

# The Maputo protocol: A guide for non-lawyers

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The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa<sup>1</sup> – most commonly referred to as the *Maputo Protocol* after the city in Mozambique where it was adopted – is one of the world's most progressive human rights treaties providing a comprehensive set of human rights for women in Africa. This briefing note outlines the framework of the Protocol, the rights it protects and the obligations of States Parties under the Protocol.

- 1** The Maputo Protocol was adopted to address the fact that despite the ratification of the African Charter on Human and People's Rights and other international human rights treaties, women in Africa continue to be victims of discrimination and harmful practices (Preamble to the Protocol). The limitations of the African Charter in relation to the rights of women included the failure to explicitly define discrimination against women; lack of guarantees around the right to equality in marriage; and an emphasis on traditional values and practices which often undermined women and girls' rights.<sup>2</sup>
- 2** The Maputo Protocol was adopted by the African Union in 2003 and entered into force in 2005 following the required number of 15 ratifications<sup>3</sup> by State Parties. Today, the Maputo Protocol has been ratified by 42 African States. The principles and rights set out in the Protocol reflect and significantly advance international standards on women's rights. The Protocol was the first binding human rights treaty to explicitly address sexual and reproductive rights and include provisions on the right to a medical abortion, women's rights in the context of HIV/AIDS and the prohibition of harmful practices.

## STATE OBLIGATIONS

- 3** Under the Protocol,<sup>4</sup> States Parties must take all appropriate legislative, institutional, budgetary and other measures to combat all forms of discrimination and harmful practices against women, including:
  - + Including in their national constitutions and domestic law the principle of equality between women and men and ensuring its effective application
  - + Introducing legislation or regulations to prohibit all forms of discrimination and harmful practices<sup>5</sup> and taking corrective and positive action in those areas where discrimination against women in law and in fact exists
  - + Modifying the cultural patterns of conduct of women and men through public awareness and education strategies aimed at eliminating harmful cultural and traditional practices and harmful gender stereotyping
  - + Integrating a gender perspective in their legal and policy decisions, programmes and plans
  - + Supporting national, regional and international initiatives aimed at eliminating all forms of discrimination against women

1 The text of the Maputo Protocol is available at: [https://www.un.org/en/africa/osaa/pdf/au/protocol\\_rights\\_women\\_africa\\_2003.pdf](https://www.un.org/en/africa/osaa/pdf/au/protocol_rights_women_africa_2003.pdf).

2 S. Omondi, E. Waweru and D. Srinivasan, *Breathing Life into the Maputo Protocol: Jurisprudence on the Rights of Women and Girls in Africa*, Equality Now, 2018.

3 Ratification means the international act whereby a State formally consents to be bound by the terms of a treaty.

4 Article 2.

5 Article 5.

## RIGHTS PROTECTED

- 4** The Maputo Protocol protects women's human rights across the spectrum of civil, political, social, economic, cultural, environmental and sexual health rights, including:
- + The right to dignity and respect as a person and to be protected from all forms of violence (Article 3)
  - + The right to life and the integrity and security of her person (Article 4)
  - + The enjoyment of equal rights and to be regarded as equal partners in marriage, separation, divorce and annulment of marriage (Articles 6 and 7)
  - + The right to equality before the law and to the equal protection and benefit of the law (Article 8)
  - + The right to participate in the political and decision-making process (Article 9)
  - + The right to education and training and the right to equal opportunities in work and equal remuneration for work of equal value (Articles 12 and 13)
  - + The right to health and reproductive rights, including the right to control her fertility, the right to decide whether to have children, the right to choose any method of contraception, the right to self-protection and to be protected against sexually transmitted infections, including HIV/ AIDS (Article 14)
  - + The right to a healthy and sustainable environment (Article 18)
  - + The rights of widows to become the automatic guardian and custodian of her children on the death of her husband; to inherit an equitable share of her husband's property; and to have the right to remarry (Articles 20 and 21)

The Protocol sets out special protections for elderly women, women with disabilities and women in distress (including women heads of households from marginalised populations, pregnant or nursing women and women in detention).

## MONITORING AND IMPLEMENTATION

- 5** States Parties are required to report on the steps taken to implement the Protocol as part of their wider reporting obligations under Article 62 of the African Charter to report on the measures taken to give effect to the rights and freedoms guaranteed under the African Charter.<sup>6</sup> The African Union Commission's Women, Gender and Development Directorate reported in June 2020 that whilst 42 Member States have ratified the Maputo Protocol, only nine member states have submitted reports on implementation of the Protocol.

<sup>6</sup> Article 26 of the Maputo Protocol.

## IMPACT OF THE MAPUTO PROTOCOL

- 6** Since its adoption over 15 years ago, the Maputo Protocol has made a significant impact, influencing the introduction of a number of progressive and innovative laws, policies and institutional mechanisms at the domestic level in several States. These include:
- + The adoption of a family code on gender equality in Benin that prohibits polygamy and provides for equal access to rights for children regardless of their status
  - + The adoption of the Registration of Customary Marriage and Divorce Act in Sierra Leone which protects women from customary forced marriages
  - + The Promotion of Equality and Prevention of Unfair Discrimination Act in South Africa which guarantees women equal protection and benefit of the law<sup>7</sup>
- 7** Positive policy developments following the adoption of the Maputo Protocol include:
- + Algeria's introduction of the solidarity school bonus for students from disadvantaged communities and distribution of free books and uniforms to promote girls' education and women's literacy
  - + Ethiopia's establishment of a Health Extension Programme which deploys Health Workers to communities in order to reduce maternal and child mortality
  - + Tunisia's creation of a programme which provides financial support to women's projects<sup>8</sup>
- 8** In addition to legislative and policy measures, several African Union countries have also established national machineries to promote and protect the rights of women, including Gender Equality or Equal Opportunity Commissions in Uganda, Kenya, Rwanda, South Africa and Zimbabwe.<sup>9</sup>

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<sup>7</sup> 'Maputo Protocol on Women's Rights: A Living Document for Women's Rights in Africa', Women, Gender and Development Directorate of the African Union Commission (AU Commission WGDD Report), available at: [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](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).

<sup>8</sup> AU Commission WGDD Report.

<sup>9</sup> AU Commission WGDD Report.