



ACHPR
African Commission on
Human and Peoples' Rights

77th Ordinary Session



Side Event Concept Note

THEME

20 YEARS OF THE MAPUTO PROTOCOL

Assessing its impact on SRHR Litigation and
Non-Communicable Diseases in Africa



MONDAY 23RD OCTOBER 2023



Arusha International
Conventional Center K 105, Kilimanjaro Wing, 1st Floor

The Protocol to the African Charter on Human and People's Rights on the Rights of Women (Maputo Protocol) was adopted in July 2003 in Maputo Mozambique.¹ It is often regarded as a very radical and progressive instrument recognizing a range of human rights of women. The Maputo Protocol has been regarded as a trail blazing instrument for the advancement of women's rights in Africa. It broke new grounds through the explicit recognition of the right to sexual and reproductive health of women and the protection of women's rights to equality and non-discrimination. Several provisions of the Protocol address issues affecting the fundamental rights and freedoms of women such as violence, non-discrimination, dignity, harmful practices, property and other socio-economic rights. So far, about 46 African countries have ratified the Protocol, which is still a far cry from universal ratification.

By far, the most important provision detailing the rights to sexual and reproductive health of women is guaranteed in article 14 of the Protocol. This provision contains a number of firsts. It is the first to explicitly protect women from sexually transmitted infection, including HIV from a rights-based perspective. More importantly, it is the first to allow women to seek abortion on specific grounds. These provisions have presented opportunities for civil society groups including activists to hold states accountable with regard to the sexual and reproductive health and rights (SRHR) of women. The provisions of the Protocol on SRHR intersects with the prevention and treatment of non-communicable diseases (NCDs) for women. NCDs remain one of the biggest challenges facing women in Africa. The major five NCDs facing women in the region include cardiovascular diseases (CVDs), diabetes, cancer, chronic respiratory diseases (CRDs) and mental health and neurological conditions.

So far, the African Commission on Human and Peoples' Rights has issued three general comments in relation to the Maputo Protocol. These include General Comment 1 on article 14 (1) (d) and (e),² General Comment 2 on article 14 (1) (a),(b), (c)and (f) and (2) (a) and (c)³ and more recently General Comment 6 on article 7 of the Protocol in relation to women's right to property.⁴ These general comments have provided authoritative guidance on the obligations of states with regard to the provisions of the Protocol. No doubt this will serve as benchmarks for monitoring states' obligations to implement the provisions of these provisions of the Protocol. More importantly, the general comments will help in holding states accountable to their obligations under the Protocol.

As we celebrate the 20 years of the adoption of the Protocol this year, it is necessary to assess the influence of its provisions in advancing sexual and reproductive health and rights litigation and NCDs, nationally and regionally. At the regional level, very few cases have been submitted to the African Commission and Court specifically on the provisions of the Maputo Protocol. There is a pending communication before the African Commission against Nigeria in relation to the right to maternal healthcare under the Maputo Protocol.⁵ With regard to the Court, the case against Mali has been applauded

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- 1 The Protocol to the African Charter on the Rights of Women in Africa adopted by the African Union (AU) in 2003 entered into force on 27 November 2005
- 2 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 adopted by the African Commission on Human and Peoples' Rights during its 52nd Ordinary Session in November 2012.
- 3 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 adopted by the African Commission on Human and Peoples' Rights during its 54th Ordinary Session in November 2014.
- 4 General comment no. 6 on the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol): The Right to Property during Separation, Divorce or Annulment of Marriage (article 7(d)), adopted at the 27th Extra Ordinary Session of the African Commission on Human and Peoples' Rights, held from 19 February to 4 March, 2020 in Banjul, Gambia
- 5 See *Community Law Centre (Dullah Omar Institute) and others v Nigeria*

for the progressive stance in addressing harmful practices and other human rights violations of women and girls under the Maputo Protocol.⁶ This is a clear indication that the provisions of the Maputo Protocol have not been explored fully to advance women's rights in the region.

A study to assess the nature of domestication and impact of the Maputo Protocol has revealed mixed result. While in some countries the Protocol has to some extent been domesticated and effectively implemented, in others the domestication process is slow and impact of the Protocol uncertain.⁷ Recent developments in some countries such as Kenya, Uganda, Malawi and South Africa have shown increase in SRHR litigation to address gaps in laws and policies with a view to addressing human rights violations against women and girls. Some of the cases have invoked the provisions of the Maputo Protocol as part of the strategy to hold states accountable. This positive development deserves further engagement and analysis.

Against this backdrop, the Afya na Haki, KELIN and the Dullah Omar Institute, University of the Western Cape propose a side event during the 77th Ordinary Session of the African Commission on Human and Peoples' Rights to assess the impact of the Maputo Protocol on SRHR litigation and NCDs at the national and regional levels.

> **Objectives of the Side Event**

- ② To assess the impact of the Maputo Protocol as a standard-setting norm on SRHR litigation and NCDs in Africa
- ② To examine the potential of the Maputo Protocol for SRHR litigation and NCDs in the region
- ② To examine the barriers to SRHR litigation and NCDs at the regional and national levels
- ② To share experiences across the countries on the impact of the Maputo Protocol on SRHR litigation and NCDs in Africa
- ② To discuss possible ways of effectively utilizing the Maputo Protocol for SRHR litigation and NCDs in the region

> **Expected Outcomes**

- ② More awareness about the influence of the Maputo Protocol in SRHR litigation and NCDs in the region
- ② Attempts at invoking the provisions of the Maputo Protocol for SRHR litigation and NCDs in the region
- ② Renewing of efforts to litigate on SRHR, including NCDs, issues using the Maputo Protocol
- ② Network of civil society groups working towards SRHR litigations and NCDs using the Maputo Protocol

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6 APDF and IHRDA v Mali
7 Center for Human Rights



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