20of%20reservation%20under%20Article%2014%20%282%29%20%28c%29%20of%20the%20Maputo%20Protocol.pdf> accessed 3 January 2025.

hazards.¹⁵ Women who conceive as a result of rape or incest seek out abortions in secrecy¹⁶ and therefore face many risks including death due to severe hemorrhage, development of infections and sepsis from the use of unsterilized instruments, incomplete abortions which can introduce bacteria to the uterus, potentially causing organ damage and infertility.¹⁷

- Mauritius' reservation against positive discrimination in preference to formal equality undermines equal opportunities for women. It has been noted that despite over 50% female enrollment in secondary and tertiary education, women comprise only five percent of doctoral students in Science, Technology, engineering and Mathematics (STEM) courses.¹⁸
9. In Resolution 632, the African Commission recognises that the effective implementation and domestication of the Maputo Protocol would have positive impacts on the lives of women and advance gender equality on the continent. The Commission, however, also recognises that some State Parties to the Maputo Protocol have made reservations on some provisions of the Protocol, consequently limiting full realisation of the rights guaranteed under the Protocol. In addition, some of the reservations undermine the Protocol's fundamental purpose and essence, thereby impeding the Protocol's capacity to provide effective and substantial safeguards to women's rights across the continent. This is the context within which the African Commission has found it necessary to prepare an Advocacy Framework to raise awareness on the need for the universal application of all the provisions of the Maputo Protocol to enable women across the continent to access its protections fully.¹⁹

¹⁵ Simon Peter Kayondo, "Implementing the Maputo Protocol in Uganda", International Federation of Gynaecology and Obstetrics <https://www.figo.org/maputo-protocol-at-20/simon-kayondo#:~:text=Uganda's%20ratification%20of%20the%20Maputo,circumstances%20including%20rape%20and%20incest> accessed 4 January 2025.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ M. Madhoua, K. Fowdarb, D. N. Modia & B. S. Moosuna, "STEM Education in the Republic of Mauritius: a Gender Perspective," 13 <https://www.repository.mu/mrc/op/op.DownloadFromOutside.php?documentid=876&version=1> accessed 4 January 2025.

¹⁹ Preamble of ACHPR/Res.632, n1.

Objective

10. The objective of the Advocacy Framework is to raise awareness on the need for the universal application of all the provisions of the Maputo Protocol, by providing State Parties to the Protocol and other stakeholders with guidance on the standards and approach for withdrawing reservations to the Protocol.
11. The Advocacy Framework establishes a systematic approach to problem-solving in relation to the reservations that have been lodged on the Maputo Protocol. It provides various relevant actors with guidance on the measures they may take to develop and implement strategies towards ensuring the withdrawal of reservations.
12. Each stakeholder may draw ideas from the Advocacy Framework and use them to build or adapt their strategies on the withdrawal of reservations. The Framework provides context in relation to each stakeholder-category before suggesting approaches which may be used to make the case for and take actions towards the withdrawal of reservations. Elements of suggested approaches are not mutually exclusive and may be used singly or in combination with each other. Elements explained under particular stakeholder-categories may also be relevant for other stakeholders.
13. The Advocacy Framework provides guidance to the following stakeholders:
 - Member States of the AU;
 - State Parties to the Maputo Protocol;
 - The Special Rapporteur;
 - The African Committee of Experts on the Rights and Welfare of the Child (Committee of Experts);
 - The African Court on Human and Peoples' Rights (African Court);
 - The key organs of the AU, including the Assembly of the Union, the Executive Council, the Permanent Representatives Committee (PRC), and the African Union Commission (AUC);
 - The Pan-African Parliament (PAP);
 - The Regional Economic Communities (RECs), their legislatures, and their courts of justice;

- National human rights institutions (NHRIs);
- International human rights bodies; and
- CSOs.

14. The preparation of this Advocacy Framework was undertaken using mixed methods. At the outset, one of the collaborating partners of the Special Rapporteur, Equality Now, prepared a literature review on the meaning and implications of the reservations that State Parties have made to the Maputo Protocol. Subsequently, the Special Rapporteur established a cohort of experts drawn from across the continent who provided the process with technical support. The regional experts participated in a technical workshop that determined the issues and themes to be covered by the Advocacy Framework. The experts also provided feedback on a draft of the Advocacy Framework prepared by a consultant under the guidance of the Special Rapporteur and Equality Now. This is the third draft of the Advocacy Framework, to be validated by stakeholders of the Maputo Protocol.

Chapter 2: Reservations in International Law

The Vienna Convention on the Law of Treaties

15. The Vienna Convention on the Law of Treaties (VCLT) establishes the meaning of reservations in international law. Over time, this has been elaborated by institutions such as the International Law Commission (ILC), and the supervisory committees of treaties such as the International Covenant on Civil and Political Rights (ICCPR), and the Convention on Elimination of All Forms of Discrimination against Women (CEDAW).²⁰

16. Under the VCLT, a reservation is:

a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.²¹

17. In determining whether a State Party to a treaty has lodged a reservation, what matters is the intention of the State rather than the form of the instrument. As the supervisory mechanism of the ICCPR, the Human Rights Committee, explains:

If a statement, irrespective of its name or title, purports to exclude or modify the legal effect of a treaty in its application to the State, it constitutes a reservation. Conversely, if a so-called reservation merely offers a State's understanding of a provision but does not exclude or modify that provision in its application to that State, it is, in reality, not a reservation.²²

18. It is essential to distinguish between reservations and interpretive declarations.

According to the ILC, an interpretive declaration is:

A unilateral statement, however phrased or named, made by a State or an international organization, whereby that State or that organization purports to specify or clarify the meaning or scope of a treaty or of certain of its provisions.²³

²⁰ For a detailed study on the approaches taken by various international bodies to develop the meaning and purports of reservations in international law, see Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (Cambridge University Press, 2019) 119-142.

²¹ Vienna Convention on the Law of Treaties (1969), art2(1)(d) https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf accessed 3 January 2025.

²² CCPR General Comment No. 24, "Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, or in Relation to Declarations under Article 41 of the Covenant", para 4 <https://www.refworld.org/legal/general/hrc/1994/en/10945> accessed 3 January 2025.

²³ International Law Commission, "Report of the International Law Commission on the Work of its Sixty-Third Session: Guide to Practice on Reservations on Treaties" (2011) para 1.2 https://legal.un.org/ilc/texts/instruments/english/draft_articles/1_8_2011.pdf accessed 3 January 2025.

19. Unlike a reservation, an interpretive declaration does not purport to exclude or modify the legal effects of a treaty. Rather, it seeks to clarify the meaning of certain provisions or of the entire treaty.²⁴
20. A State Party to a treaty has the right in international law to object to a reservation lodged by another State Party. Under the VCLT, once a State Party is notified of a reservation to a treaty or once it has ratified a treaty, whichever is the later, it has 12 months within which to lodge an objection if it deems the reservation to be incompatible with the object and purpose of the treaty.²⁵ Additionally, a State Party to a treaty may withdraw or amend a reservation in writing at any time, and a State may similarly withdraw or amend an objection.²⁶

The reservations regime under the Maputo Protocol

21. The Maputo Protocol establishes a comprehensive and progressive legal and institutional framework for ensuring women's rights on the continent. It supplements the provisions of the ACHPR by elaborating on the rights of women. It seeks to protect them from discrimination and harmful practices and to ensure that they enjoy their rights fully.
22. The Maputo Protocol obligates states to use legislative, institutional and other measures to combat discrimination against women. Among others, it guarantees women the rights to dignity, and the right to life, and it obligates states to eliminate harmful practices. It legislates for women's equal rights in marriage, and their rights during separation, divorce or annulment of marriage. The Protocol also establishes that women have the right to sexual and reproductive health.
23. Neither the Maputo Protocol nor its antecedent, the ACHPR, have express provisions on reservations. This is unlike CEDAW which allows State Parties to enter reservations upon ratification as long as those reservations are not incompatible with the "object and

²⁴ *United Nations Office of Legal Affairs Treaty Handbook*, para 3.6.1 <https://treaties.un.org/doc/source/publications/THB/English.pdf> accessed 3 January 2025.

²⁵ VCLT art20, n21.

²⁶ *Ibid*, art22.

purpose” of the Convention.²⁷ The jurist Keba Mbaye recalled that when the ACHPR was being drafted, proposals to include a reservation clause were made by the Central African Republic, Congo and Niger. Delegates, he noted, rejected these proposals because they found the matter was adequately covered under the VCLT which anticipates that a State Party may withdraw from a treaty that does not expressly prohibit reservations.²⁸

24. Hence, save where a treaty explicitly excludes reservations, such as the Rome Statute of the International Criminal Court,²⁹ a State Party may make a reservation on a treaty so long as the reservation is not incompatible with the object and purpose of the treaty.

25. The African Commission, which oversees the implementation of the Maputo Protocol, has determined that it has the power to assess the validity of reservations to the treaties it oversees. In *Hossam Ezzat and Rania Enayet (represented by Egyptian Initiative for Personal Rights & INTERIGHTS) v The Arab Republic of Egypt*, the Commission stated thus:

the Commission has the competence, in accordance with its mandate, to assess and pronounce its views on the validity of a reservation to the Charter. A valid reservation to a treaty forms part of the terms of the treaty with respect to the authoring State and other states parties which have not registered repudiatory objections to the reservation. The Commission’s functional competence to interpret and consider the validity of a reservation is inherent in the Commission’s very function of interpreting and applying the Charter to ensure the protection of the rights and freedoms.³⁰

²⁷ Article 28 of Convention on Elimination of all Forms of Discrimination against Women (United Nations 1979) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> accessed 3 January 2025.

²⁸ Keba Mbaye, “Keynote Address on the African Charter on Human and Peoples’ Rights”, in “Human and Peoples’ Rights in Africa and the African Charter” (INTERNATIONAL Commission of Jurists, 1985) <https://www.icj.org/wp-content/uploads/1986/04/Africa-human-and-peoples-rights-conference-report-1986-eng.pdf> accessed 9 January 2025.

²⁹ Article 120 of the Rome Statute of the International Criminal Court (United Nations 1998), provides as follows: “No reservations may be made to this Statute.” <https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court> accessed 3 January 2025.

³⁰ Communication 355/07: Hossam Ezzat and Rania Enayet (represented by Egyptian Initiative for Personal Rights & INTERIGHTS) v The Arab Republic of Egypt (African Commission on Human and Peoples’ Rights 2016) para154 <https://achpr.au.int/en/decisions-communications/35507-hossam-ezzat-rania-enayet-egypt-interights> accessed 3 January 2025.

26. The African Commission, therefore, seems to follow the view³¹ that an invalid reservation should be severable so that a treaty remains in effect without providing benefit to a state that lodges a reservation deemed invalid. The Commission has, however, as yet not severed a reservation for incompatibility with a human rights treaty.

27. Presently, nine states have lodged reservations to the Maputo Protocol on provisions covering matters such as equality, marriage, separation, divorce and annulment, affirmative action, and sexual and reproductive health.

Table 1: States with reservations and interpretive declarations to the Maputo Protocol as of January 2025³²

State	Date of ratification/accession	Provisions with reservations	Provisions with interpretive declarations
Algeria	2016	Articles 6, 7 and 14	-
Cameroon	2012	-	General
Ethiopia	2018	Articles 6(c), 6(d), 6(f), 7(a), 10(3), 21(1) and 27	Articles 4(2), 6(b), 6(j), 7(d), 13(i) and 14(1)(b)
Kenya	2010	Articles 10(3) and 14(2)(c)	
Mauritius	2017	Articles 6(c); 9; 4(2)(k), 10(2)(d) and 11(3); 12(2); and 14(2)(c)	-
Namibia	2004	Article 6(d)	-
SADR	2022	Articles 2(c); 6 (a), (b), (c) and (e); 7 (b) and (d); 8 (d) and (e); 14 (1(a), (b), (c),	-

³¹ Articulated by the Human Rights Committee in General Comment No. 24, see para 18, n22.

³² Information for this table is drawn from official websites of AU organs, including African Union, List of Countries which have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa", n8.

A number of reservations seem either to be miscited or they are not cited at all in published AU records.

		and (2 (c); 19 (a); and 21	
South Africa	2004	Articles 4(j), 6(d) and 6(h)	Articles 1(f) and 31
Uganda	2010	Articles 14(1)(a) and 14(2)(c)	-

28. The reservations made by the nine states cover a broad range of themes. Four reservations are made to Article 14(2)(c) of the Protocol on medical abortion (Kenya, Mauritius, SADR and Uganda). Three reservations are made, each to Article 6(c) on monogamy as the preferred form of marriage (Ethiopia, Mauritius and SADR), and Article 6(d) on recording of marriages (Ethiopia, Namibia and South Africa). Two reservations are made, each to Article 6(b) on the minimum age of marriage (Ethiopia and SADR), Article 7(d) on equitable sharing of joint property (Ethiopia and SADR), Article 10(3) on reduction of military expenditure (Ethiopia and Kenya), Article 14(1)(a) on control of fertility (SADR and Uganda), and Article 14(1)(b) on right to decide whether to have children etc (Ethiopia and SADR). Around 28 other single reservations and interpretive declarations are made.

29. In 2006, The Gambia withdrew its blanket reservations to Articles 5 (elimination of harmful practices), 6 marriage), 7 (separation, divorce and annulment of marriage) and 14 (health and reproductive rights) of the Maputo Protocol, which it had lodged in 2005. The withdrawal of the reservations was the culmination of intense advocacy by civil society organisations (CSOs) which leveraged their campaign on the facts that The Gambia was hosting the AU Summit as well as the Beijing +10 Review Conference.³³ The withdrawal of these reservations had positive impacts on women's rights. For example, having withdrawn its reservation to Article 5 of the Protocol on harmful cultural practices, The Gambia enacted legislation to criminalise FGM with penal and monetary sanctions.³⁴

³³ "Maputo at 20: Undimmed Resolve - Advancing and Protecting the Rights of Women and Girls in Africa", n10.

³⁴ Basiru Bah, "THE IMPACT OF THE MAPUTO PROTOCOL IN THE GAMBIA", in Susan Mutannbasere, Ashwanee Budoo-Scholtz and Davina Murden (eds), *The impact of the MAPUTO PROTOCOL in selected African states* (Pretoria

30. In 2012, Rwanda withdrew its reservation to Article 14(2)(c) of the Maputo Protocol,³⁵ following advocacy by national and international CSOs.³⁶ This withdrawal followed the enactment of legislation reducing penalties against women who terminated their pregnancies and doctors who performed abortions.³⁷ Consequently, women in Rwanda can access abortions on socioeconomic grounds, in cases where the mother's life or health is at risk, where the pregnancy is as a result of sexual assault, rape or incest, and where there is a health risk to the fetus.³⁸
31. The case, therefore, has increasingly been made by stakeholders across the continent for the universal withdrawal of reservations to the Maputo Protocol, to ensure that Africa's women enjoy their rights under the Protocol fully.

University of Pretoria Law Press, 2023)117-118
<https://www.pulp.up.ac.za/latest-publications/the-impact-of-the-maputo-protocol-in-selected-african-states>
accessed 9 January 2025.

³⁵ Official Gazette n° Special of 04/05/2012,
<https://abortion-policies.srhr.org/documents/countries/09-Rwanda-Lifting-reservation-on-Maputo-Protocol-Art-14.2.pdf> accessed 2 February 2025.

³⁶ "Maputo at 20: Undimmed Resolve - Advancing and Protecting the Rights of Women and Girls in Africa" n10.

³⁷ Centre for Reproductive Rights, "AllAfrica: Rwandan Govt Takes Critical Step in Recognizing Women's Fundamental Human Rights",
<https://reproductiverights.org/allafrica-rwandan-govt-takes-critical-step-in-recognizing-womens-fundamental-human-rights/> accessed 20 February 2025.

³⁸ Ibid.

PART TWO

32. This part establishes and explains the key components and elements of the Advocacy Framework. It discusses the measures which relevant stakeholders should put in place or keep in mind as they seek the withdrawal of reservations to the Maputo Protocol. The Advocacy Framework explains the contexts within which the roles of each stakeholder should be understood, and it proposes the approach which each institution should take to support the withdrawal of reservations to the Protocol.

Chapter 3: State Parties to the Maputo Protocol and Member States of the African Union

Context

33. Each Member State of the AU has the sovereign right to determine which human rights treaties it should become party to. As indicated in chapter two, 45 of the 55 Member States of the AU are party to the Maputo Protocol. 36 of the State Parties to the Protocol have not lodged any reservations to it, and hence they are bound fully by all its provisions.

34. No State Party to the Maputo Protocol has objected to reservations lodged by other State Parties.³⁹ This may evidence the disinclination of the States to interfere with the sovereignty of peer States, possibly correspondingly expecting that their peers will not interfere with their sovereignty. Yet, under the Constitutive Act of the African Union, Member States commit the Union to promote and protect human and peoples' rights in accordance with the ACHPR and other relevant human rights instruments,⁴⁰ including the Maputo Protocol.

³⁹ In comparison, multiple objections have over the years been raised against state parties to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Objections have been raised on reservations made on CEDAW by Algeria, Egypt, Lesotho, Libya, Malawi, Mauritania, Mauritius, Morocco, Niger and Tunisia.

⁴⁰ Constitutive Act of the African Union, art3(h) (African Union, 2000) <https://au.int/en/constitutive-act> accessed 8 January 2025.

Under Article 5 of the Constitutive Act, the AU's organs include the Union's Assembly, the Executive Council, the Pan African Parliament, the African Union Commission, the Permanent Representatives Committee, the Specialised Technical Committees, and the Economic, Social and Cultural Council.

35. States provide a broad range of reasons to explain their reservations to the Maputo Protocol.

36. SADR explains that certain provisions of the Maputo Protocol contravene Islamic law.

SADR has used this justification to make reservations on provisions covering Article 2(c) (integration of gender perspective), Article 6(a) (free and full consent of parties in marriage), Article 6(b) (minimum age of marriage), Article 6(c) (monogamy as preferred form of marriage), Article 6(e) (matrimonial regime and place of residence), Article 7(b) (rights to seek separation, etc), Article 7(d) (equitable sharing of joint property), Article 8(e) (representation of women in judicial organs), Article 14(1)(a) (control of fertility), Article 14(1)(b) (right to decide whether to have children etc), Article 14(1)(c) (contraception), Article 14(2)(c) (medical abortion), and Article 21 (inheritance).⁴¹

37. Some State Parties use reservations to subordinate provisions in the Maputo Protocol to domestic legislation:

- Although Algeria gives no reasons for its reservations to provisions in the Maputo Protocol on marriage, separation, divorce and annulment, and health and reproductive rights,⁴² its explanation for making reservations to some equivalent provisions in CEDAW is that those provisions contradict relevant domestic legislation.⁴³
- One of Ethiopia's reservations subordinates the application of Article 4(2)(a) on unwanted sex to the relevant provision of its Criminal Code on the crime of rape.⁴⁴
- In another reservation, Ethiopia restricts the application of Article 6(b) (which sets 18 years as the minimum age of marriage, requiring that it be applied in accordance with its family law, which allows dispensation from this minimum age of marriage).⁴⁵

⁴¹ "List of Countries which have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa", n8.

⁴² Ibid.

⁴³ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en accessed 10 January 2025.

⁴⁴ "List of Countries which have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa", n8.

⁴⁵ Ibid.

For an assessment of Ethiopia's reservations to the Maputo Protocol, see Henok Ashagrey, "The Impact of the Maputo Protocol in Ethiopia", in Susan Mutannbasere, Ashwanee Budoo-Scholtz and Davina Murden (eds), *The impact of the MAPUTO PROTOCOL in selected African states*, n34.

- Ethiopia’s interpretive declaration on Article 6(j) (on the right to acquire own property) purports to restrict the provision to domestic legislation, under which income acquired during marriage is common property of the spouses and is managed and disposed by their joint decision.⁴⁶
- Ethiopia’s reservation on Article 21(1) (on equitable share to inheritance), subjects the application of the provision in the Protocol to domestic law, so that a spouse inherits from their deceased spouse as a legatee by will.⁴⁷
- Mauritius declines to enforce Article 6(c) of the Protocol (on monogamy as the preferred form of marriage) where the provision is incompatible with provisions of domestic laws.⁴⁸ It should, however, be noted that Mauritius reported to the African Commission that it had withdrawn its reservation to Article 6(b) of the Maputo Protocol on 3 March 2023 and that it deposited its notice of withdrawal on 12 May 2023.⁴⁹ The reportedly withdrawn reservation was not previously recorded as a reservation, and it is not clear whether the withdrawn reservation is rather in respect of Article 6(c).
- Mauritius also declines to enforce Article 12(2) (on positive action), on the basis that its Constitution does not recognise positive discrimination.⁵⁰
- Additionally, it makes a reservation on Article 14(2)(c) (on medical abortion) where a pregnancy has exceeded 14 weeks.⁵¹
- Kenya and Uganda make reservations on Article 14(2)(c) of the Maputo Protocol (on medical abortion), deeming that provision inconsistent with their domestic legislation on health and reproductive rights.⁵²

⁴⁶ Ibid, “List of Countries which have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

⁴⁷ Ibid.

⁴⁸ Ibid.

For an assessment of Mauritius’s reservations to the Maputo Protocol, see Ashwanee Budoo-Scholtz, “The Impact of the Maputo Protocol in Mauritius”, in Susan Mutannbasere, Ashwanee Budoo-Scholtz and Davina Murden (eds), *The impact of the MAPUTO PROTOCOL in selected African states*, *ibid*.

⁴⁹ “Eleventh Periodic Report of the Republic of Mauritius on the Implementation of the African Charter on Human and Peoples’ Rights September 2019 — March 2024” (Republic of Mauritius, 2024) <https://achpr.au.int/en/state-reports/mauritius-11th-periodic-report-2019-2024> accessed 20 February 2025.

⁵⁰ “List of Countries which have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa”, N8.

⁵¹ Ibid.

⁵² Ibid.

- Cameroon contends that the Maputo Protocol has provisions that are inconsistent with African ethical and moral values. In its interpretive declaration (which seems to have the legal effect of a reservation), Cameroon explains that its acceptance of the Protocol does not mean that it endorses, encourages or promotes homosexuality, non-therapeutic abortion, FGM, prostitution or any other practice which is not consistent with universal or African ethical and moral values.⁵³
38. Related to the above, some State Parties to the Maputo Protocol contend that their domestic laws are superior to the norms established in the Protocol and, therefore, they are not bound by the apparently lower standards in the instrument:
- South Africa makes its reservation on Article 4(2)(j) (prohibiting application of the death penalty on pregnant women) on the basis that the death penalty was abolished in the country.⁵⁴
 - South Africa made its reservation to Article 6(h) (on the nationality of children) of the Maputo Protocol on the basis that the Protocol subjugates the equal rights of men and women with respect to the nationality of their children to national legislation and national security interests, thereby removing inherent rights of citizenship and nationality from children.⁵⁵
 - South Africa's reservation to the Maputo Protocol on Article 6(d) (on recording marriages), and Ethiopia's similar reservation, are based on the concern that a marriage should not be deemed invalid simply because it has not been recorded.⁵⁶
 - Ethiopia limits the application of Article 7(a) to the Protocol (on separation of spouses being effected by judicial order) to domestic legislation which permits spouses to

⁵³ Ibid.

⁵⁴ Ibid.

Also see "Republic of South Africa Combined Second Periodic Report Under the African Charter on Human and Peoples' Rights and Initial Report Under the Protocol to the African Charter on the Rights of Women in Africa" (Republic of South Africa, 2015) <https://achpr.au.int/en/state-reports/south-africa-2nd-periodic-report-2003-2014> accessed 20 February 2025.

For an assessment of South Africa's reservations to the Protocol, see Jamil Ddamulira Mujuzi, "The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: South Africa's Reservations and Interpretative Declarations" <https://www.saflii.org/za/journals/LDD/2008/12.pdf> accessed 3 January 2025.

⁵⁵ Ibid.

⁵⁶ "List of Countries which have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa", n8.

separate by agreement.⁵⁷ In its periodic report to the African Commission, Ethiopia communicated that its reservations and interpretive declarations to the Protocol do not in its view impede realisation of women's rights, and rather that the reservations provide better protection for the rights and freedoms of women, concluding that it did not have plans to withdraw the reservations.⁵⁸

39. Some State Parties to the Maputo Protocol make reservations of an interim nature to be withdrawn after specific requisite measures are put in place. Namibia makes the withdrawal of its reservation on Article 6(d) (on recording of marriages) contingent on the enactment of legislation on the recording and registration of customary marriages.⁵⁹

40. Some State Parties to the Maputo Protocol either do not provide any reasons for their reservations, or they provide overly ambiguous or unclear reasons. This is the case with:

- Algeria's reservations on Articles 6 (marriage), 7 (divorce, separation and annulment) and 14 (sexual and reproductive health).
- Mauritius's reservations on Article 4(2)(k) (equal rights to access refugee status), Article 9 (participation in political and decision-making process), and Article 11(3) (protecting asylum-seeking women etc from violence).
- Ethiopia's reservation to Article 6(c) (monogamy preferred form of marriage), Article 6(f) (retention of maiden name), Article 10(3) (reduction of military expenditure), and Article 27 (interpretation).
- Kenya's reservation to Article 10(3) (reduction of military expenditure).
- Uganda's reservation to Article 14(1)(a) (control of fertility).⁶⁰

Suggested approach towards withdrawing reservations

41. Prerogative to become party to a treaty with reservations: A Member State of the AU has the prerogative to determine whether to become party to a human rights treaty and whether to make reservations as it ratifies or accedes to it. As was pointed out at a

⁵⁷ Ibid.

⁵⁸ "Ethiopia Initial Report on the Implementation of the Protocol on the Rights of Women (Maputo Protocol) para (January 2024) para 28 <https://achpr.au.int/en/states-reporting-status> accessed 2 February 2025.

⁵⁹ "List of Countries which have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa", n8.

⁶⁰ Ibid.

convening by Universal Rights Group on the withdrawal of religion-based reservations in core human rights treaties, the ratification of or accession to a treaty, the withdrawal of reservations, and the domestication, implementation and monitoring of the treaty, are all part of one cycle/process whose key starting point is becoming party to the instrument even with reservations. Ratification of a treaty binds a State legally and impels it to engage with law reform which should eventually culminate in the withdrawal of reservations.⁶¹

42. Imperative of becoming party to a treaty without reservations: A State should, however, also recognise the immense benefits of becoming party to the Maputo Protocol without reservations. It is essential that Member States of the AU that are not party to the Maputo Protocol ratify or accede to it expeditiously and without reservations. In that regard, of the 10 Member States of the AU that have not ratified the Maputo Protocol, only two have also not ratified CEDAW, i.e. Somalia and Sudan.⁶² Hence, there is no compelling reason for the other eight Member States not to become party to the Maputo Protocol, i.e. Burundi, Central African Republic, Chad, Egypt, Eritrea, Madagascar, Morocco and Niger.⁶³

43. Interpretive declarations as a valve for managing the pressure to lodge reservations: In the immediate term, a State may find it difficult to become party to the Maputo Protocol without recording its viewpoints on certain provisions. Where a State feels inclined to enter a reservation, it should rather lodge an interpretive declaration that does not change the legal effect of the provision in question.

44. Reservations as an interim measure: In the very last resort, a State Party to the Maputo Protocol may enter a reservation to a provision on an interim basis if that is the only

⁶¹ "Lifting Religion-Based Reservations to the Core International Human Rights Conventions as a Means of Strengthening Women's Rights at the National Level: A Guide for Women's Rights Groups MEETING" (UNIVERSAL RIGHTS GROUP, 2019) <https://www.universal-rights.org/urg-policy-reports/lifting-religion-based-reservations-to-the-core-international-human-rights-conventions-as-a-means-of-strengthening-womens-rights-at-the-national-level-a-guide-for-womens-rights-groups/> accessed 9 January 2025.

⁶² United Nations Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en.

⁶³ Morocco is an outlier since it is not a party to the African Charter.

avenue for enabling the State to ratify or accede to the Protocol. The State should establish measures for addressing the interim circumstances engendering the reservation, following which it should withdraw the reservation expeditiously. Measures for addressing the interim circumstances may involve establishing genuinely participatory processes to build the public's awareness on the impacts of the reservations and the imperative for withdrawing them. Such measures should also entail building the capacities of public institutions on the impacts of the reservations and the imperative for withdrawing them.

45. Withdrawal of reservations: A State Party with reservations to the Maputo Protocol should institute measures for withdrawing them. Such measures should involve relevant domestic institutions, including the executive, parliament, and the general public. The State Party should heed directions and determinations duly issued by domestic courts and international tribunals. It should ensure that the public, particularly women, participate fully in the discussions.
46. Objection to reservations: States Parties should review reservations lodged to the Maputo Protocol by fellow State Parties. They should, accordingly, raise objections where they deem that the reservations are incompatible with the core aims of the Protocol. As illustrated below, raising an objection can have the positive impact of encouraging a State Party to withdraw its reservation to a treaty.
47. Lesotho – reservations, objections and modifications: When Lesotho ratified CEDAW on 22 August 1995, it lodged the following reservation on the instrument:

The Government of the Kingdom of Lesotho declares that it does not consider itself bound by article 2 to the extent that it conflicts with Lesotho's constitutional stipulations relative to succession to the throne of the Kingdom of Lesotho and law relating to succession to chieftainship. The Lesotho Government's ratification is subject to the understanding that none of its obligations under the Convention especially in article 2 (e), shall be treated as extending to the affairs of religious denominations. Furthermore, the Lesotho Government declares it shall not take any legislative measures under the Convention where those measures would be incompatible with the Constitution of Lesotho.⁶⁴

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<https://www.un.org/womenwatch/daw/cedaw/reservations.htm#:~:text=The%20Convention%20permits%20ratification%20subject,in%20other%20human%20rights%20treaties> Accessed 19 February 2025.

48. On 12 February 1997, Denmark had lodged the following objection to Lesotho's reservation:

The Government of Denmark finds that the said reservations are covering central provisions of the Convention. Furthermore, it is a general principle of international law that internal law may not be invoked as justification for failure to perform treaty obligations. The Government of Denmark finds that the reservations are incompatible with the object and purpose of the Convention and accordingly inadmissible and without effect under international law. Consequently, the Government of Denmark objects to these reservations.

It is the opinion of the Government of Denmark that no time limit applies to objections against reservations, which are inadmissible under international law.

The Convention remains in force in its entirety between Lesotho and Denmark.

The Government of Denmark recommends the Government of Lesotho to reconsider its reservations to the [said] Convention.⁶⁵

49. On 25 August 2004, Lesotho communicated to the UN Secretary-General modification of its reservation as follows:

The Government of the Kingdom of Lesotho declares that it does not consider itself bound by article 2 to the extent that it conflicts with Lesotho's constitutional stipulations relative to succession to the throne of the Kingdom of Lesotho and law relating to succession to chieftainship.⁶⁶

50. Invalid reservations: A State Party to the Maputo Protocol must not lodge an invalid reservation, i.e. a reservation that is incompatible with the purpose and object of the Protocol. A reservation is deemed invalid if:

- It seeks to derogate from a peremptory norm. A peremptory norm, also known as a *jus cogens* norm, is a norm of international law reflecting high moral standards and considered universally binding whether or not a state has agreed to it specifically. A peremptory norm is non-derogable, and includes norms such as the prohibition of genocide, slavery and torture.⁶⁷
- It is entered against a core provision of a treaty, i.e. a provision that establishes the object and purpose of the instrument.⁶⁸
- It is framed in general and vague statements that do not provide a sufficiently clear indication of how they affect a State's obligations and may effectively nullify them.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ CCPR General Comment No. 24, para 8, n22.

⁶⁸ Ibid.

Phraseology, for example, may state that a treaty or a specific article is to be interpreted in conformity with national legislation.⁶⁹

- It invokes the provisions of its domestic law to justify its failure to perform its treaty obligation.⁷⁰

51. Incompatibility with the object and purpose of the Protocol: As already indicated, a State Party must not lodge a reservation that is incompatible with the object and purpose of the Maputo Protocol. As shown in the next chapters, the African Commission and the African Court, among other mechanisms, are formally mandated to determine the object and purpose of the Protocol, and it is essential that the mechanisms fulfil that mandate. Nonetheless, a recent study on the Maputo Protocol suggests that by its preamble, the object and purpose of the Protocol is to eliminate all forms of discrimination and harmful practices against all women, including gender-based violence, and to promote women's role in development and peace-making.⁷¹ It can be surmised that the object and purpose of the Maputo Protocol is to create a legally-binding scheme of specific rights and obligations for the promotion and protection of the rights of women, and to establish or designate an institutional framework for supervising the realisation by State Parties of those rights and obligations.

52. Core articles of the Protocol: A consequent arising priority is the need for State Parties to be aware of the core articles of the Maputo Protocol whose violation would undermine its object and purpose. Comparatively, one study notes that in relation to CEDAW, Articles 2 (obligations to eliminate discrimination against women), 9 (equal rights regarding nationality), 15 (equality before the law), and 16 (equality in marriage and family matters), form the core articles of the Convention.⁷² Additionally, the Committee

⁶⁹ Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Cambridge University Press 2013) 57.

⁷⁰ Ibid, p58.

⁷¹ Annika Rudman, "Preamble", in Annika Rudman, Celestine Musembi & Triza Makunya (eds) *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: a commentary* (Pretoria University Law Press, 2023) https://www.soawr.org/resources_posts/the-protocol-to-the-african-charter-on-human-and-peoples-rights-on-the-rights-of-women-in-africa-a-commentary/ accessed 22 February 2025.

⁷² Susanne Zwingel, *Translating International Women's Rights: The CEDAW Convention in Context* (Springer Nature 2016) chapter 7.

of Experts has expressed the view that entering a reservation limiting the definition of a child under Article 2 of the ACRWC is invalid because it undermines the operation of other rights in the Charter and it goes against the foundation on which the whole instrument is established.⁷³ It has also been noted that lodging reservations that undermine the effective operation of a treaty's supervisory mechanism undermines the purpose and object of the treaty since it denies rights-holders the option of seeking effective remedies.⁷⁴ In this regard, it should be noted that Ethiopia makes a reservation on Article 27 of the Maputo Protocol which gives the African Court jurisdiction to determine cases under the Protocol.⁷⁵

53. Cultural relativism not a justification for lodging a reservation: A State Party must not employ reservations as a tool for asserting notions of cultural relativism. It must recognise that excluding or modifying specific provisions of the Protocol on any exceptional basis gravely undermines the rights of women and limits the enjoyment of human rights which apply universally. It has been noted that reservations "dilute" the principle of universality of human rights, thereby chipping away at the purpose of the treaty making system which seeks to create universal human rights norms and standards.⁷⁶ Hence, while a State Party technically has the prerogative to lodge reservations to the Maputo Protocol, it should not use exclusivist or exceptionalist means to raise any concerns it may have on certain provisions of the Protocol. Mali, for example, employed a more amenable approach when it ratified the Protocol without

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https://www.acerwc.africa/sites/default/files/2022-10/Agenda2040-Assessment%20of%20the%20first%20phase%20of%20implementation%202016-2020_0.pdf accessed 17 February 2025.

⁷⁴ Humphrey Sipalla, "(In)validity of Egypt's Reservations to the African Charter on the Rights and Welfare of the Child" (2019) <http://ir.kabarak.ac.ke/handle/123456789/781> accessed 23 February 2025.

⁷⁵ "List of Countries which have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa", n8.

This reservation is curious since Ethiopia is not a party to the Protocol for the Establishment of an African Court on Human and Peoples' Rights.

⁷⁶ Y Tyagi, "The Conflict of Law and Policy on Reservation to Human Rights Treaties," (2000) *British Yearbook of International Law*, Volume 71, Issue 1, 205.

any reservations, rather opting to engage on any concerns it had on a continuing basis while its women enjoyed their rights under the Protocol.⁷⁷

54. African ethical and moral values: States Parties should recognise that the contention that the Maputo Protocol has provisions that are inconsistent with African ethical and moral values is based on a misunderstanding. In fact, the Protocol recognises “the crucial role of women in the preservation of African values based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy”.⁷⁸ The African values envisaged in the Protocol resonate with universal values in their prohibition of discrimination as established in Article 2 of the Protocol. As has been noted,⁷⁹ this indeed is the context within which the Protocol prohibits harmful practices, which it defines as “all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity”.⁸⁰

55. Apparent contravention of Islamic law: A State Party with a majority or significant minority Muslim population should engage critically with the contention that certain provisions of the Maputo Protocol contravene Islamic law. At least eight State Parties with majority or significant minority Muslim populations have not made reservations to the Maputo Protocol, i.e. Djibouti, Gambia, Libya, Mali, Mauritania, Nigeria, Senegal and Tunisia.⁸¹ Studies highlight instances where States with significant Muslim populations have enacted legislation guaranteeing equal rights for women.⁸²

⁷⁷ Brenda K Kombo, “Silences that Speak Volumes: The Significance of the African Court Decision in *APDF and IHRDA v Mali for Women's Human Rights on the Continent*” (2019) 3 *African Human Rights Yearbook* 389-413 <https://upjournals.up.ac.za/index.php/ahry/article/view/3905/3609> accessed 2 January 2025.

⁷⁸ Preamble of the Maputo Protocol, n7.

⁷⁹ A Johnson, “Article 17: Right to a Positive Cultural Context”, in Annika Rudman, Celestine Musembi & Triza Makunya (eds) *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: a commentary*, 365, n71.

⁸⁰ Article 1 of the Maputo Protocol, n7.

⁸¹ “List of Countries which have Signed, Ratified/Accessed to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa”, n8.

⁸² See, for example, “CEDAW and Muslim Family Laws: In Search of Common Ground” (Musawah, 2011) <https://www.musawah.org/resources/cedaw-and-muslim-family-laws-in-search-of-common-ground/#:~:text=This%20report%20outlines%20the%20arguments,on%20our%20Framework%20for%20Action> accessed 9 January 2025.

56. Article 31 of the Protocol: A reservation based on the contention that domestic legislation offers better protection than a legal standard established in the Maputo Protocol is superfluous in light of Article 31 of the Protocol which provides that: “None of the provisions of the present Protocol shall affect more favourable provisions for the realisation of the rights of women contained in the national legislation of States Parties or in any other regional, continental or international conventions, treaties or agreements applicable in these States Parties.”⁸³
57. Reservations made on an interim basis: Where a State Party makes reservations on an interim basis to give it time to enact enabling legislation, it is imperative that the State Party proceeds with dispatch to take requisite measures to address the intervening circumstances so that it may then withdraw the reservation expeditiously.⁸⁴

⁸³ Maputo Protocol, n7.

⁸⁴ This is evidenced in relation to the Convention on the Rights of Persons with Disabilities by Mauritius which explained to the African Commission that it had enacted regulations on accessibility for persons with disabilities and hence was in a position to lift its reservations to accessibility in the Convention.

11th Periodic Report of the Republic of Mauritius on the Implementation of the African Charter on Human and Peoples' Rights, September 2019 — March 2024 (Republic of Mauritius, April 2024) <https://achpr.au.int/en/state-reports/mauritius-11th-periodic-report-2019-2024> accessed 9 January 2025.

Chapter 4: The African Commission on Human and Peoples' Rights

Context

58. The functions of the African Commission include promoting and protecting human and peoples' rights, and interpreting the ACHPR.⁸⁵
59. The African Commission promotes human and peoples' rights by undertaking research and organising seminars on matters of human and peoples' rights, and making recommendations to governments and other actors. It also formulates and lays down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislation.
60. The African Commission ensures the protection of human and peoples' rights by determining communications, undertaking protection or fact-finding missions, and by responding to emergent situations of human rights violations through provisional measures, urgent appeals, resolutions, and public statements.
61. The African Commission interprets the ACHPR at the request of a State Party, an institution of the AU or an African organisation recognised by the AU.
62. As already indicated in chapter two, the African Commission supervises the implementation of the Maputo Protocol.
63. The African Commission has, occasionally but not regularly and consistently, urged States Parties to the instruments it supervises to consider withdrawing reservations to those instruments. It has, for example, called on Egypt to withdraw its reservations to Articles 8 and 18(3) of the ACHPR, particularly those on the equality of women, which Egypt's reservation considers should be applied subject to the guidance of Islamic Law.⁸⁶ Specifically on the Maputo Protocol, in 2024, without proffering any elaborations, the

⁸⁵ Article 45 of the African Charter on Human and Peoples' Rights, n2.

⁸⁶ Concluding Observations and Recommendations - Egypt: 7th and 8th Periodic Reports, 2001-2004 May 11, 2005 <https://achpr.au.int/index.php/en/state-reports/concluding-observations-and-recommendations-egypt-7th-and-8th-periodic-report> accessed 9 January 2025.

Commission called on Uganda to withdraw its reservations on Articles 14 and 21⁸⁷ of the Maputo Protocol.⁸⁸ In 2022, the Commission called on Kenya to consider withdrawing its reservation on Article 10(3) of the Protocol, “in light of all the efforts aiming to promote the social development in the country”.⁸⁹ It also called on Kenya to withdraw its reservation on Article 14(2)(c) “since Article 26(4) of the Constitution permits abortion for the same reasons as the above-mentioned Article”.⁹⁰ In 2016, the Commission called on South Africa to withdraw all its reservations to the Maputo Protocol “in line with the spirit of the Protocol”.⁹¹ The Commission has, however, not used its concluding observations with more regularity to call on States Parties with reservations to the Protocol to withdraw them. For example, in 2022, it did not call on Namibia to withdraw its reservation to the Protocol.⁹²

64. The African Commission has elaborated normative standards which provide limited guidance on the use of reservations.

65. Guideline 64 of the Guidelines on Combating Sexual Violence and its Consequences in Africa (Niamey Guidelines), issued by the African Commission, notes:

⁸⁷ It should be noted that the AU website does not record Uganda’s apparent reservation on Article 21 of the Maputo Protocol. See “List of Countries which have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa”, n4.

⁸⁸ “Concluding Observations on the Combined 6th - 8th Periodic Report of the Republic of Uganda under the African Charter on Human and Peoples Rights and Initial Report under the Maputo Protocol (2013-2022)” (African Commission on Human and Peoples’ Rights 2024) paras 65 and 78 <https://achpr.au.int/index.php/en/state-reports/concluding-observations-combined-6th-8th-periodic-uganda> accessed 20 February 2025.

⁸⁹ “Concluding Observations on the Republic of Kenya 12th-13th Periodic Report on the Implementation of the African Charter on Human and Peoples’ Rights and Initial Report on the Protocol on the Rights of Women in Africa (Maputo Protocol)” (African Commission on Human and Peoples’ Rights 2022) para 88.

⁹⁰ Ibid, para 92.

⁹¹ “Concluding Observations and Recommendations on the Combined Second Periodic Report under the African Charter on Human and Peoples’ Rights and the Initial Report under the Protocol to the African Charter on the Rights of Women in Africa of the Republic of South Africa” (African Commission on Human and Peoples’ Rights 2016) para 45 <https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-south-africa-2nd-periodic-report> accessed 20 February 2025.

⁹² See “Concluding Observations on the Republic of Namibia 7th Periodic Report on the Implementation of the African Charter on Human and Peoples’ Rights and 2nd Report on the Protocol on the Rights of Women in Africa (Maputo Protocol)” (African Commission on Human and Peoples’ Rights 2022) <https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-namibia-7th-periodic-report-2015> accessed 20 February 2025.

A number of African States have not yet ratified regional and international instruments to combat sexual violence and its consequences, including the Maputo Protocol, CEDAW and its Optional Protocol. These States are encouraged to immediately ratify all of these instruments without reservation.⁹³

66. The African Commission has also stressed that customary, traditional and religious practices must not undermine the application of substantive equality to women. States must establish a unified and harmonised legal standard consistent with the Maputo Protocol on marital property regimes.⁹⁴

67. Finally, as stated in chapter two, the African Commission has affirmed that it has the jurisdiction to determine the validity of reservations made to the human rights instruments it supervises.⁹⁵ This is the context within which the African Commission has adopted Resolution 632 for the preparation of this Advocacy Framework to raise awareness on the withdrawal of reservations.

Suggested approach towards withdrawing reservations

68. Reviewing effectiveness of past approaches and adapting them accordingly: The African Commission should review the effectiveness of the approaches it has used in the past seeking the withdrawal of reservations to the Maputo Protocol and other human rights instruments. It should adapt those approaches, using a combination of strategies, to establish concrete standards and provide directions and guidance on the withdrawal of reservations. Different strategies will suit different States and different contexts.

69. Concerted calls for withdrawing reservations: The African Commission should call on States Parties to withdraw their reservations on a more regular and consistent basis. It should ask them to regularly review the circumstances and contexts that informed the

⁹³ Guidelines on Combating Sexual Violence and its Consequences in Africa (African Commission on Human and Peoples' Rights, 2017) <https://achpr.au.int/index.php/en/documents/2017-11-05/guidelines-combating-sexual-violence-and-its-consequences-africa> accessed 4 January 2025.

⁹⁴ General Comment No. 6 on Article 7(d) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Commission on Human and Peoples' Rights, 2020) paras 48-49 <https://achpr.au.int/index.php/en/documents/2020-03-04/general-comment-no6-article-7d-maputo-protocol-right> accessed 2 January 2025.

⁹⁵ Communication 355/07: Hossam Ezzat and Rania Enayet (represented by Egyptian Initiative for Personal Rights & INTERIGHTS) v The Arab Republic of Egypt, n30.

reservations. As well, the Commission should establish standard operating procedures for monitoring and reviewing the extent to which States Parties respond to these calls.

70. Periodic reports and promotion missions: The African Commission should engage States Parties to withdraw reservations using its periodic reporting procedure provided under Article 62 of the ACHPR and Article 26 of the Maputo Protocol. It should similarly engage with State and non-state actors when it undertakes promotion missions. The Commission should be innovative in its engagements with State Parties, and its recommendations should not simply fall back on template phraseology without taking account of country-specific contexts. Whenever it calls on a State Party to withdraw its reservations to a human rights instrument, it should set out its reasons for the request.
71. Resolutions: the African Commission should use country resolutions to call on States Parties with particularly severe reservations to withdraw them. It should use thematic resolutions to call on State Parties to withdraw reservations to particularly contested provisions of the Maputo Protocol, including Articles 6 (marriage), 7 (divorce, separation and annulment), 10 (military expenditure), and 14 (sexual and reproductive rights).
72. General comments: The Commission should consider preparing guidance instruments addressing the meaning and implications of reservations, explaining the validity or invalidity of reservations under the Maputo Protocol and more generally under the other instruments it supervises, and providing directions on the withdrawal of reservations. This authoritative guidance should be in the form of a general comment, and it may be prepared by the Commission singly or jointly with the Committee of Experts. Precedents for the preparation of joint general comments exist, most recently when the two mechanisms prepared the Joint General Comment on FGM.⁹⁶ In the above regard, the African Commission should make an express statement on the provisions in the Maputo Protocol that it considers so core to the Protocol that lodging reservations to them amounts to negating the object and purpose of the instrument.

⁹⁶ Joint General Comment on Female Genital Mutilation (African Commission on Human and Peoples' Rights, and African Committee of Experts on the Rights and Welfare of the Child, 2023) https://www.acerwc.africa/sites/default/files/2023-11/Joint%20General%20Comment_ACHPR-ACERWC_on%20FGM%20%282%29_0.pdf accessed 7 January 2024.

73. Determination of communications: Whenever the African Commission is determining admissibility or merit communications, it should consider taking a view on the impacts that reservations relevant to the communications may have on the litigants. The determinations should include evaluations on the validity of such reservations. Implicit in this approach is the need for all Member States of the AU to become party to the Maputo Protocol. In the instance of the Egyptian *Initiative for Personal Rights v Egypt*, a communication determined in 2011, the African Commission could not base its decision on the Maputo Protocol because Egypt was not a party to it.⁹⁷
74. Direct access to the African Court: Whenever appropriate, the African Commission should consider using its mandated direct access to the African Court, established under the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol), to seek an advisory opinion on particular reservations. The African Court Protocol provides that the African Commission may request the African Court to "provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments ...".⁹⁸
75. Information synthesis and sharing: At an administrative level, the African Commission should urge and support relevant organs of the AU to ensure they provide full and current information on the continent's status of reservations of human rights instruments. The Commission should include such relevant information on its website, for example, by linking its pages with relevant pages of other AU organs. It should also include current information on reservations in country-specific reports, including concluding observations and recommendations reports, promotion mission reports, and fact-finding reports.
76. High-level convening on the withdrawal of reservations: Finally, to anchor all the foregoing elements of the Advocacy Framework, the African Commission should

⁹⁷ Annika Rudman, "Women's Access to Regional Justice as a Fundamental Element of the Rule of Law: The Effect of the Absence of a Women's Rights Committee on the Enforcement of the African Women's Protocol" (2018) 18 African Human Rights Law journal) 319-345 <https://www.ahrli.up.ac.za/rudman-a-2018-1> accessed 2 January 2025.

⁹⁸ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (Organisation of African Unity, 1998) art5, <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-establishment-african-court-human-and> accessed 10 January 2025.

consider hosting a high-level convening on the withdrawal of reservations to African human rights instruments. The convening will provide the Commission's stakeholders, including Member States of the AU and non-state actors, with the opportunity to address how to realise the full withdrawal of reservations. Such a convening could be held as part of an ordinary session of the Commission or in a specially convened conference.

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Chapter 5: The Special Rapporteur on the Rights of Women in Africa

Context

77. As stated in chapter one of the Advocacy Framework, the mandate of the Special Rapporteur is to assist African governments to develop and implement policies on the promotion and protection of the rights of women, in line with the domestication of the Maputo Protocol.⁹⁹

78. The Special Rapporteur has, for over 25 years, played critical advocacy and campaign roles to promote and protect the rights of women. For example, the Special Rapporteur has spearheaded the development and adoption by the African Commission of a number of general comments elaborating various provisions of the Maputo Protocol.¹⁰⁰

79. In 2024, the African Commission mandated the Special Rapporteur to prepare a Model Law on the Implementation and Domestication of the Maputo Protocol, to “serve as a blueprint to assist Member States (sic – actually state parties to the Protocol) in harmonizing their legislation with the provisions of the Maputo Protocol.”¹⁰¹

⁹⁹ ACHPR/res.38 (XXV) 99 “Appointment of a Special Rapporteur on the Rights of Women in Africa”, n5.

¹⁰⁰ See:

- “General Comment No. 1 on Article 14(1) (d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa” (African Commission on Human and Peoples' Rights, 2012)
[https://achpr.au.int/en/node/855#:~:text=In%20Article%2014%20\(1\)%20\(,standards%20and%20practices%20in%20force.](https://achpr.au.int/en/node/855#:~:text=In%20Article%2014%20(1)%20(,standards%20and%20practices%20in%20force.)
- “General Comment No. 2 on Article 14(1) (a), (b), (c) and (f) and Article 14(2) (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa” (African Commission on Human and Peoples' Rights, 2014) <https://achpr.au.int/index.php/en/node/854>
- “Joint General Comment of the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on ending Child Marriage”, (2017)
<https://achpr.au.int/en/special-mechanisms-reports/joint-general-comment-african-commission-human-and-peoples-rights-ac>
- “General Comment No. 6 on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: The Right to Property During Separation, Divorce or Annulment of Marriage (Article 7(d))” (2020)
<https://achpr.au.int/index.php/en/node/906#:~:text=This%20General%20Comment%20provides%20guidance,Maputo%20Protocol%20as%20well%20as>

¹⁰¹ ACHPR/RES.592 (LXXX) “Resolution for the Development of a Model Law on the Implementation and Domestication of the Maputo Protocol”
<https://achpr.au.int/en/adopted-resolutions/development-model-law-implementation-domestication-maputo-protocol> accessed 8 January 2025.

Suggested approach towards withdrawing reservations

80. Campaigns and advocacy missions: The Special Rapporteur should undertake campaigns and advocacy missions calling on States Parties to withdraw their reservations to the Maputo Protocol. The Special Rapporteur should support stakeholders in specific countries to make the case for the withdrawal of reservations. The Special Rapporteur should craft a specific campaign focusing on State Parties with reservations. The Special Rapporteur should also use advocacy visits, organised in partnership with domestic stakeholders, to meet and engage various relevant State and non-state actors.
81. Working with organs of State Parties: The Special Rapporteur should encourage and support government organs and departments in the nine State Parties with reservations to the Maputo Protocol to establish policy and legislative measures for the withdrawal of the reservations. The Special Rapporteur should propose a specific resolution or series of resolutions for adoption by the African Commission calling on the nine State Parties to withdraw the reservations.
82. Research studies: The Special Rapporteur should, in collaboration with NHRIs and CSOs, undertake studies on the impact of reservations in State Parties with reservations to the Maputo Protocol.
83. Partnerships: The Special Rapporteur should partner/collaborate with equivalent mechanisms within the continent's human rights infrastructure, such as the Committee of Experts, and UN Special Procedures, to issue joint communiqués, undertake joint missions, and otherwise support the African Commission's work focusing on the withdrawal of reservations to the Maputo Protocol and other relevant human rights instruments. The Special Rapporteur has played equivalent collaborative and partnership roles, such as when the Committee of Experts and the African Commission prepared and launched their Joint General Comment on FGM in 2023.¹⁰²
84. Letters of urgent appeal: Whenever the Special Rapporteur sends a letter of urgent appeal to the government that is a State Party to the Maputo Protocol, the Rapporteur

¹⁰² Intersession Activity Report by the Special Rapporteur on the Rights of Women in Africa, presented at the 79th Ordinary Session of the African Commission on Human and Peoples' Rights, 14th May – 3rd June 2024, para 10 <https://achpr.au.int/en/intersession-activity-reports/rights-women-africa> accessed 7 January 2025.

should highlight whether the apparent violation at issue is being exacerbated by a reservation that the subject State may have on the Protocol and, if so, the Rapporteur should use the letter as a means for engaging the State to withdraw the reservation.

85. Model Law: The Model Law on the Implementation and Domestication of the Maputo Protocol being prepared by the Special Rapporteur in collaboration with PAP should include guidance on the withdrawal of reservations to the Maputo Protocol.

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Chapter 6: The African Committee of Experts on the Rights and Welfare of the Child

Context

86. Under the African Charter on the Rights and Welfare of the Child (ACRWC), the functions of the Committee of Experts include promoting and protecting the rights of children.¹⁰³ These functions cover children, defined in the ACRWC as every human being below the age of 18.¹⁰⁴ The Committee's scope of work includes gender-specific interventions on matters such as child marriage.¹⁰⁵
87. Five State Parties to the ACRWC have over time lodged reservations to some provisions of the Charter, i.e. Botswana, Egypt, Mauritania, Sudan,¹⁰⁶ and SADR.¹⁰⁷ The reservations entered by these State Parties limited the exercise of rights by girls. For example, Egypt's reservation on Article 24 of the ACRWC restricted the adoption of children, while its reservation on Article 30(a) restricted the rights of children of imprisoned mothers.¹⁰⁸ Sudan's reservation on Article 11(6) of the ACRWC was on the education of children who became pregnant before completing their education, while its reservation on Article 21(2) was on the abolition of child marriage and the betrothal of girls and boys.¹⁰⁹
88. On a positive note, in 2015, it was reported that Egypt had withdrawn its reservations to some provisions in the ACRWC, including Article 24.¹¹⁰ Again, on a positive note, it was reported in 2020 that the Transitional Government of Sudan had withdrawn three reservations to the ACRWC, including reservations covering child marriage and the

¹⁰³ Article 42 of the African Charter on the Rights and Welfare of the Child (Organisation of African Unity, 1990) <https://au.int/en/treaties/african-charter-rights-and-welfare-child> accessed 8 January 2025.

¹⁰⁴ Ibid, art1.

¹⁰⁵ Ibid, art21.

¹⁰⁶ https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf accessed 11 January 2025.

¹⁰⁷ <https://www.acerwc.africa/en/member-states/ratifications> accessed 20 February 2025.

¹⁰⁸ Ibid.

¹⁰⁹ https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf

Also see "Report of the African Committee of Experts on the Rights and Welfare of the Child to the Executive Council" (February 2022) <https://www.acerwc.africa/en/key-documents/activity-reports/acerwc-report-executive-council-2022> accessed 17 February 2025.

¹¹⁰ <https://egyptindependent.com/egypt-cancels-reservations-african-child-rights-charter/> accessed 17 February 2025.

continuation of education by pregnant girls.¹¹¹ However, these apparent withdrawals of reservations to the ACRWC by Egypt and Sudan have not been published formally by the AUC. This is unlike the reservation lodged by Botswana to the ACRWC. In 2022, the AUC communicated formally to states that Botswana had withdrawn its reservation challenging the definition of a child in Article 2 of the ACRWC.¹¹² Hence, according to the website of the Committee of Experts, despite reports to the contrary, Egypt, Mauritania, SADR and Sudan retain reservations to the ACRWC.¹¹³

89. The Committee of Experts has used the communications procedure under Article 44 of the ACRWC to determine cases involving the violation of girls' rights. In *Legal and Human Rights Centre and the Centre for Reproductive Rights (on Behalf of Tanzanian Girls) Against the United Republic of Tanzania*, the Committee of Experts found that Tanzania's practice of expelling pregnant students from school violated adolescent girls' human rights. The Committee of Experts found that Tanzania had violated its obligations under the ACRWC in relation to non-discrimination; best interests of the child; protection of privacy, education, health and health services; protection against child abuse and torture; and protection against harmful social and cultural practices.¹¹⁴

Suggested approach towards withdrawing reservations

90. Communications: The Committee of Experts should make determinations on communications filed before it on reservations under the ACRWC, if and when they are filed.

91. Other strategies: The Committee of Experts should use its periodic reporting procedure, its communications procedure, its promotion missions, and its country and thematic

¹¹¹ <https://www.unicef.org/sudan/press-releases/joint-press-release-day-african-child-2021> accessed 17 February 2025.

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<https://www.acerwc.africa/en/article/news/republic-botswana-has-withdrawn-its-reservation-article-2#:~:text=The%20African%20Union%20Commission%20presents,the%20Child%2C%20which%20were%20entered> accessed 17 February 2025.

¹¹³ <https://www.acerwc.africa/en/member-states/ratifications> accessed 20 February 2025.

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<https://reproductiverights.org/case/tanzania-acerwc-expulsion-pregnant-schoolgirls/#:~:text=On%20September%2015%2C%202022%2C%20the%20ACERWC%20ruled%20that%20the%20practice,Tanzania%20reform%20its%20education%20policies> Accessed 25 February 2025.

resolutions to guide State Parties to withdraw reservations to the ACRWC that undermine the rights of girls.

92. Joint general comment: The Committee of Experts should consider preparing a joint general comment with the African Commission on the withdrawal of reservations that undermine the rights of women and girls, including reservations to the ACRWC and the Maputo Protocol.
93. Collaborations: Relevant Special Rapporteurs of the Committee of Experts, such as the Special Rapporteur on Child Marriage and Other Harmful Practices, should collaborate with the Special Rapporteur and other relevant mandate-holders of the African Commission, to undertake joint promotion missions and other promotional/advocacy activities for the withdrawal of reservations to the ACRWC and the Maputo Protocol.

Chapter 7: The African Court on Human and Peoples' Rights

Context

94. The mandate of the African Court under the African Court Protocol is to complement the protective mandate of the African Commission by determining cases and disputes including on the application and interpretation of the ACHPR.¹¹⁵ Additionally, the African Court is mandated by the Maputo Protocol to interpret that Protocol's application or implementation.¹¹⁶
95. Relevant too under the African Court Protocol is its provision that a State Party may make a declaration accepting the competence of the Court to receive cases directly from individuals and NGOs with observer status before the African Commission.¹¹⁷ The following eight states have issued the declaration allowing individuals direct access to the Court: Burkina Faso, The Gambia, Ghana, Guinea Bissau, Mali, Malawi, Niger and Tunisia.¹¹⁸ Four State Parties which had previously made the declaration allowing individuals direct access to the Court, i.e. Benin, Côte d'Ivoire, Rwanda and Tanzania, withdrew the declaration.¹¹⁹ Hence, none of the nine State Parties with reservations to the Maputo Protocol allow individuals or NGOs direct access to the Court.
96. Where individuals do not have direct access to the African Court, they may request the African Commission to use its complementarity mandate to lodge a case on their behalf before the Court, in relation to a State Party to the African Court Protocol.¹²⁰
97. The African Court has made important determinations affirming the rights of women. The Court, for example, found that Mali had violated Article 6(b) of the Maputo Protocol, among other instruments, since its Family Code did not comply with 18 years as the minimum age of marriage, and since the Code's provisions left women and girls in

¹¹⁵ African Court Protocol, arts 2 and 3, n98.

¹¹⁶ Maputo Protocol, art 27, n7.

¹¹⁷ African Court Protocol, art 34(6), n98.

¹¹⁸ https://www.african-court.org/wpafc/wp-content/uploads/2020/11/ACC-Publication_Volume-1_2020_ENG.pdf accessed 10 January 2025.

¹¹⁹ Ibid.

¹²⁰ African Court Protocol, art 5, n98.

danger of being married without their consent, in violation, among others, of Article 6(a) of the Maputo Protocol.¹²¹

Suggested approach towards withdrawing reservations

98. Determinations: The African Court should make determinations on the withdrawal of reservations to the Maputo Protocol, if and when cases arise. It should admit requests for advisory opinions from entities with standing before it, including the African Commission, States Parties to the African Court Protocol, and entities/individuals with Article 34(6) standing, on the validity of reservations under the Maputo Protocol. Consideration of such advisory opinions would benefit State Parties with reservations and AU Member States that have not become party to the Maputo Protocol. The African Court should also receive and determine cases, as appropriate, from individuals, NGOs and AU organs with standing, challenging the validity of country-specific reservations to the Maputo Protocol.
99. Popularising its functions: Subject to its mandate, the African Court should use its country promotion visits to explain to potential parties about how they may use the Court to address women's rights violations and abuses, including by challenging reservations to the Protocol.
100. Gatherings of judicial and quasi-judicial institutions: The African Court should also use gatherings of judicial and quasi-judicial institutions to address the question of reservations to the Maputo Protocol.

¹²¹ *APDF and Another v Mali* (Application No. 046/2016) [2018] AfCHPR 9 (11 May 2018) <https://africanlii.org/akn/aa-au/judgment/afchpr/2018/9/eng@2018-05-11> accessed 3 January 2025.

Chapter 8: Key Decision-Making Organs of the African Union

Context

101. The key decision-making organs of the AU under the Constitutive Act of the AU include the Union's Assembly, its Executive Council, and the PRC.¹²² The AUC is the secretariat of the AU, and hence is responsible for implementing the decisions of those organs.¹²³
102. The Constitutive Act enjoins the Union's organs to function in accordance, among others, with the principle of gender equality.¹²⁴ The AU has operationalised this principle through policies and plans which also support the full realisation of the Maputo Protocol.
103. Aspiration 6 of the Union's long-term development blueprint, Agenda 2063, anticipates "An Africa where development is people driven, relying upon the potential offered by people, especially its women and youth and caring for children".¹²⁵
104. The AU, in the Solemn Declaration on Gender Equality in Africa (Solemn Declaration), committed Member States to undertake public campaigns against gender-based violence and the trafficking of women and girls;¹²⁶ and to promote legislation guaranteeing women's land, property and inheritance rights.¹²⁷ States also undertook to become party to the Maputo Protocol, and to domesticate and implement it.¹²⁸ These commitments are consistent with the imperative of withdrawing all reservations to the Maputo Protocol. The Solemn Declaration provides apt opportunities for the AU to urge State Parties with reservations to the Maputo Protocol to withdraw them. The Solemn

¹²² Constitutive Act of the African Union, art5, n40.

Other organs of the Union listed in Article 5 of the Constitutive Act are: the Pan-African Parliament; the Court of Justice; the Specialized Technical Committees; the Economic, Social and Cultural Council; and the Financial Institutions.

¹²³ Statutes of the Commission of the African Union (African Union) <https://au.int/en/documents/20190314/commission-statutes> accessed 20 February 2025.

¹²⁴ Constitutive Act of the African Union, art4(l), n40.

¹²⁵ <https://au.int/en/agenda2063/overview> accessed 10 January 2025.

¹²⁶ Solemn Declaration on Gender Equality in Africa (African Union, 2004), para 4 <https://au.int/en/documents/20200708/solemn-declaration-gender-equality-africa> accessed 2 January 2025.

¹²⁷ Ibid, para 7.

¹²⁸ Ibid, para 9.

Declaration commits Member States of the AU to submit annual progress reports on gender mainstreaming.¹²⁹ While the Solemn Declaration is not legally binding, all Member States of the Union are required to submit the progress reports, which are then synthesised and submitted to the AU Assembly.

105. The goal of the Strategy for Gender Equality and Women's Empowerment (2018-2028), which operationalises Aspiration 6 of Agenda 2063, is full gender equality in all spheres of life.¹³⁰ This goal cannot be realised fully when State Parties retain reservations to key provisions of the Maputo Protocol. The intended outcomes of pillar two of the Strategy, which is on dignity, security and resilience, include improving the sexual and reproductive health and reproductive rights of women, and criminalising all forms of violence against women and girls. The outcomes of pillar three of the Strategy include national laws and judicial systems that protect and fulfil women's ownership and inheritance rights, education, wage equality, civil liberties and physical integrity as provided for by the Maputo Protocol.¹³¹

106. The Maputo Plan of Action 2016-2030 for the Operationalisation of the Continental Policy Framework for Sexual and Reproductive Health and Rights seeks to realise universal access to comprehensive sexual and reproductive health services. The Plan's ten action areas are particularly significant in the discourse for withdrawing reservations to the Maputo Protocol. These include the action areas on political commitment, leadership and governance; health legislation; gender equality, empowerment of girls and women and respect for human rights; investing in sexual and reproductive health needs of adolescents, youth and other vulnerable populations; partnerships and collaborations; and monitoring, reporting and accountability. The Plan commits to provide sexual and reproductive health services along the continuum of care to all who need them, including couples, women of reproductive age, women beyond reproductive age, newborns, children, adolescents and youth and men in hard-to-reach areas, mobile

¹²⁹ Ibid, para 12.

¹³⁰ AU Strategy for Gender Equality and Women's Empowerment 2018-2028 (African Union) https://au.int/sites/default/files/documents/36195-doc-52569_au_strategy_eng_high.pdf accessed 2 January 2025.

¹³¹ Ibid.

and cross-border populations, and displaced persons.¹³² This commitment will be realised fully only if State Parties with reservations to Article 14 of the Maputo Protocol withdraw them.

107. The AU's Declaration and Call to Action on Positive Masculinity to End Violence Against Women and Girls in Africa commits to support the Chairperson of the AUC to implement the Maputo Protocol Scorecard and Index as a tool to accelerate the realisation of the rights of women and girls.¹³³

108. As well, the AU has, in collaboration with the United Nations Development Programme (UNDP) been undertaking a five-year project on accelerating the ratification and domestication of AU treaties.¹³⁴ However, no progress reports on the project, which was to end in 2024, have been published, and the success of the project is, therefore, unclear.

109. The African Peer Review Mechanism (APRM), a voluntary self-monitoring mechanism under which Member States of the AU monitor their peers to ensure policies and practices conform to agreed governance values, codes and standards, has used research and advocacy outputs towards ensuring the rights of women.¹³⁵ APRM monitors gender using indicators on gender-based violence, HIV/AIDS, harmful practices, and sexual and reproductive health.¹³⁶

110. A further relevant legal avenue is the African Charter on Democracy, Elections and Governance (ACDEG), whose objectives include promoting gender balance and equality

¹³² Maputo Plan of Action 2016-2030 for the Operationalisation of the Continental Policy Framework for Sexual and Reproductive Health and Rights (African Union) https://au.int/sites/default/files/pages/32895-file-maputo_plan_of_action_english.pdf accessed 2 January 2025.

¹³³ Declaration and Call to Action on Positive Masculinity to End Violence Against Women and Girls in Africa (African Union, 2021) <https://au.int/en/pressreleases/20211125/declaration-and-call-action-positive-masculinity-end-violence-against-women> accessed 2 January 2025.

¹³⁴ For example, see <https://www.undp.org/kenya/projects/accelerating-ratification-and-domestication-african-union-treaties> accessed 3 January 2025.

¹³⁵ See, for example, Gender Equality and The Africa Peer Review Mechanism (Economic Commission for Africa, 2016) <https://archive.uneca.org/publications/gender-equality-and-africa-peer-review-mechanism> accessed 10 January 2025.

¹³⁶ <https://africa.ippf.org/sites/africa/files/2018-09/SOAW-Report-Chapter-3-SRHR-in-the-AU-Framework.pdf> accessed 9 January 2025.

in the governance and development processes.¹³⁷ ACDEG obligates State Parties to eliminate all forms of discrimination, including those based on gender, and to adopt legislative and administrative measures to guarantee the rights of women.¹³⁸ ACDEG obligates State Parties to submit to the AUC biennial reports on measures taken to give effect to the principles and commitments of the Charter. The AUC submits a synthesis of these reports to the Executive Council.¹³⁹ Seven of the nine State Parties with reservations to the Maputo Protocol are also State Parties to ACDEG, i.e. Algeria, Cameroon, Ethiopia, Kenya, Namibia, SADR and South Africa.¹⁴⁰ However, none of them have submitted their reports for consideration.¹⁴¹

111. The Economic, Social and Cultural Council of the African Union (ECOSOCC) is an advisory organ of the Union constituted of CSOs from Member States. Its functions include forging partnerships between governments and all segments of the civil society, including women, and promoting the participation of African civil society in the implementation of the policies and programmes of the Union.¹⁴² ECOSOCC contributes to the promotion of human rights, the rule of law, good governance, democratic principles, gender equality and child rights.¹⁴³

112. Another important advisory agency of the AU is the African Union Commission of International Law (AUCIL), whose mandate includes proposing draft framework agreements, model regulations, formulations and analyses of emerging trends in State

¹³⁷ African Charter on Democracy, Elections and Governance (African Union, 2007) art2 <https://au.int/en/treaties/african-charter-democracy-elections-and-governance> accessed 21 February 2025.

¹³⁸ Ibid, art8.

¹³⁹ Ibid, art49.

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https://au.int/sites/default/files/treaties/36384-sl-AFRICAN_CHARTER_ON_DEMOCRACY_ELECTIONS_AND_GOVERNANCE.pdf accessed 20 February 2025.

¹⁴¹ For a review of the prospects and challenges of ACDEG's implementation, see Andrew Songa and Makda M Tessema, "Strengthening Democratic Governance in Africa Through State Reporting Under the African Charter on Democracy, Elections and Governance: Assessing the Prospects, Challenges and Pathways to Improved Compliance" (2024) 8 *African Human Rights Yearbook* <https://www.ahry.up.ac.za/images/ahry/volume8/Songa%20AHRY%202024.pdf> ACCESSED 20 FEBRUARY 2025.

¹⁴² Statutes of the Economic, Social and Cultural Council of the African Union (African Union, 2004) art2, <https://ecosocc.au.int/en/about/statutes#:~:text=The%20elections%20of%20the%20members,ages%20of%2018%20to%2035> accessed 9 January 2025.

¹⁴³ Ibid, art7.

practice to facilitate the codification and progressive development of international law.¹⁴⁴

Suggested approach towards withdrawing reservations

113. The Solemn Declaration as a platform for the withdrawal of reservations: The AU should provide directions on, facilitate and encourage State Parties to withdraw reservations to the Maputo Protocol. In particular, the Women, Gender and Youth Directorate of the AUC should use the reporting procedure under the Solemn Declaration as a basis for encouraging such States to withdraw the reservations, and encouraging Member States of the AU that are not party to the Maputo Protocol to become party to it. As well, the Specialised Technical Committee on Gender, Equality and Women's Empowerment, which is constituted by ministries of gender of AU member states, should include a standing agenda item on the withdrawal of reservations to the Maputo Protocol.
114. Information synthesis and dissemination by Office of Legal Counsel: The AUC should, through its Office of Legal Counsel, revamp a dynamic depository of all ratifications and reservations to African human rights instruments. The depository should include full information on all the reservations to the Maputo Protocol which any State Party has ever made, and information on when and which reservations have been withdrawn. More generally, whenever a Member State of the AU lodges an instrument of ratification or accession with the AUC, the AUC should communicate that fact in a timeous manner to all the Member States of the AU, to provide them ample opportunity to lodge objections if they so desire. The AUC too should publicise such reservations expeditiously, to provide Africa's stakeholders with ample participation opportunities.
115. The PRC: The PRC should specifically mandate its Sub-committee on Human Rights and Governance to support the withdrawal of reservations to the Maputo Protocol. The PRC should also partner with the African Commission to build the capacities of its members on human rights instruments, including on the meaning and implications of reservations.

¹⁴⁴ <https://au.int/en/auCIL/about> accessed 20 February 2025.

116. Gender indicators: The APRM should ensure that the gender indicators it uses in its reports capture the impacts of reservations to the Maputo Protocol and other human rights instruments.
117. ACDEG: The AU should, under the ACDEG framework, call on State Parties with reservations to the Maputo Protocol to withdraw them.
118. ECOSOCC: ECOSOCC should explore opportunities for engaging Member States of the AU on the withdrawal of reservations to human rights instruments, in line with its mandate.

Chapter 9: The Pan-African Parliament

Context

119. The Protocol to the Treaty Establishing the African Economic Community Relating to the Pan- African Parliament mandates PAP, among others, to promote the principles of human rights and democracy in Africa.¹⁴⁵ The Protocol enjoins PAP to make recommendations on matters pertaining to the respect of human rights, and to work towards the harmonisation or coordination of the laws of Member States of the African Economic Community.¹⁴⁶
120. In fulfilment of the above mandate, PAP is in the process of preparing the Model Law on Gender Equality and Equity, with the involvement of other AU organs and agencies, including ECOSOCC and RECs.¹⁴⁷ As already stated, PAP is also collaborating with the Special Rapporteur to develop a Model Law on Implementing and Domesticating the Maputo Protocol.

Suggested approach towards withdrawing reservations

121. Model law: PAP should develop a model law on the ratification of human rights treaties, including the withdrawal of reservations to such instruments. The Model Law on the Implementation and Domestication of the Maputo Protocol being prepared by the Special Rapporteur in collaboration with PAP should include guidance on the withdrawal of reservations to the Maputo Protocol.

¹⁴⁵ Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament (Organisation of African Unity, 2001) art1 <https://au.int/sites/default/files/treaties/36301-sl-Protocol%20to%20the%20Treaty%20Establishing%20the%20African%20Economic%20Community%20Relating%20to%20the%20Pan-African%20Parliament.pdf> accessed 8 January 2025.

This Protocol will be replaced by the Protocol to the Constitutive Act of the African Union Relating to the Pan-African Parliament, adopted by the AU in 2014, when a simple majority of Member States of the AU deposit their instruments of ratification with the AUC. <https://au.int/en/treaties/protocol-constitutive-act-african-union-relating-pan-african-parliament> accessed 8 January 2025.

¹⁴⁶ Protocol to the Treaty Establishing the African Economic Community Relating to the Pan- African Parliament, art11, *ibid*.

¹⁴⁷ For example, see <https://pap.au.int/en/news/press-releases/2024-04-25/pan-african-parliament-moves-one-step-closer-landmark-model-law> accessed 8 January 2025.

122. Additional interventions: PAP should use its resolutions to call on State Parties to withdraw their reservations to the Maputo Protocol. PAP's Committee on Gender, Family, Youth and People with Disability should also be seized with this matter.

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Chapter 10: Regional Economic Communities

Context

123. The AU recognises the following eight RECs: the Arab Maghreb Union (AMU), Community of Sahel- Saharan States (CEN- SAD), Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), Intergovernmental Authority on Development (IGAD), and Southern African Development Community (SADC).
124. Some RECs have established significant policy and regulatory gender frameworks.
125. The SADC Protocol on Gender and Development provides for many of the matters also legislated in the Maputo Protocol. These include affirmative action, marriage and family rights, the rights of widows and widowers, the girl and boy-child, gender equality, access to property and resources, and health.¹⁴⁸ The SADC Protocol forms an important basis for assessing the extent to which women exercise many of the rights on which some State Parties to the Maputo Protocol have made reservations.¹⁴⁹
126. The SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage,¹⁵⁰ and the SADC Model Law on Gender-Based Violence,¹⁵¹ urge Member States of SADC to ratify and domesticate international human rights instruments without undue delay, and to withdraw reservations to such instruments.
127. Some RECs have established judicial organs that enforce the ACHPR and, by extension, the Maputo Protocol. The Economic Community of West African States

¹⁴⁸ Southern Africa Development Community (SADC) Protocol on Gender and Development (Southern Africa Development Community, 2004) https://www.sadc.int/sites/default/files/2021-08/Protocol_on_Gender_and_Development_2008.pdf accessed 9 January 2025.

¹⁴⁹ For example, see the 15th edition of the SADC Gender Protocol Barometer, launched in 2024 <https://genderlinks.org.za/what-we-do/sadc-gender-protocol/sadc-protocol-barometer/> accessed 9 January 2025.

¹⁵⁰ Southern Africa Development Community Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage (Southern African Development Community Parliamentary Forum, 2016) <https://www.veritaszim.net/node/1868> accessed 2 January 2025.

¹⁵¹ SADC Model Law on Gender-Based Violence https://www.unodc.org/documents/southernafrica/Publications/CriminalJusticeIntegrity/GBV/SADC_Gender_based_Violence_Model_Law.pdf accessed 10 January 2025.

Community Court of Justice (ECOWAS Court) has express human rights mandate.¹⁵² The ECOWAS Court has used the Maputo Protocol to make significant determinations on the rights of women. In 2019, in *Dorothy Njemanze and 3 Others v Nigeria, the ECOWAS Court determined that Nigeria had violated the rights of women who it had treated violently assuming they were sex workers.*¹⁵³ In 2020, in *Women Against Violence and Exploitation in Society (WAVES) v Sierra Leone*, the ECOWAS Court determined that stopping pregnant girls from attending mainstream schools was discriminatory and in violation of human rights instruments including the Maputo Protocol. The Court found that there was no reasonable basis for singling out the pregnant girls for differential treatment. Sierra Leone had failed to put in place measures to reduce teenage pregnancy, and it had discriminated against pregnant girls by establishing parallel suboptimal schools where the girls would learn only four subjects for three days a week.¹⁵⁴

Suggested approach towards withdrawing reservations

128. Withdrawal of reservations: RECs should encourage and support their Member States to withdraw reservations to the Maputo Protocol.
129. Judicial mechanisms: The judicial mechanisms of RECs should, when approached, consider providing interpretation on the validity or invalidity of country-specific reservations.
130. Resolutions and model laws: The parliaments of RECs should adopt resolutions on the withdrawal of reservations to the Maputo Protocol.

¹⁵² In 2005, ECOWAS amended Article 9 of the Protocol on the Community Court of Justice, among others, to provide the Economic Community of West African States Community Court of Justice with jurisdiction to determine cases of the violation of human rights occurring in any member state.

Supplementary Protocol A/SP.1/01/05 Amending the Preamble and Articles 1, 2, 9 and 30 of Protocol A/P.1/7/91 Relating to the Community Court of Justice and Article 4 Paragraph 1 of the English Version of the said Protocol http://www.courtecowas.org/wp-content/uploads/2018/11/Supplementary_Protocol_ASP.10105_ENG.pdf accessed 21 February 2025.

¹⁵³ For a critical review of this decision, see Ciara O’Connell, “Reconceptualising the first African Women’s Protocol case to work for all women” (2019) 19 *African Human Rights Law Journal* 510- 533 <https://www.ahrj.up.ac.za/o-connell-c> accessed 20 February 2025.

¹⁵⁴ https://equalitynow.org/news_and_insights/victory_for_girls_in_sierra_leone/ accessed 20 February 2025.

131. CSO networks: Civil society networks in RECs, such as the ECOWAS CSOs Network and the East African CSO Forum, should play proactive roles in advocating for the withdrawal of reservations.

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Chapter 11: International Human Rights Mechanisms

Context

132. 52 AU Member States are State Parties to CEDAW, of which 11 States have lodged reservations and declarations on CEDAW. These include three States which also have reservations to the Maputo Protocol - Algeria, Ethiopia and Mauritius.¹⁵⁵ The CEDAW Committee has urged these States to withdraw their reservations to the Convention.
133. The Committee has stated that Algeria's reservations to articles 2 and 16 of CEDAW are contrary to the object and purpose of the Convention, and thus impermissible under Article 28 (2) of CEDAW.¹⁵⁶ It has called on Algeria to expedite legislative reforms, especially of the Family Code, so that it may withdraw its reservations to Articles 2, 15(4) and 16 of CEDAW.¹⁵⁷
134. The CEDAW Committee has called on Ethiopia to remove the exception to the minimum age for marriage; to harmonize the legal provisions on bigamous and polygamous marriage at the federal level; and to remove its reservations to the Maputo Protocol regarding marital rape and polygamy.¹⁵⁸
135. The CEDAW Committee has called on Mauritius to fully implement Section 12A of the Criminal Code, including through the adoption of clear regulations and protocols for hospitals and health-care practitioners, and raise awareness among women and health-care providers regarding access to legal abortion and post-abortion care.¹⁵⁹ The

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<https://www.un.org/womenwatch/daw/cedaw/reservations.htm#:~:text=The%20Convention%20permits%20ratification%20subject,in%20other%20human%20rights%20treaties> accessed 10 January 2025.

¹⁵⁶ CEDAW Committee, "Concluding observations of the Committee on the Elimination of Discrimination against Women - Algeria" CEDAW/C/DZA/CO/3-4 23 March 2012, para 13, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FDZA%2FCO%2F3-4&Lang=en

¹⁵⁷ Ibid, para 14 (b).

¹⁵⁸ CEDAW/C/ETH/CO/8: Concluding Observations on the Eighth Periodic Report of Ethiopia by the Committee on the Elimination of Discrimination against Women (2019) para 58 <https://www.ohchr.org/en/documents/concluding-observations/cedawcethco8-concluding-observations-eighth-periodic-report> accessed 8 February 2025.

¹⁵⁹ CEDAW/C/MUS/CO/8 "Concluding Observations on the Eighth Periodic Report of Mauritius" (14 November 2018), para 28 (b) <https://www.ohchr.org/en/documents/concluding-observations/cedawcmusco8-concluding-observations-eighth-periodic-report> accessed 10 February 2025.

Committee has also asked Mauritius to collect data and provide information on access to legal abortion and on the number of women and girls resorting to unsafe abortions;¹⁶⁰ and adequately train medical personnel to ensure specialized attention and care for women and girls who are victims of sexual violence, including the provision of essential services for emergency contraception and abortion.¹⁶¹

136. Some international treaty supervision mechanisms have issued authoritative statements on reservations to human rights instruments. In its 1998 Statement on Reservations, the CEDAW Committee stated that Articles 2 and 16 of CEDAW were core provisions of the Convention, and hence that making reservations to them was incompatible with the purpose and object of the Convention.¹⁶²

Suggested approach towards withdrawing reservations

137. Engagements with State Parties: International human rights mechanisms that supervise the implementation of instruments with provisions of equivalence to the Maputo Protocol, such as the CEDAW Committee, should engage with State Parties, make determinations and take other actions for the States to withdraw reservations to women's rights instruments.
138. The Universal Periodic Review Mechanism and Special Procedures mandate-holders: The Universal Periodic Review (UPR) Working Group, and other mechanisms of the Human Rights Council, notably relevant Special Procedures mandate-holders, should take more robust and specific actions urging individual states to withdraw reservations to women's rights instruments.

¹⁶⁰ Ibid, para 28 (c).

¹⁶¹ Ibid, para 28 (f).

¹⁶² A/53/38/Rev.1, Statements on reservations to the Convention on the Elimination of All Forms of Discrimination against Women adopted by the Committee on the Elimination of Discrimination against Women <https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/Reservations-English.pdf> accessed 10 January 2025.

Chapter 12: National Human Rights Institutions

Context

139. NHRIs play unique roles as independent state actors for the promotion and protection of human rights. Domestic and international actors, including development partners, rely on reports issued by NHRIs to assess state accountability on human rights. NHRIs have indeed provided advice to State Parties to the Maputo Protocol recommending the withdrawal of reservations.¹⁶³
140. At least 36 of the continent's NHRIs and Equality Commissions have affiliate status with the African Commission.¹⁶⁴ Affiliate status with the African Commission enables NHRIs to address the Commission during its ordinary sessions, and to submit biennial reports to it.
141. At the continental level, the Network of African National Human Rights Institutions (NANHRI) organises regular meetings of NHRIs on the sidelines of ordinary sessions of the African Commission. These meetings discuss themes relevant to the promotion and protection of human rights on the continent.

Suggested approach towards withdrawing reservations

142. Leveraging specific mandates: NHRIs should leverage their specific mandates as independent state organs to encourage State Parties to the Maputo Protocol to withdraw their reservations. In that regard, they should partner with CSOs.
143. Use of forums and platforms: NHRIs, including NANHRI, should use their forums and platforms to strategize on the withdrawal of reservations to the Maputo Protocol. They should use shadow or alternative reports to the African Commission and statements

¹⁶³ See, for example, Advisory on the Removal of Kenya's Reservation on Article 14 (2) (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Kenya National Commission on Human Rights, 2021) <https://www.knchr.org/Portals/0/Final%20KNCHR%20Advisory%20on%20removal%20of%20reservation%20under%20Article%2014%20%282%29%20%28c%29%20of%20the%20Maputo%20Protocol.pdf> accessed 10 January 2025.

¹⁶⁴ "54th and 55th Activity Reports of the African Commission on Human and Peoples' Rights" (African Commission on Human and Peoples' Rights, 2024) para 43 [https://achpr.au.int/en/documents/2024-03-08/54th-55th-combined-activity-reports#:~:text=The%2054th%20and%2055th%20Combined,the%20African%20Charter\)%20and%20cover](https://achpr.au.int/en/documents/2024-03-08/54th-55th-combined-activity-reports#:~:text=The%2054th%20and%2055th%20Combined,the%20African%20Charter)%20and%20cover) accessed 21 February 2025.

during sessions of the Commission to call on State Parties to withdraw reservations to the Maputo Protocol. They should also use their statutory reports to make similar recommendations. Additionally, they should collaborate with CSOs in conducting research, since their data/reports are given due consideration by relevant actors.

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Chapter 13: Civil society organisations

Context

144. Domestic and international CSOs have a track-record of advocating for the adoption, domestication and implementation of the Maputo Protocol. CSOs have undertaken research and advocacy on the impacts of reservations to the Maputo Protocol. They have also used shadow or alternative reports to address the violation or abuse of women's rights.
145. CSOs play significant roles in influencing continental policies and programmes on gender. For example, significant interventions have been made under the Gender is My Agenda Campaign (GMAC), which provides CSOs a platform for monitoring implementation of the Solemn Declaration. The SOAWR Coalition has also played critical roles in the campaign for the full ratification of the Maputo Protocol and its domestication and implementation.¹⁶⁵

Suggested approach towards withdrawing reservations

146. Research: CSOs should undertake research to enable them to understand the in-country dynamics that trigger State Parties to the Maputo Protocol to lodge reservations. They should investigate the reasons for and contexts within which specific reservations were made.
147. Mapping the terrain and impact of reservations: CSOs should map the terrain and the effects/impacts of reservations to women's rights and, complement the mapping with documented survivor stories, as lived experiences can be a powerful advocacy tool to leverage the support of the media and members of parliament. In mapping the pro and anti-reservations terrain, CSOs should explore the questions: Who has power? Which is the right office? Which argument should I use?
148. Using targeted approaches and arguments: CSOs should employ targeted approaches and arguments to appeal to different demographic groups on the importance of withdrawing reservations to the Maputo Protocol. As well, they should

¹⁶⁵ See, for example, <https://soawr.org/maputo-at-20/> accessed 21 February 2025.

identify champions and networks. Even relatively junior government officials may have more influence than more senior government officials. While certain sectors of society may be approached using the human rights framework of analysis, other groups may be reached using a values framework of analysis. For example, increased deaths of women and girls because of reservations to the Protocol may resonate with faith-based groups concerned about the right to life. CSOs should engage with rather than simply dismiss arguments that are contrary to their perspectives.

149. Undertaking capacity-building and awareness-raising: CSOs should undertake capacity-building initiatives for State officials, and they should undertake awareness-raising campaigns for the public.
150. Advocating for law reform: CSOs should leverage law reform processes to make the case for the repeal or revision of laws that undermine women's rights.
151. Leveraging opportunities: CSOs should identify key high-level forums taking place in their countries onto which they can link their campaigns. They should also leverage international institutions and development partners based in their countries. UN partner institutions such as UNDP work with states on a regular basis and, as such, have influence which they may bring to bear on the withdrawal of reservations.
152. Social media: CSOs should systematically use social media to highlight the impacts of reservations to the Maputo Protocol and, thereby, to put pressure on State Parties with reservations to the Protocol. They should commemorate international and national celebrations such as the International Women's Day by reaching out to relevant national actors.
153. Information hubs: CSOs should establish hubs to share current information on ongoing judicial efforts and decisions across the different levels of courts and tribunals on the continent.
154. Shadow or alternative periodic reports: CSOs should submit shadow or alternative reports to relevant treaty bodies (such as the African Commission, the Committee of Experts, and the CEDAW Committee).

155. Collaboration with Special Mechanisms: CSOs should identify and engage with mandate-holders of Special Mechanisms. CSOs should provide these Mechanisms with credible information.
156. Strategic litigation: CSOs should file triable communications/cases before the African Commission, the Committee of Experts, the African Court, and tribunals of RECs, as appropriate, to seek remedies for women and girls whose rights are impacted by reservations and, while doing so, move those legal bodies to declare such reservations as incompatible with the object and purpose of the relevant human rights instruments.
157. Special Rapporteur. CSOs should partner with and facilitate the Special Rapporteur when the Rapporteur undertakes advocacy visits on the withdrawal of reservations to the Maputo Protocol. CSOs should leverage their fund-raising capacities to enable the Special Rapporteur to undertake such visits, noting that the African Commission tends not to have adequate resources under its AU budget to support many such visits.

Conclusion

158. This Advisory Framework has provided guidance to State Parties to the Maputo Protocol and other stakeholders on the standards and process for withdrawing reservations to the Protocol. By implementing or taking account of some or many of the proposals made in the Advocacy Framework, stakeholders across the continent will facilitate the full implementation of the Maputo Protocol.
159. In the past two decades, the key priority towards ensuring the rights of women in Africa has been anchored on ensuring the full ratification and domestication of the Maputo Protocol. While this priority has not been realised fully, the AU and its Member States as well as non-state actors on the continent have taken significant strides towards ensuring the rights of women. The priority for the next few years needs to focus more on ensuring the full implementation of the Maputo Protocol. Effective implementation of the Protocol is contingent on the withdrawal of reservations. Moving forward, it is incumbent on State Parties to the Maputo Protocol, the organs that supervise implementation of the Protocol, and non-state actors to employ concerted and accountable means to achieve the withdrawal of the reservations.

Annex: Resolution on the Need to Raise Awareness for States to Withdraw Reservations on some Provisions of the Maputo Protocol

- ACHPR/Res.632 (LXXXII)

The African Commission on Human and Peoples' Rights (the Commission) convened at its 83rd Ordinary Session from 25 February to -11 March 2025.

Recalling the Commission's mandate to promote and safeguard human and peoples' rights in Africa, as outlined in Article 45 of the African Charter on Human and Peoples' Rights (the African Charter);

Considering Article 45 of the African Charter entitles the Commission to formulate and lay down principles and rules to solve legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.

Reaffirming the principles enshrined in Article 4 of the Constitutive Act of the African Union (AU), particularly Article 4 (I), which highlights the promotion of gender equality;

Recognizing the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) and the positive impact its effective implementation and domestication would bring to the lives of African women, as well as the advancement of gender equality across the continent;

Acknowledging that some State Parties to the Maputo Protocol have made reservations on certain provisions of the Protocol, limiting the full realization of the rights and protections guaranteed under the Protocol;

Taking into account that certain reservations made to the Protocol undermine its fundamental purpose and essence, thereby impeding its capacity to provide effective and substantial safeguarding of women's rights throughout the continent;

Recognizing the critical significance of guaranteeing the complete realization of all articles of the Maputo Protocol, without any reservations, to fulfill its goals of advancing gender equality and safeguarding women's rights in Africa;

Emphasizing the necessity of promoting and assisting States that have not yet ratified the Maputo Protocol to do so without reservations, to guarantee that every African woman can avail herself of the entirety of the Protocol's provisions;

Acknowledging the imperative for an Advocacy Framework to raise awareness about reservations of certain provisions of the Maputo Protocol and the need to guarantee the universal application of its provisions to enable women across Africa to access its protections fully;

Reiterating the AU's dedication to the complete and efficient enforcement of the Maputo Protocol as a pivotal tool for advancing women's empowerment and achieving gender equality in Africa;

The Commission decides to:

1. Develop a Framework for Advocacy to raise awareness for lifting Reservations on some provisions of the Maputo Protocol.
2. Direct the Special Rapporteur on the Rights of Women in Africa to develop the Advocacy Framework in collaboration with relevant Partners and other stakeholders.

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