

Chapter 3

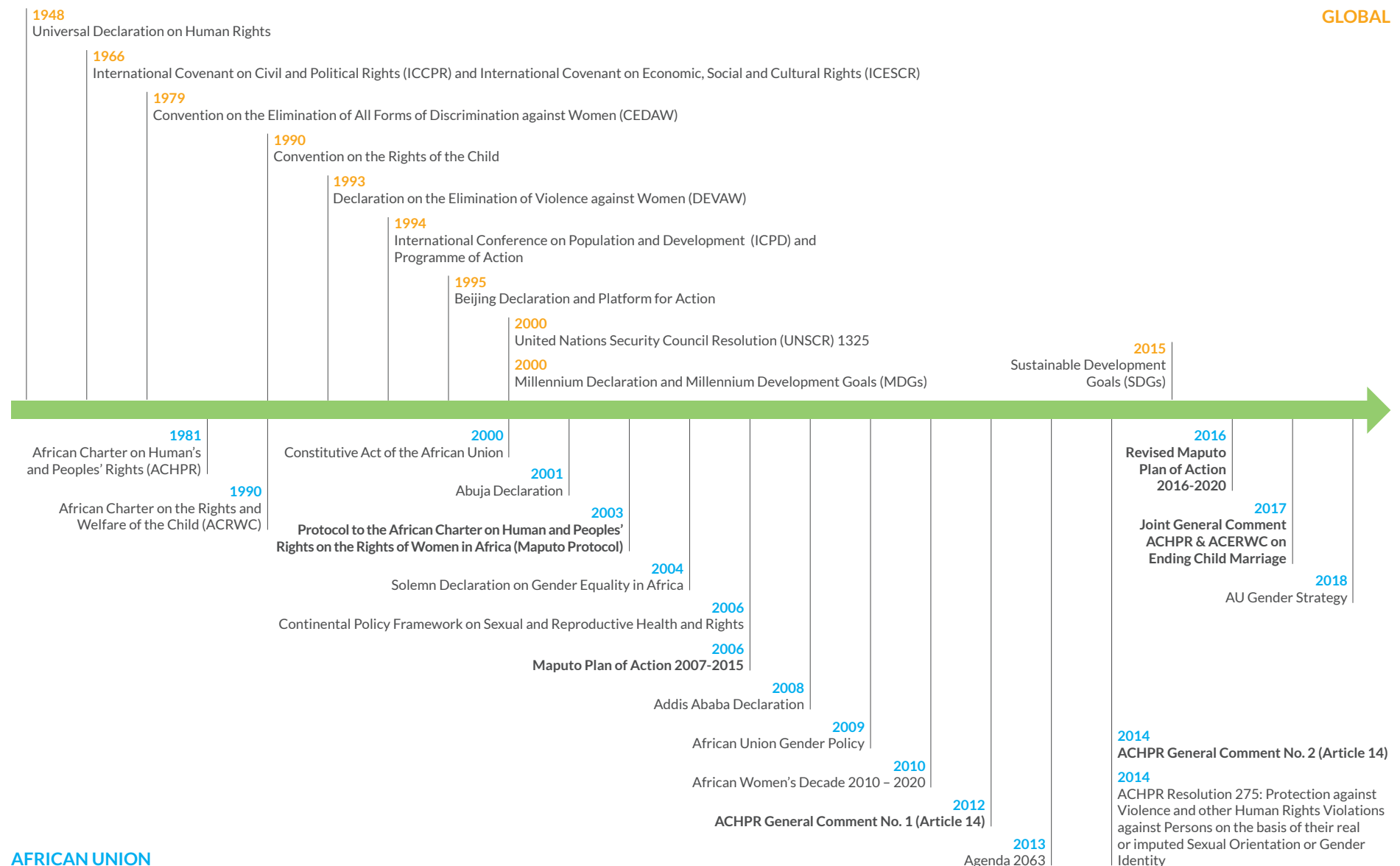
Women and girls' rights and SRHR in the African Union framework

What normative and institutional frameworks exist at the African continental level for the promotion and realisation of women and girls' rights and SRHR? This chapter offers an overview of these, in four main sections. Section 3.1 provides an overview of the normative frameworks. It starts with the Maputo Protocol and takes a brief look at the Solemn Declaration on Gender Equality in Africa. It then introduces the Continental Policy Framework on SRHR and the Maputo Plan of Action. This is complemented by a brief introduction of the African Charter on the Rights and Welfare of the Child and the African Youth Charter. This is followed by a review of the AU Gender Strategy, which is to be adopted in 2018. Figure 3.1 offers a graphic overview of the key continental as well as global commitments on women and girls' rights and SRHR.

Section 3.2 takes a closer look at the significance of the Maputo Protocol. It discusses the comprehensiveness of the Protocol and introduces the three General Comments that have been elaborated in relation to it. This section also looks at the status of signing and ratification, at reservations made by member states and at state periodic reporting.

Section 3.3 of the chapter then turns the spotlight on Africa Women's Decade and highlights key campaigns that have been initiated to promote and realise gender equality and women and girls' rights. Section 3.4 provides an overview of the institutional framework at the AU. It introduces the gender equality and women's rights actors and bodies and also reflects on the mandate of the ACHPR to protect and promote women and girls' rights.

Figure 3.1. Timeline of key frameworks for women and girls' rights and SRHR at the global and AU level



Key insights on women and girls' rights and SRHR in the AU Framework

The AU has a strong and comprehensive normative and institutional framework on gender equality and women and girls' rights, one that continues to evolve and become stronger. The **Solemn Declaration on Gender Equality in Africa**, the **Maputo Protocol** and the soon to be adopted **AU Gender Strategy** are key components of this normative framework. **Africa Women's Decade** is also important to furthering gender equality and women and girls' rights, and so are the continental Campaigns on Ending Child Marriage (CECM), Maternal Mortality (CARMMA) and Gender Is My Agenda (GIMAC) and the recently launched Free to Shine.

The **Maputo Protocol** is a ground-breaking protocol on women and girls' rights, which was adopted in 2003 and came into force in 2005. It includes 32 articles and an explicit definition of discrimination against women, and pays specific attention to vulnerable and marginalised women and girls.

Civil society and women's rights and feminist organisations have played a key role in the formulation and adoption of the Maputo Protocol. Since its adoption, they have proven critical players in further ratification, domestication, implementation and popularisation of the Protocol.

The Continental Policy Framework on SRHR, and its translation into the **Maputo Plan of Action (MPoA)**, offer guidance to African states on the implementation of the ICPD Programme of Action (UN 1994), as well as the Abuja Declaration (AU 2001).

The Maputo Protocol is progressive in many areas, including rights areas of central concern to women and girls in terms of SRHR. The Maputo Protocol has strong provisions regarding GVAW, harmful practices, FGM, child marriage, reproductive rights and SRH, access to safe abortion, and HIV and AIDS.

The African Commission on Human and Peoples' Rights (ACHPR) has developed **General Comments** as well as **Guidelines** on specific topics, to provide interpretative guidance to member states on the Maputo Protocol provisions and the required state response on women and girls' rights.

Fifty-two countries have signed the Maputo Protocol; of these, forty countries have **ratified** it. Seven countries have ratified with reservations, often concerning women and girls' rights on SRHR issues, especially in relation to marriage or access to safe abortion.

The 12 countries that have not (yet) ratified the Maputo Protocol are Burundi, CAR, Chad, Ethiopia, Eritrea, Madagascar, Niger, Somalia, Sudan, Tunisia, Western Sahara and São Tomé and Príncipe. Three countries have not signed the Protocol: Botswana, Egypt and Morocco.

At the end of 2017, nine countries had reported on implementation of the Maputo Protocol; **state reporting** can be strengthened using the *Guidelines for State Reporting under the Maputo Protocol*.

Implementation of the MPoA is affected by weak political commitment and leadership, inadequate financing for health and high donor dependency, as well as inadequate health legislation, weak health systems and limited empowerment of women and girls.

Implementation of the Maputo Protocol has been affected by continued contestations related to women and girls' rights and **culture and patriarchal norms** and structures, which are frequently invoked to justify violations of women and girls' rights. There is growing awareness and consensus of the importance of social norm change to respect and realise women and girls' rights, in particular around SRHR, as well as their access to justice.

3.1 OVERVIEW OF NORMATIVE FRAMEWORKS AND COMMITMENTS AND THEIR ADOPTION

3.1.1 The African Charter and the Maputo Protocol

On 11 July 2003, the AU member states adopted the **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**, widely referred to as 'the Maputo Protocol', in reference to the capital city of Mozambique where it was adopted. The Maputo Protocol came into force on 25 November 2005, after its ratification by 15 countries. It strengthens the provisions on gender equality of the **African Charter on Human and Peoples Rights** ('the African Charter'), which lies at the foundation of the African human right system and was adopted in 1981.¹ The African Charter is the 'parent treaty' of the Maputo Protocol.

The African Charter introduced and enshrined the principle of non-discrimination on any grounds, including on the basis of sex (Art. 2), and calls for the elimination of discrimination against women and girls and the protection of their rights (Art. 18).

Box 3.1. African Charter on Human and Peoples' Rights

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status

Article 3

- (1) Every individual shall be equal before the law.
- (2) Every individual shall be entitled to equal protection of the law.

Article 18

The State shall ensure the elimination of every discrimination against women and also censure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

In June 1995, the AU Assembly of Heads of State² recommended the African Commission on Human and People's Rights (ACHPR) elaborate a protocol on the rights of women in Africa. The adoption of the Maputo Protocol was a landmark decision for the AU and its member states, because of the comprehensive framework it provides on women and girls' economic, social and cultural as well as civic and political rights (this is discussed in more detail in Section 3.2).

The Maputo Protocol builds on the women and girls' rights in the African Charter, and provides an explicit definition of discrimination against women and girls, something missing in the African Charter.

The Maputo Protocol is the product of concerted collaborative efforts between the ACHPR and NGOs. In 1995, Women in Law and Development in Africa (WILDAF) and the ACHPR organised a meeting to discuss the situation of women and girls in Africa. At this, it was noted that the legal disenfranchisement of women in Africa could be alleviated through a continental commitment on the elimination of discrimination against women and girls akin to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This initiative also found support from the then Organisation of African Unity.¹

Box 3.2. The Maputo Protocol definition of 'discrimination against women'

'Discrimination against women' means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.

At the ACHPR level, the development of this continental framework was a key determinant in the establishment of the mandate of the Special Rapporteur on the Rights of Women in Africa (SRRWA). The initial mandate-holders were preoccupied with the development, adoption and ratification of the Maputo Protocol and, to date, its continued ratification and implementation forms a key part of the SRRWA's mandate (see more on this in Section 3.4).

¹ The Charter was adopted on 27 June 1981 and came into force on 21 October 1986.

The role of continental NGOs, particularly women's rights organisations, in undertaking advocacy towards the development, adoption and ratification, as well as popularisation, of the Maputo Protocol has been critical. This sustained advocacy culminated in the Protocol being the fastest ratified treaty in the history of the AU. Beyond ratification, NGOs have also campaigned for the Protocol's domestication and popularisation. In this regard, two important civil society initiatives that have tracked the Protocol and that have had a continent-wide outreach are SOAWR and FEMNET. The **Solidarity for African Women's Rights (SOAWR) coalition**³ was founded in 2004; FEMNET was established in 1980, and is one of the founding members of SOAWR (see Box 3.3).⁴

Box 3.3. The Solidarity for African Women's Rights coalition and the African Women's Development and Communications Network

The **Solidarity for African Women's Rights (SOAWR) coalition** is a regional network comprising 50 national, regional and international CSOs based in 25 countries. SOAWR works towards the promotion and protection of women's human rights in Africa. Since its inauguration in 2004, SOAWR's main area of focus has been to compel African states to urgently sign, ratify, domesticate and implement the Maputo Protocol.

The **African Women's Development and Communications Network (FEMNET)** is a feminist, pan-African organisation for women's rights, gender equality and women's empowerment. FEMNET was established in 1980 (based in Nairobi) and comprises over 500 individual and institutional members across 43 African countries. It contributes to building the women's movement in Africa and ensuring women's voices are heard at global, regional and national levels. FEMNET is one of the founding members of SOAWR. It ran the #Follow the Protocol campaign in 2016, to track progress on the Maputo Protocol.

3.1.2 Solemn Declaration and the Gender is My Agenda Campaign

In July 2004, the AU member states adopted the **Solemn Declaration on Gender Equality in Africa**. In this, they reaffirmed their commitment to gender equality, gender parity and women and girls' human rights as enshrined in Art. 4(L) of the Constitutive Act of the AU as well as other international, regional and national commitments. Importantly, the Solemn Declaration expressed the commitment to sign and ratify the landmark Maputo Protocol, for it to enter into force by 2005, and to support sensitisation campaigns and to continue, to expand and to accelerate efforts to promote gender equality at all levels.

The AU Commission (AUC) is expected to submit a **yearly general report** on the progress of implementation of commitments as set out in the Solemn Declaration and on the state of gender equality. When states sign the Declaration, they are **committed to reporting** on it, under Art. 12, for which guidelines have been developed.ⁱⁱ⁵

Box 3.4. The Solemn Declaration on Gender Equality in Africa (2004)

The Solemn Declaration emphasises the commitments of AU states to fighting HIV and AIDS; to enabling women's full participation in peace processes; and to launching a campaign to end GBV; as well as to expanding and promoting gender parity; to ensuring the education of girls and literacy of women; and to promoting and protecting all human rights for women, especially with respect to land, property and inheritance.

Box 3.5. Femmes Africa Solidarité

FAS is an NGO founded in Geneva by African Women Leaders in 1996. It aims to prevent and resolve conflicts in Africa and empower women to have a voice in leadership and peace-building efforts. Since 2002, FAS has annually organised the Women's AU Pre-Summit Consultative Meeting to strengthen women's voice in advancing African women's agenda.

³ SOAWR members include ACDHRS, ACFODE, AEFL, AJM, Akina Mama wa Afrika, Alliances for Africa, AWDF, BAOBAB for Women's Human Rights, CAFOB, CJSI, COVAW, CPTAFE, CSV, EASSI, Equality Now – Africa Regional Office, Fahamu – Networks for Social Justice, FAMEDEV, FEMNET, FIDA Kenya, Forum Mulher, Girl Child Network, HURILAWS, IAC, IPAS Africa Alliance for Women's Reproductive Health and Rights, Legal and Human Rights Centre – Tanzania, MEWC, NAFGEM Tanzania, NGO Gender Coordination Network – Malawi, Oxfam GB, POWA, RHRA, SIHA, Sister Namibia, STEWARD, Tomorrow's Child Initiative, UNFD, University of Pretoria Centre for Human Rights, UWONET, Voix de Femmes, WANET, WILDAF, WLSA Zambia, WOLPNET, WONGOSOL and WRAPA. See www.soawr.org for more information.

⁴ Another campaign to push for further ratification of the Maputo Protocol was Africa's Women's Rights: Ratify and Respect! This was initiated in 2009 by the International Federation for Human Rights (Fédération internationale des ligues des droites de l'homme (FIDH)), in cooperation with the African Centre for Democracy and Human Rights Studies (ACDHRS), Femmes Africa Solidarité (FAS), Women's Aid Collective (WACOL), WILDAF and Women and Law in Southern Africa (WLSA).

⁵ An Implementation Framework for the Solemn Declaration on Gender Equality in Africa was adopted at the first AU Conference of Ministers Responsible for Women and Gender in Dakar, Senegal (2005). There was no information accessible on the level of state reporting on progress regarding implementation of the Solemn Declaration.

The Solemn Declaration is an important point of reference for civil society campaigning and advocacy. In July 2005, the **Gender is My Agenda Campaign (GIMAC)** was initiated, coordinated by Femmes Africa Solidarité (FAS) (Box 3.5). Currently, the campaign comprises around 55 international and national organisations. It aims to create a space for civil society to monitor implementation of the Solemn Declaration. The annual Pre-Summit Consultative Meeting to the AU Assembly of Heads of State and Government represents a key effort in this regard. In addition, GIMAC promotes networking of CSOs across the African continent and the compilation of reports as main strategies in promoting women and girls' rights.⁶

3.1.3 The Continental Policy Framework on Sexual and Reproductive Health and Rights

In January 2006, the AU Heads of State endorsed the **Continental Policy Framework on Sexual and Reproductive Health and Rights (CPF)**.⁷ This was developed by the AUC, in cooperation with key development partners,⁸ and is based on a set of sub-regional studies and meetings on SRHR challenges in the continent. The CPF offers guidance in policy formulation and in the actions of member states to further the implementation of the ICPD PoA and the Millennium Development Goals (MDGs).

Informed by its review of SRHR gaps and challenges, the CPF identifies eight core strategic areas, and calls for their mainstreaming and harmonisation in national, sub-regional and continental development initiatives.

Box 3.6. Strategic areas and core policy concerns in the CPF

- Maternal mortality and morbidity
- Infant and child mortality
- Contraceptive use and family planning services
- Unsafe abortion
- Sexually transmitted infections and HIV and AIDS
- Adolescent reproductive health
- Female genital mutilation
- Gender-based violence

In addition, the CPF identifies a number of challenges, including inadequate policies owing to lack of human and technical capacity, weak health infrastructure and a lack of partnerships for systematic cooperation. A key challenge concerns low budgetary allocations to health and the unrealised promises of donors at the ICPD.

The CPF aims to strengthen implementation of the recommendations of the Abuja Declaration of the 2001 Summit of Heads of State and Government in order to increase resources for the health sector.

Box 3.7. Abuja Declaration (2001)

After adoption of the Millennium Declaration in 2000 at the UN level, AU Heads of State met in April 2001 in Abuja, Nigeria, and pledged to allocate a minimum of 15% of their annual budget to strengthen the health sector.ⁱⁱⁱ These commitments have proven hard to make good on.^{9 iv}

The AU member states also urged donor countries to 'fulfil the yet to be met target of 0.7% of their gross national product as official development assistance to developing countries'.

⁶ In addition, women's groups coordinated by FAS adopted 'The Civil Society's Guidelines and Mechanism for Implementation, Monitoring and Evaluation of the Solemn Declaration on Gender Equality in Africa'.

⁷ This followed the adoption of the CPF by the Conference of Ministers of Health in Gaborone, Botswana, in October 2005.

⁸ These include the United Nations Population Fund (UNFPA), the African Regional Office of the International Planned Parenthood Federation and other development partners.

⁹ Progress on realisation of the Abuja targets is monitored by AIDS Watch Africa; see www.aidswatchafrica.net/index.php/africa-scorecard-on-domestic-financing-for-health. Chapter 7 of this report includes more details on progress on realisation of the Abuja targets, drawing on the Scorecard of AIDS Watch Africa. Earlier observations noted that, after 10 years, the World Health Organization (WHO) found that only Tanzania had reached this target; 26 states had increased health expenditures and 11 states had reduced them. The remaining nine countries did not show a trend either up or down (WHO, 2011. *The Abuja Declaration: Ten Years On*).

3.1.4 The Maputo Plan of Action

The **Maputo Plan of Action (MPoA)** is the further operationalised and costed plan of action to implement the CPF. The first MPoA ran from 2007 to 2010; it was then extended to 2015. After a comprehensive review of this first period,^v a revised MPoA was formulated for the period 2016–30. The **MPoA 2016–30** aims for African governments, civil society, the private sector and multi-sectoral development partners to join forces and redouble their efforts towards the effective implementation of the CPF.

Box 3.8. Maputo Plan of Action 2016–30: ultimate goal

The ultimate goal of the MPoA 2016–30 is to end preventable maternal, newborn, child and adolescent deaths by expanding contraceptive use, reducing levels of unsafe abortion, ending child marriage, eradicating harmful traditional practices including FGM, eliminating all forms of violence and discrimination against women and girls and ensuring access of adolescents and youth to SRH by 2030 in all countries in Africa (p. 11).

In order to achieve its aims, the MPoA defines strategic interventions and indicators that reflect reproductive, maternal, neonatal, child and adolescent health (RMNCAH) issues on the African continent. These are consistent with the framework set out in the Agenda 2063 Ten Year Implementation Plan and other continental and international commitments.¹⁰ In order to achieve the ultimate goal, the following 10 key strategies are formulated:

1. Improving political commitment, leadership and good governance
2. Instituting health legislation and policies for improved access to RMNCAH services
3. Ensuring gender equality, women and girls' empowerment and respect of human rights
4. Improving strategic communication for SRH and reproductive rights
5. Investing in the SRH needs of adolescents, youth and other vulnerable marginalised populations
6. Optimising the functioning health system for RMNCAH
7. Investing in human resources by strengthening training, recruitment and retention
8. Improving partnerships and multi-sectoral collaborations for RMNCAH
9. Ensuring accountability and strengthening monitoring and evaluation, research and innovation
10. Increasing investments in health

Implementation of MPoA has been hampered by various factors, with many states experiencing challenges meeting the targets set out in the Plan and in the Abuja Declaration. Whereas there are as yet no reports on implementation of the revised MPoA, the progress review of the first MPoA, carried out in 2015, points to several main barriers to meeting its objectives.^{vi} These include limited political commitment and leadership, inadequate financing for health and high donor dependency. In addition, implementation has been hampered by inadequate health legislation and weak health systems (i.e. lack of SRH services, resources and capacity, data monitoring and male involvement). Lastly, limited women and girls' empowerment and presence of harmful practices present challenges to achieving the objectives. Earlier civil society reports noted similar barriers to implementation.^{11 vii}

¹⁰ Including the SDGs, Rio+20, ICPD+20, the Global Strategy for Women's, Children's and Adolescent's Health, the Gaborone Declaration on the Roadmap towards Universal Access to Prevention, Treatment and Care, the Brazzaville Commitment on Scaling up towards Universal Access and the Abuja commitments.

¹¹ The African Population and Health Research Center (APHRC), commissioned by IPPFAR, undertook an evaluation of status of implementation of the Maputo Protocol in 2009. It found that, first, the translation of policies, relevant to the MPoA, into implementation had been hampered as a result of various factors, including financial and human resourcing problems, lack of political will in some countries, lack of organisation in government structures and inefficient use of financial resources. Second, fragmentation of government structures for SRH limits progress on achieving the MPoA objectives, given competing government priorities and lack of clear responsibilities. Furthermore, tracking of government budgets in order to identify how much is allocated to health and SRH has proven a complex endeavour. Lastly, awareness levels of the MPoA vary widely among CSOs and the MPoA does not necessarily inspire the work of CSOs on SRH.

3.1.5 The African Charter on the Rights and Welfare of Children and the African Youth Charter

The MPoA focuses specifically on youth and adolescents as a vulnerable population group (Key Strategy 5). There are two important normative frameworks regarding children and youth at the African level. First is the **African Charter on Rights and Welfare of the Child (ACRWC)**, also called the African Children's Charter, which was adopted in 1990 and came into force in 1999. At the international level, the United Nations Convention on the Rights of the Child (UNCRC) has been adopted, also in 1990. The African continent is the only one with a region-specific instrument on child rights. The ACRWC builds on the same principles as the UNCRC and highlights issues that are of specific importance to the African context. As of January 2017, all member states have signed the ACRWC; a remaining seven states have to ratify the document.¹²

The **African Youth Charter** was adopted in 2006, and it responds to the need to prioritise youth development and empowerment.¹³ It underscores youth participation in debates and decision-making on development in the continent and seeks to ensure their effective involvement in the development agenda. The African Youth Charter consists of 31 articles, including one specifically on health (Art. 16) and one on girls and young women (Art. 23).

Table 3.1 presents the relevant articles regarding the four rights areas central to this report, plus general discrimination against women and girls, of the African Children's Charter and African Youth Charter.

Table 3.1. Articles in the African Children's Charter and the African Youth Charter relevant to this report

	African Children's Charter (1990)	African Youth Charter (2006)
Discrimination against women and girls	Art 3 – Non-Discrimination Art. 26 – Protection against Apartheid and Discrimination	Art. 4 – Non-Discrimination Art. 23 – Girls and Young Women
GVAW	Art. 5 – Survival and Development Art. 15 – Child Labour Art. 16 – Protection against Child Abuse and Torture Art. 22 – Armed Conflict Art. 27 – Sexual Exploitation Art. 29 – Sale, Trafficking and Abduction	Art. 17 – Peace and Security Art. 23 – Girls and Young Women Art. 26 – Responsibilities of Youth
Harmful practices	Art. 19 – Parental Care and Protection Art. 21 – Protection against Harmful Social and Cultural Practices	Art. 20 – Youth and Culture Art. 25 – Elimination of Harmful Social and Cultural Practices
Reproductive rights and SRH	Art. 14 – Health and Health Services	Art. 16 – Health Art. 23 – Girls and Young Women
HIV and AIDS	Art. 14 – Health and Health Services	Art. 13 – Education and Skills Development Art. 16 – Health Art. 26 – Responsibilities of Youth

¹² DRC, Morocco, Sahrawi Arabic Democratic Republic, Somalia, São Tomé and Príncipe, South Sudan and Tunisia.

¹³ The African Youth Charter defines youth or young people as 'every person between the ages of 15 and 35 years'.

3.1.6 Agenda 2063 and the AU Gender Equality and Women's Empowerment Strategy

In 2018, the AU will adopt its first Gender Equality and Women's Empowerment Strategy (2018–27), which will reaffirm its commitment to advancing gender equality. The Gender Strategy will be instrumental in aligning gender mainstreaming in the AU to Agenda 2063, the Maputo Protocol and the Sustainable Development Goals (SDGs). More specifically, the Gender Strategy is expected to contribute to attaining Agenda 2063 visions for gender equality, as expressed in Aspiration 6.^{viii} Goal 17 of Aspiration 6 is to achieve 'full gender equality in all spheres of life', and requires, among others, the domestication and full implementation of the Maputo Protocol.¹⁴

In relation to Agenda 2063, the African Union Commission (AUC) published the African Gender Score Card in 2015. This aims to measure national progress towards gender equality in seven sectors: health, education, access to land, business, employment, parliament and decision-making, and access to credit. Within this there is a special call for a gender-responsive data revolution. The first Gender Score Card underlined the need to invest in gender-responsive statistics, in order to be able to realise commitments on gender equality and women's empowerment.^{ix}

Box 3.9. Agenda 2063: The Africa We Want – Aspiration 6, Goal 17¹⁵

Aspiration 6 An Africa whose development is people driven, relying on the potential offered by people, especially its women and youth and caring for children

Goal 17. Full gender equality in all spheres of life Priority area 1: Women empowerment
Priority area 2: Violence and discrimination against women and girls

The AU Gender Strategy is being developed by the Women, Gender and Development Directorate (WGDD) of the AUC in an elaborate process¹⁶ involving AU departments, divisions and organs, gender structures of the RECs, national gender machineries and UN, local, national, regional and international CSOs and faith-based organisations. In the consultative process, child marriage, FGM, GVAW and other harmful practices featured as prominent priorities, as did the eradication of preventable maternal mortality and HIV and AIDS. Attention was also drawn to ensuring affordable and accessible SRH services, with specific emphasis placed on SRHR for youth (especially in terms of adolescent pregnancies, commercial sexual exploitation, lack of youth-friendly SRH services and sexual violence/harassment in schools). The importance of grounding the Gender Strategy in a gender equality, women's empowerment and women's rights framework was also emphasised.

¹⁴ The First Ten Year Implementation Plan of Agenda 2063 formulates targets (national and continental) to be reached by 2023, and indicates the key process actions and milestones on AU frameworks, as well as indicative strategies to reach the set targets.

¹⁵ The Seven Aspirations of Agenda 2063 are 1) a prosperous Africa, based on inclusive growth and sustainable development, 2) an integrated continent, politically united, based on the ideals of pan-Africanism and the vision of Africa's renaissance, 3) an Africa of good governance, democracy, respect for human rights, justice and the rule of law, 4) a peaceful and secure Africa, 5) an Africa with a strong cultural identity, common heritage, values and ethics, 6) an Africa whose development is people driven, relying on the potential offered by people, especially its women and youth and caring for children and 7) an Africa as a strong, united, resilient and influential global player and partner.

¹⁶ The process encompassed 10 consultative workshops and an online discussion.

3.2 THE QUALITIES AND STRENGTHS OF MAPUTO PROTOCOL

3.2.1 The innovative character of the Maputo Protocol

The Maputo Protocol is based on existing international instruments, including CEDAW (1979), adopted by the UN in 1981, translating and advancing these human rights of women and girls into the African context. It defines the term 'women' as referring to 'persons of female gender, including girls' (Art. 1).

The Maputo Protocol is a major step forward in the promotion and protection of women and girls' rights in Africa. The comprehensive framework of women and girls' human rights includes the right to equal pay and to maternity leave, as well as affirmative action and equal participation at all levels of decision-making. The Protocol recognises the right of women to participate in the promotion and maintenance of peace and to equal participation in law enforcement and the judiciary.

The Maputo Protocol is progressive in a range of areas. It is the first human rights instrument to make an explicit reference to HIV and AIDS, and is also innovative in its legal prohibition of FGM. It provides legal protection against violence against women, in both the public and the private spheres, and in times of peace and war. The Protocol is the first treaty to recognise abortion, under specific conditions, as a human right for women and girls.

Adolescent girls as well as several other groups of women facing specific vulnerabilities are addressed in particular provisions; these include widows, elderly women, disabled women, poor women and women from marginalised population groups and pregnant or nursing women in detention. For instance, the Protocol defines the equal rights of widows. It provides protection to adolescent girls to be free from abuse and sexual harassment in schools. It prohibits forced marriage and marriage for girls under the age of 18.^x

Articles in the Maputo Protocol

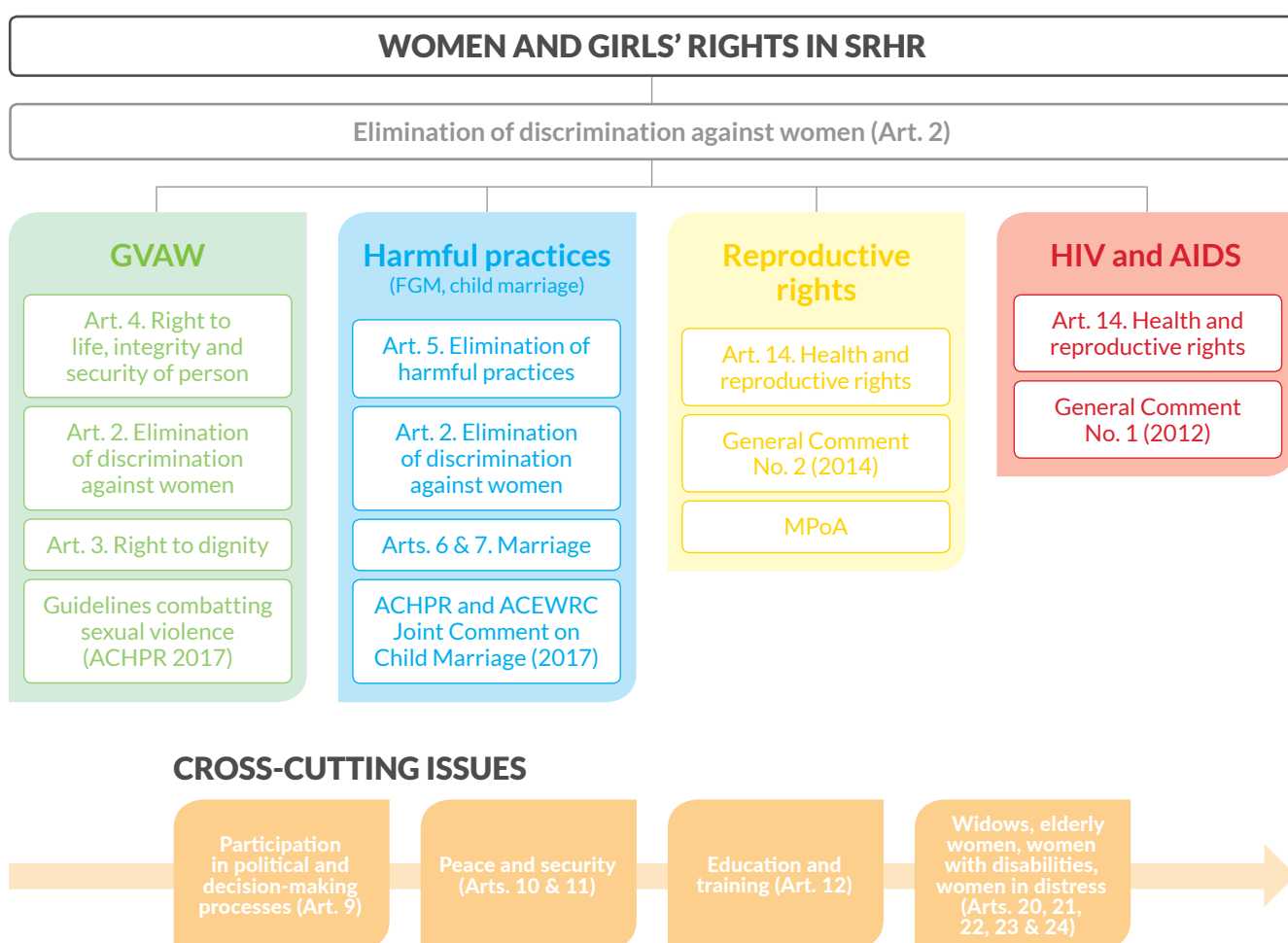
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|---|---|
| Art. 1 – Definitions | Art. 17 – Right to Positive Cultural Context |
| Art. 2 – Elimination of Discrimination against Women | Art. 18 – Right to a Healthy and Sustainable Environment |
| Art. 3 – Right to Dignity | Art. 19 – Right to Sustainable Development |
| Art. 4 – The Rights to Life, Integrity and Security of the Person | Art. 20 – Widows' Rights |
| Art. 5 – Elimination of Harmful Practices | Art. 21 – Right to Inheritance |
| Art. 6 – Marriage | Art. 22 – Special Protection of Elderly Women |
| Art. 7 – Separation, Divorce and Annulment of Marriage | Art. 23 – Special Protection of Women with Disabilities |
| Art. 8 – Access to Justice and Equal Protection before the Law | Art. 24 – Special Protection of Women in Distress |
| Art. 9 – Right to Participation in the Political and Decision-Making Process | Art. 25 – Remedies |
| Art. 10 – Right to Peace | Art. 26 – Implementation and Monitoring |
| Art. 11 – Protection of Women in Armed Conflicts | Art. 27 – Interpretation |
| Art. 12 – Right to Education and Training | Art. 28 – Signature, Ratification and Accession |
| Art. 13 – Economic and Social Welfare Rights | Art. 29 – Entry into Force |
| Art. 14 – Health and Reproductive Rights | Art. 30 – Amendment and Revision |
| Art. 15 – Right to Food Security | Art. 31 – Status of Present Protocol |
| Art. 16 – Right to Adequate Housing | Art. 32 – Transitional Provisions |

3.2.2 General Comments

With respect to the Maputo Protocol, three **General Comments** have been adopted. General Comments are human rights tools used for the interpretation of provisions in international or regional legal treaties and provide guidance to states in the implementation of their obligations. Two of these General Comments have been adopted by the ACHPR.¹⁷ The first was adopted in October 2012 and concerns the intersections between *women's rights and HIV* (Art. 14.1(d) and (e) of the Protocol). The second was adopted in May 2014 and concerns the *rights to reproductive freedom, to family planning education and to safe abortion* (Art. 14.1(a), (b), (c) and (f) and Art. 14.2(a) and (c) of the Protocol). Both General Comments provide guidance on the normative content of the respective articles, and articulate general and specific measures to be taken by state parties to fulfil their obligations. The third General Comment was adopted jointly by the ACHPR and the African Committee of Experts on the Rights and Welfare of the Child (ACEWRC) in 2017 and speaks to *ending child marriage*, and refers to both the Maputo Protocol and the African Children's Charter.

Figure 3.2 provides insight into which articles of the Maputo Protocol and which General Comments are relevant to these four rights areas central in this report: GVAW, harmful practices, reproductive rights and HIV and AIDS.

Figure 3.2. Articles in the Maputo Protocol relevant to this report



¹⁷ Article 45.1(b) of the African Charter authorises the ACHPR to formulate and adopt General Comments, by providing jurisdiction 'to formulate and lay 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'.

3.2.3 Signing and ratification of the Protocol

Currently, out of the 55 AU member states, 41 have ratified the Protocol. Recent ratifications of the Protocol were Algeria in November 2016, Mauritius in June 2017, South Sudan in October 2017.¹⁸ The last state that announced ratification of the Protocol was Ethiopia.¹⁸ Out of the all AU member states, only three have not signed the Protocol (Botswana, Egypt and Morocco), while 11 member states have signed but not ratified the Protocol. Figure 3.3 offers an overview of the current status of signing and ratification of the Maputo Protocol. South-Sudan and Ethiopia are marked green on the map, but have not yet formally deposited their ratification with the ACHPR.

Box 3.10. Signing and ratifying a protocol

According to the Vienna Convention on the Law of Treaties (1969), by *signing* a protocol a state expresses the willingness to continue the treaty-making process to ratification. Signing a treaty does not yet make it legally binding, but the signature does create the obligation for the state to refrain from acts that defeat the purpose of the protocol. In addition, the signature creates obligation for states to refrain from acts that defeat the object and purpose of the protocol (Arts 10 and 18).

In turn, *ratification* is 'the act whereby a State establishes on the international plane its consent to be bound by a treaty'. The content of the treaty then becomes legally binding for the state (Arts 2(1)(b), 14(1) and 16).

Figure 3.3. Status of ratification and signing of the Maputo Protocol



¹⁸ Ethiopia announced at the 62nd Ordinary Session of the ACHPR that it had ratified the Maputo Protocol. It appears that the state is yet to deposit the instruments of ratification with the AU.

3.2.4 Reservations on the Protocol

Certain countries have ratified the Maputo Protocol while entering reservations on certain articles or declarations. In the Vienna Convention on the Law of Treaties (1969), a reservation on a treaty, which can also be referred to as an 'interpretative declaration/statement', is a unilateral statement that 'purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State' (Art. 2(1)(d)). Eight countries have made such reservations to the Maputo Protocol (see Table 3.2). One of them, Rwanda, lifted its reservation in 2012 (see case study 24 in Chapter 7). Most reservations concern articles on marriage, fertility and abortion (in particular Arts 6 and 14).

Table 3.2. Reservations by country on the Maputo Protocol

Country	What	Reservation regarding?
Cameroon	Declaration	(Regarding homosexuality, abortion (except therapeutic abortion), genital mutilation, prostitution or any other practice which is not consistent with universal or African ethical and moral values)
Kenya	Reservation	Art. 10(3) (regarding reducing military expenditures in favour of social development) Art. 14(2)(c) (regarding access to safe abortion)
Namibia	Reservation	Art. 6(d) (regarding recording and registration of customary marriages)
Rwanda	Reservation	Art. 14(2)(c) (regarding access to safe abortion) (lifted in 2012)
South Africa	Reservation	Art. 4(j) (regarding death penalty) Art. 6(d) (regarding registration and recognition of marriages) Art. 6(h) (regarding equal rights of women and men in marriage in relation to nationality of their children)
	Interpretative declaration	Art. 1(f) (regarding definition of discrimination of women) Art. 31 ('South African Bill of Rights shall not be interpreted to offer less favourable protection of human rights than the Protocol, which does not expressly provide for such limitations')
Uganda	Reservation	Art. 14(1)(a) (regarding: women entirely having the right to control their fertility regardless of their marital status) Art. 14(2)(c) (regarding access to safe abortion)
Mauritius	Reservation	Art. 6(b)(c) (regarding minimum age of marriage; and regarding polygamous marriages) Art. 9 (regarding women's equal participation in political life) Art. 4(2)(k), Art. 10(2)(d) and Art. 11(3) (regarding measures for women seeking refuge or asylum, and protection of women in armed conflict) Art. 14(2)(c) (regarding access to safe abortion)
South Sudan	Reservation	Regarding polygamous marriages, regarding women's right to control their sexuality and their reproductive rights Art. 14(2)(c) (regarding access to safe abortion)

3.2.5 Periodic reporting under the Protocol

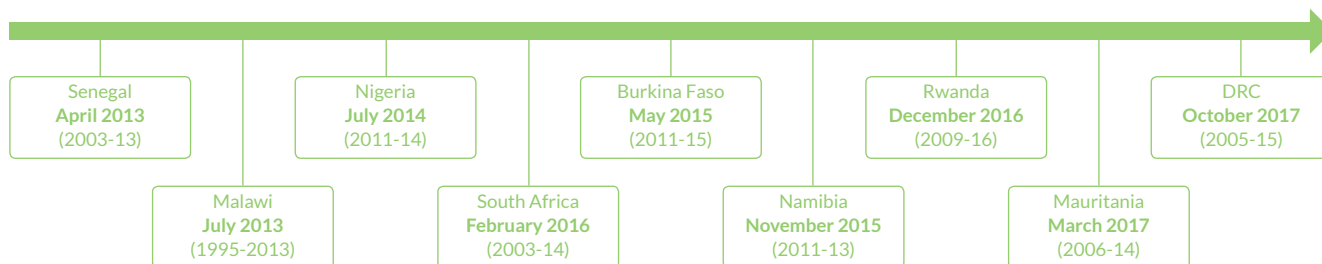
Under Art. 26 of the Maputo Protocol, states are required to submit Periodic Reports to the ACHPR (in accordance with Art. 62 of the African Charter). These reports have two parts, the first on implementation of the African Charter and the second on the Maputo Protocol.

In order to assist member states in drafting Periodic Reports and to encourage states to honour their obligations, the mechanism of the SRRWA developed the *Guidelines for State Reporting under the Maputo Protocol*.^{xii} These were adopted during the 46th Ordinary Session of the AUC on 11–25 of November 2009 in Banjul, The Gambia.

The state Periodic Reports should indicate the legislative and other measures the state has undertaken 'for the full realisation of the rights' recognised in the Maputo Protocol. States are also required to 'adopt all necessary measures' and 'provide budgetary and other resources for the full and effective implementation' of the right recognised in the Protocol (Art. 26.2). The ACHPR issues its concluding observations on the progress on implementation, after engaging in dialogue with the state. These concluding observations include recommendations on required actions. States are expected to report on progress in implementation in their next Periodic Report.

While the majority of states have reported on implementation of the African Charter, fewer have reported on their implementation of the Maputo Protocol. As at the ACHPR's 60th Ordinary Session (late 2017), nine states had submitted a report on the Maputo Protocol: Burkina Faso, Democratic Republic of Congo (DRC), Malawi, Mauritania, Namibia, Nigeria¹⁹, Rwanda, Senegal and South Africa. The compliance of these reports with the *Guidelines for State Reporting under the Maputo Protocol* varies. Some countries, such as Malawi, Mauritania, Rwanda and South Africa, have complied with the guidelines. Other states, while reporting on measures taken with regard to women and girls' rights under the Maputo Protocol, do not always do so as per the prescribed format.²⁰

Figure 3.4. Timeline of state reporting on the Maputo Protocol



To inform constructive dialogue with the state as well as influence the concluding observations, NGOs with observer status can prepare and submit 'shadow reports'; these supplement, and where necessary, contradict the state reports. Shadow reports can alert the ACHPR to specific issues, raise questions or propose recommendations. It is also worth noting that NGOs have also been instrumental in growing the state reporting process. For instance, the Centre for Human Rights at the University of Pretoria was instrumental in the drafting of the *Guidelines for State Reporting under the Maputo Protocol*. The Centre has undertaken several state reporting trainings towards popularising the Guidelines and enhancing states officers' knowledge on state reporting, which has often resulted in reporting by the targeted states. To date, the Centre continues to offer technical expertise to a number of states in the drafting of state reports.

¹⁹ In January 2018, Nigeria submitted their 2nd report under the Maputo Protocol and became the first country to do so. The report was examined during the 62nd Ordinary Session of the ACHPR.

²⁰ Togo and Angola submitted state reports that include reporting on the Maputo Protocol, but the same were not considered during the 62nd session of the ACHPR.

3.2.6 Implementation of the Protocol

After ratifying the Protocol, states face challenges in relation to actual implementation. In 2017, the AUC Directorate for Women, Gender and Development published the *State of Women's Rights Report*. This noted that the main challenges to further domestication and implementation of the Protocol included lack of awareness of human rights instruments such as the Maputo Protocol and lack of state reporting under Art. 26. Moreover, the report highlighted the continued contestation of the universality of human rights by African values and the use of culture and/or religion to justify harmful practices—and the way this affected the realisation of women's rights to hamper progress on implementation of the Maputo Protocol.

In 2013, SOAWR published *Journey to Equality: 10 Years of the Protocol on the Rights of Women in Africa*. This looks at specific articles²¹ of the Maputo Protocol individually and reports on the related challenges. Overall, the SOAWR coalition encourages states to go further in addressing social and cultural norms and behaviour, including harmful practices, and women's access to justice, through advocacy, education and the inclusion of men and boys. In its 2015 report *Breathing Life into the Maputo Protocol*, the coalition highlighted as key challenges issues related to SRHR and the side-lining of the redistribution and valuing of unpaid care work. It also noted a tendency to focus on women's empowerment, rather than on taking a rights-based approach, in particular in relation to economic development. Terrorism, fundamentalism and land-grabbing were highlighted as key emerging issues, with implications for women's rights.²²

In 2016, the Centre for Human Rights of the University of Pretoria published *The Impact of the African Charter and the Maputo Protocol in Selected African States*. The book covers 17 states,²³ and finds that the Maputo Protocol has had the most impact on judicial activities in Anglophone Africa, specifically in Ghana, Kenya and Nigeria. Key challenges include low levels of awareness and use of the Maputo Protocol among both legal actors, such as domestic judges and lawyers, and CSOs. Lack of political will across high-level political actors is also observed. At the same time, widespread poverty and illiteracy, as well as political instability, pose obstacles to the Maputo Protocol's impact. Lack of media coverage of the ACHPR and the African Court also works against the translation of the Maputo Protocol to domestic levels.

²¹ Art. 2 (Elimination of discrimination), Art. 6 (Marriage), Art. 8 (Access to justice and equal protection before the law), Art. 14 (Reproductive health rights) and Art. 21 (Right to inheritance).

²² SOAWR identified seven priorities: women's access to decision-making; access to, control over and ownership of land and property; SRHR; women and HIV; maternal health; GVAW; harmful practices; and women and the private sector.

²³ Burkina Faso, Cameroon, Côte d'Ivoire, Ethiopia, The Gambia, Ghana, Kenya, Lesotho, Malawi, Mauritius, Nigeria, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda and Zimbabwe.

3.3 AFRICA WOMEN'S DECADE AND KEY CAMPAIGNS ON WOMEN'S RIGHTS

Several initiatives have been launched at the AU to advance the promotion of women and girls' rights and gender equality. One key initiative is **African Women's Decade (AWD) 2010–20**, launched by the AU in Nairobi, Kenya, in October 2010. AWD aims to advance gender equality through accelerating the implementation of global and regional commitments and decisions regarding gender equality and women and girls' empowerment, through both a top-down and a bottom-up approach, including grassroots participation. The main objective of AWD is to 'enhance the implementation of the African Union Members States commitments related to gender equality and women's empowerment and to support activities resulting in tangible positive change for African women at all levels'. In order to achieve this objective, AWD focuses on one thematic area per year, which is derived from the critical areas identified in the Beijing Platform for Action, the MDGs and the ICPD PoA. AWD is currently in its second implementation phase (2015–20).

Since 2011, Make Every Woman Count (MEWC) has published a yearly report on the status and progress on women and girls' rights with respect to the goals of the AWD. The initiative for these reports was grounded in concerns about the information vacuum after the AWD was launched; there did not seem to be a systematic assessment of progress, or possibly lack thereof, on the ambitious commitments the AWD had set out to achieve. The MEWC report presents progress for each country on the continent, and addresses six core areas of women's right and gender equality (women, peace and security; violence against women; political participation and leadership; economic empowerment; education; and HIV, AIDS and reproductive health).

The Mid-Term Report on the AWD, published in 2016, observed considerable progress in many countries in a variety of areas, including women's political decision-making, legal reform on GVAW, maternal mortality and girls' education. Yet progress is also limited and highly uneven across countries, the extent to which women and girls' rights are realised on the ground remains disappointing and gender inequality and violations of women and girls' rights continue to be major concerns. The MEWC mid-term report underscores the importance of stronger monitoring and accountability on gender equality and women and girls' rights commitments and frameworks.

Box 3.11. Make Every Woman Count

MEWC is an organisation led by African women that serves as a (primarily online) platform to inform, mobilise, conduct advocacy through evidence-based research for, and provide information and training to women's organisations, grassroots movements and activists that work to empower women and girls to eventually strengthen women's leadership capacities in order to influence policy- and decision-making. The MEWC reports are launched at the AU Gender Pre-Summit.

In 2014, the **AU Campaign to End Child Marriage** was launched to promote, protect and advocate for the rights of women and girls in Africa. The campaign originally spanned from 2014 to 2017 and has since been extended; it serves overall to accelerate change across Africa by encouraging governments to develop strategies, raise awareness and address the harmful impact of child marriage.²⁵ In order to achieve this objective, the campaign focuses on mobilising continental awareness of the negative socioeconomic impact of child marriage and supporting legal and policy actions that protect and promote human rights. It also seeks to build social movements at the grassroots and national levels and strengthen the capacity of non-state actors to undertake evidence-based policy advocacy, including youth leadership, through, for example, new media technology and monitoring and evaluation. In 2014, the AU appointed a Goodwill Ambassador for Ending Child Marriage and the ACERWC appointed an AU Special Rapporteur on Child Marriage. In 2015, the AU Common Position on the AU Campaign to End Child Marriage in Africa was adopted.²⁶ In December 2017, 22 countries launched a campaign to end child marriage (see also Chapter 6).

In 2009, the **Campaign on Accelerated Reduction of Maternal Mortality in Africa (CARMMA)** was initiated by the AUC. To date, 46 countries have launched CARMMA chapters and 6 are in preparations to launch it. CARMMA's main objective is to expand the availability and use of universally accessible quality health services, including those related to SRH. The campaign aims to achieve this objective by generating and providing data on maternal and newborn deaths and increasing political commitment. By building on existing efforts, and mobilising domestic resources in support of maternal and newborn health, the campaigns seeks to accelerate actions to reduce maternal and infant mortality in Africa.²⁷

²⁵ The AU has organised the campaign with the United Nations Children's Fund (UNICEF) and UNFPA, and cooperates with a wide variety of partners including the Ford Foundation, the United Nations Economic Commission for Africa (UNECA), Save the Children, Plan International, the Africa Child Policy Forum (ACPF) and the UK Department of International Development (DFID).

²⁶ This AU Common Position urges all member states of the AU to, among other things, 1) develop national strategies and action plans aimed at ending child marriage, 2) enact and implement laws that set the legal minimum age for marriage at 18 years of age or above, with no exceptions and applicable under all legal systems, and 3) implement all continental policies and legal instruments relating to human rights, gender equality, maternal and child health and harmful traditional practices for the empowerment and participation of girls and women in development. See www.au.int/web/en/documents/31010/african-common-position-au-campaign-end-child-marriage-africa

²⁷ Partners in the CARMMA campaign are UNFPA, IPPF AR, the Partnership for Maternal, Newborn and Child Health (PMNCH), Marie Stopes International, the United States Agency for International Development (USAID), UKAid, UNICEF and Partners in Population Development Africa.

CARMMA has been successful in generating increased political commitment and leadership as well as broadening partnerships for maternal and child health. It has published three Maternal, Neonatal and Child Health Reports and has contributed to further data generation on these themes. Whereas its strengths lie in its country-driven nature, and the many countries that have launched the campaign, it has been challenged in relation to follow-up since its launch. This has owed to a lack of resources at the Secretariat, combined with weak accountability mechanisms on country level commitments.^{xiii}

In January 2018, the AU and the Organisation of African First Ladies (OAFLA) launched a new Pan-African advocacy campaign, **Free to Shine**.^{xiv} This seeks to end childhood AIDS by raising awareness on the HIV epidemic in children and on the critical importance of prioritising women and children. It also seeks to increase understanding of how to prevent HIV and AIDS in childhood by keeping mothers healthy, preventing mother-to-child transmission and ensuring fast and effective identification and treatment of HIV-infected children. The campaign aims to mobilise resources and prioritise the delivery of effective and sustainable HIV and AIDS health services that are accessible by all who need them. It also aims to highlight the importance of removing barriers that prevent women and mothers engaging with HIV- and AIDS-related health services for themselves and their children (see case study 29 on the Free to Shine campaign in Chapter 8).

3.4 THE INSTITUTIONAL INFRASTRUCTURE FOR GENDER EQUALITY AND WOMEN'S RIGHTS OF THE AU

There are several important actors and structures related to gender equality and women's rights in the AU institutional infrastructure. These are briefly presented in Section 3.4.1, which is followed by a reflection on the protective and promotional mandate of the ACHPR (Section 3.4.2). Section 3.4.3 looks briefly at important partnerships of the AU.

3.4.1 Gender and women's rights infrastructure

The **Women, Gender and Development Directorate (WGDD)** promotes gender equality on the continent and within the AU. It designs projects and programmes based on AU member state policies. In addition, it oversees development and harmonisation of gender-related policies; is responsible for initiating gender-mainstreaming strategies in the AUC and other AU organs and member states; and provides training on gender policies and instruments (including the Maputo Protocol). It was created in 2002 and is located under the AUC. The Directorate consists of two divisions: the Gender Policy and Development Division (GPDD) and Gender Coordination and Outreach and Women's Rights.

The Directorate also acts as the Secretariat for the **African Union Women's Committee (AUWC)**, also known by its longer name, the African Union Specialised Technical Committee on Gender Equality and Women's Empowerment.²⁸ This was inaugurated in 2006 as an advisory committee on gender and development issues to the chair of the AUC and the AUC as a whole.

The **African Commission on Human and Peoples' Rights (ACHPR)**, also called 'The Commission', monitors the implementation of the obligations for states articulated in, among others, the African Charter and the Maputo Protocol. The ACHPR was established in 1987 as the enforcement mechanism under the African Charter with the mandate to 'promote and protect human and people's rights in Africa'. It receives and examines state reports, and also elaborates General Comments. The ACHPR is based in Banjul, The Gambia, and consists of 11 commissioners.

The ACHPR has appointed five Special Rapporteurs²⁹ and Working Groups, which investigate and report on specific human rights issues and cases. They are dedicated to promoting and protecting specific rights or rights of specific vulnerable groups. In 1999, the **Special Rapporteur on Rights of Women in Africa (SRRWA)** was established (see more details in Section 3.4.2).^{xv}

The **African Court on Human and Peoples' Rights (AfCHPR)**,³⁰ also called 'the African Court', is a human rights adjudicatory body with jurisdiction on the interpretation and application of the African Charter among states that have ratified the African Charter and the Maputo Protocol. The Court came into force in 2004, comprises 11 judges, elected by the AU Assembly, and sits in Arusha (Tanzania).³¹ The first case of the Court was in 2009 and it has taken up several cases since.³² The Court has an important role in safeguarding human and women/girls' rights across the AU as it can pass final and binding judgements against states violating these. Governments are then required to comply with the judgement and guarantee its execution.^{xvi} Of the 30 countries that have ratified the African Court Protocol, only eight have declared that they recognise the competence of the Court to receive cases from NGOs and individuals.³³

Lastly, the **African Committee of Experts on the Rights and Welfare of the Child (ACERWC)** was established in July 2001. This monitors implementation of the ACRWC. It comprises 11 experts and is supported by the AUC, with a mandate to promote and protect the rights enshrined in the Charter, monitor implementation, interpret provisions of the Charter by request and perform other tasks as entrusted by the AU Assembly.^{xvii}

²⁸ Each specialised technical committee (STC) is composed of member states' ministers and senior officials responsible for sectors falling within their respective areas of competence. (See also AU Constitutive Act of 2000: www.achpr.org/files/instruments/au-constitutive-act/au_act_2000_eng.pdf.)

²⁹ There are Special Rapporteurs for (1) women, (2) human rights defenders, (3) freedom of expression, (4) prisons and conditions of detention and (5) refugees, migrants and IDPs.

³⁰ This is not the same as the African Court of Justice and Human Rights (ACJHR) Protocol, which was adopted in 2008 and will come into force once 15 countries have ratified it. The ACJHR Protocol mandates the merger of the African Court on Human and Peoples' Rights and the African Court of Justice; the latter was agreed to (in 2003) but never established.

³¹ The Court was established by virtue of Art. 1 of the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights, in Ouagadougou, Burkina Faso, in June 1998. See www.african-court.org/en/

³² In August 2017, the Court had received 146 applications and finalised 32 cases. See www.african-court.org/en/

³³ The Court may receive cases filed by the ACHPR, state parties to the Protocol or African intergovernmental organisations. NGOs with observer status before the ACHPR and individuals can also institute cases directly before the Court as long as the state against which they are complaining has deposited the Art. 34(6) declaration recognising the jurisdiction of the Court to accept cases from individuals and NGOs. The eight states allowing individuals and NGOs access to the Court are Benin, Burkina Faso, Côte d'Ivoire, Ghana, Mali, Malawi, Tanzania and Tunisia. See <http://www.african-court.org/en/> (for earlier data, see also SOAWR, 2011. *Guide to Using the Protocol on the Rights of Women in Africa for Legal Action*).

3.4.2 The protective and promotional mandate of the ACHPR

The mandate of the ACHPR is to protect and promote human and peoples' rights. Under its *protective* mandate, human rights defenders and citizens can be litigants and present violations of human rights for the attention of the ACHPR. This is done via the individual 'Communications' procedure. The potential of this procedure for the ACHPR to advance women and girls' rights has not yet been fully seized. There have been only two cases exclusively addressing women's rights, and a few others relating to women's rights concerns. One of these two Communications at the ACHPR—of *Equality Now and the Ethiopian Women Lawyers Association v Ethiopia*—is documented as case study 8 in Chapter 6. As a result, the jurisprudence of the ACHPR is not well developed in this regard.

The African Charter, which all African states have ratified, offers specific and general provisions that can reliably be used in putting forward an allegation of women's rights violations.³⁴ In addition, the Maputo Protocol can be utilised as a basis for alleging violations where a state has ratified it, and as a source of persuasive authority where it has not. In spite of the rich framework in place, though, in practice, these laws have not been optimally utilised in the ACHPR's jurisprudence. In a number of cases, the ACHPR has missed critical opportunities to articulate the gender dimensions of human rights violations, such as in sexual violence cases, and the particular gendered nature of violations against women largely goes unrecognised. Consequently, the ACHPR has fallen short in relation to developing and expanding substantial jurisprudence for women's rights protection.

In a few progressive Communications the ACHPR does pronounce itself on women's rights violations. Yet, even in these noteworthy cases, discrimination and women's rights violations are framed and interpreted in a narrow way that fails to recognise the unique and disproportional and gender-specific ways in which women and girls experience discrimination.³⁵ The dearth of women's rights cases at the ACHPR cannot be attributed to the ACHPR alone; complex social, legal and practical reasons abound for this. That said, under-utilisation of the Communications procedure by NGOs contributes, and human rights defenders must be encouraged to utilise this platform to advance women's rights protection.^{xviii}

With respect to its second mandate—that is, to *promote* women and girls' rights—the ACHPR has a wide array of avenues.^{xix} The state reporting mechanism is at the core of its promotional mandate (see also Section 3.2.5 above). In addition, there are special mechanisms, comprising Special Rapporteurs, committees and working groups. The mechanisms most relevant to this report include the Special Rapporteur on the Rights of Women in Africa (SRRWA) and the Committee on the Protection of the Rights of People Living with HIV and Those at Risk, Vulnerable to and Affected by HIV (the HIV Committee). The SRRWA has been particularly active and trail-blazing in terms of standard-setting (see also her mandate in Box 3.12), for instance, in the development of three out of five of the ACHPR's General Comments. The Special Rapporteur could, however, bear to increase utilisation of promotional visits to engage with states on women's rights concerns.³⁶

Box 3.12. Mandate of the Special Rapporteur on the Rights of Women in Africa

The mandate of the SRRWA includes:

- To serve as a focal point for the promotion and protection of the rights of women and girls in Africa
- To assist African governments in the development and implementation of policies for the promotion and protection of the rights of women and girls in Africa, particularly in accordance with the Maputo Protocol
- To undertake promotional and fact finding missions in member states of the AU
- To follow up on implementation of the African Charter and the Maputo Protocol by state parties, by preparing reports on the situation of women and girls' rights in Africa and proposing recommendations to be adopted by the ACHPR
- To conduct a comparative study on the situation of the rights of women and girls in various countries of Africa
- To draft resolutions on the situation of women and girls in the various African countries and propose them to the members of the ACHPR for adoption
- To define guidelines for state reporting that assist member states in adequately addressing women and girls' rights issues in their reports submitted to the ACHPR and
- To collaborate with relevant actors responsible for the promotion and protection of the rights of women and girls internationally, regionally and nationally

³⁴ Examples of these provisions in the African Charter are the non-discrimination clause (Art. 2) and that on the elimination of discrimination against women (in Art. 18.3). For a more detailed analysis of the strengths and challenges of these provisions, in particular the not unproblematic framing of Art. 18 in relation to upholding the family and morals and traditional values, see Chapter 2 of Rajab-Leteipan, S. and Kamunyu, M. (2017). *Litigating before the African Commission on Human and Peoples' Rights: A Practice Manual*. Nairobi: Equality Now.

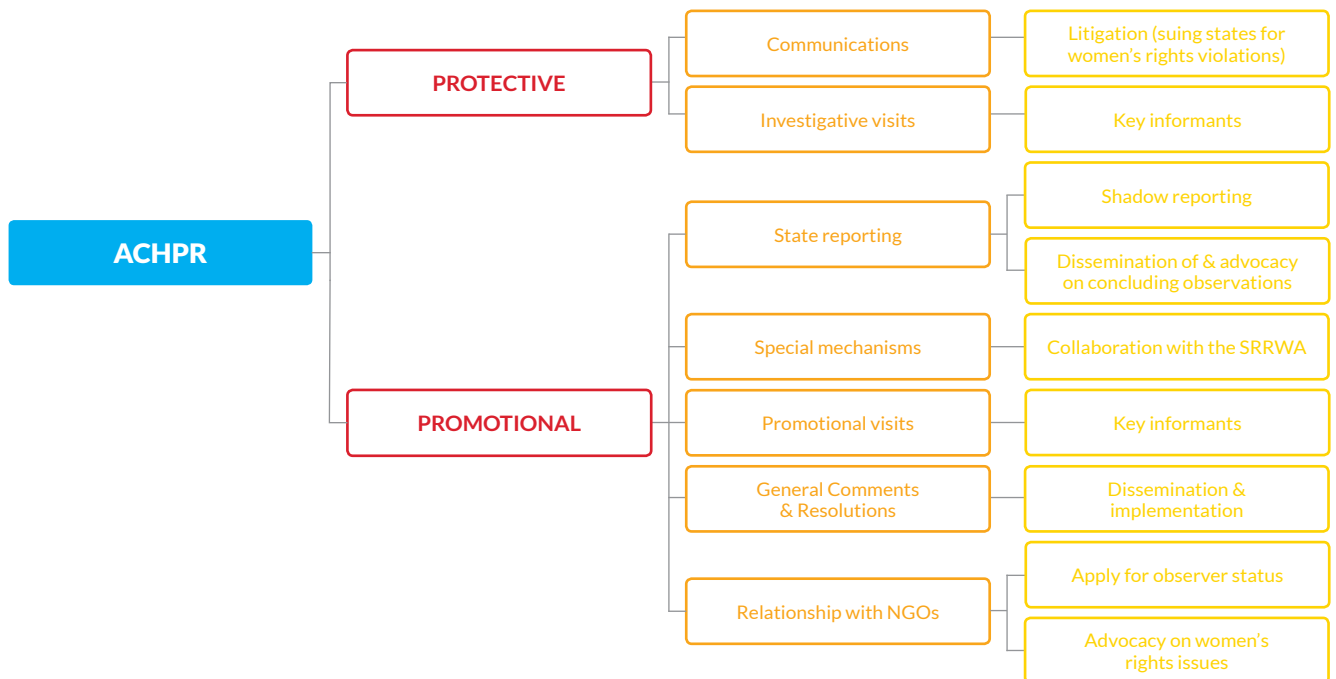
³⁵ For instance, the ACHPR has in two Communications found discrimination against women only by having applied a male-comparator standard—i.e. comparing a man and a woman in similar situations then establishing that treatment of the woman was unjust. This is problematic, as, in some instances, women and girls experience discrimination uniquely and disproportionately in a manner that it not comparable to the situation for men (see also Rajab-Leteipan and Kamunyu, 2017).

³⁶ In addition, the ACHPR itself undertakes promotional visits to states through a team of commissioners.

It is in the development of soft law that the ACHPR really comes into its own in utilising its promotional mandate. Initially, the ACHPR predominantly adopted resolutions, which can be thematic or country-specific in nature. The mechanism of adopting resolutions has been thoroughly underutilised in women's rights promotion, with only few resolutions developed in this area. More recently, the ACHPR has taken to adopting General Comments, as with the human rights treaty bodies of the UN system. The ACHPR has developed and adopted five General Comments; three are exclusively on women's rights concerns whereas two affect women generally. The three former are the General Comment No. 1 on HIV, General Comment No. 2 on sexual and reproductive health rights and the Joint General Comment on Child Marriage (see also Section 3.2.2).³⁷ Another example is the *Guidelines on Combatting Sexual Violence and its Consequences in Africa*, adopted in 2017 (discussed in more detail in Chapter 5).

From an outsider's perspective, the ACHPR's promotional mandate presents the greatest access and opportunity for civil society actors to simultaneously engage with the ACHPR and states. In fact, the ACHPR is mandated to collaborate with NGO actors and give an audience to NGOs with observer status during its ordinary sessions. Figure 3.5 offers an overview of the entry points for civil society actors in connection to both the protective and the promotional mandate of the ACHPR.

Figure 3.5. ACHPR mandate and related entry points for civil society actors



³⁷ The other two, General Comment No.4 (on the Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment) and General Comment No.3 (on the Right to Life) marginally address women's rights. General Comment No.4 is lauded in establishing that acts of sexual and gender based violence or the failure by states to prevent such acts amount to torture. In so doing, this expands the ambit of women's rights protection and right to redress in cases of violence. (see also: Kamunyu, Mariam 2018).

3.4.3 Important partnerships

The **New Partnership for Africa's Development (NEPAD)** is the strategic framework for socioeconomic development of the continent, adopted in 2002 by the AU. Its objective is 'to eradicate poverty, place African countries on a path of sustainable growth and development, halt marginalisation of Africa in the globalisation process, accelerate the empowerment of women and fully integrate Africa into the global economy'.^{xx} NEPAD is mainly implemented at the REC level; Chapter 4 of this report looks in more detail at the role of the RECs.

In 2003, the NEPAD Heads of State and Government Implementation Committee established the **African Peer Review Mechanism (APRM)**. The APRM is a self-monitoring instrument with voluntary membership. Its objective is 'to foster the adoption of policies, values, standards and practices of political and economic governance that lead to political stability, accelerated sub-regional and continental economic integration, economic growth and sustainable development'. The APRM monitors gender indicators that cover, among others, issues relating to GVAW, HIV and AIDS, harmful practices and SRH. Nineteen countries have been reviewed so far, leading to countries prioritising and implementing many of the gender objectives in their national action plans. In 2016, a study³⁸ on gender equality and the APRM concluded that the APRM mechanism could serve as a catalyst for gender equality and women and girls' empowerment in Africa, especially with opportunities for participatory governance. To fulfil this promise of serving as an accountability framework for gender equality in Africa, the mechanism needs significant reorientation.^{xxi}

Box 3.13 European relations with the African Union

The EU is one of the AU's most important partners. The relationship has a political and institutional as well as financial dimension. One important framework in the partnership between the EU and African (as well as Caribbean and Pacific) countries is the *Cotonou Partnership Agreement (CPA)*. This will expire in 2020, which means new discussions have been necessary on the future of the partnership, also in relation to Agenda 2030 and realisation of the SDGs. The CPA recognises the importance of investing in human development, and has offered a framework for cooperation in strengthening health systems and on youth and gender equality, such as in providing access to contraception and SRHR. The CPA is also unique in its recognition of the role of non-state actors, and of civil society in particular, in political dialogue and in the programming and implementation of development funds.

A second important framework is the *Joint Africa EU Strategy (JAES)*, which was established in 2007; this is the formal channel through which the AU and the EU work together. On 29–30 November 2017, an EU–AU Summit took place in Abidjan (Côte d'Ivoire). Over the past decade, the political discourse of the JAES seems to have shifted from a more thematic approach to an emphasis on the migration, security and defence agenda. In this context, there is less attention and commitment to the human development agenda, and to health and SRHR more specifically. Moreover, compared with the CPA, the JAES lacks a strong reference and support to the role of CSOs. When mentioned, civil society is often coupled with the private sector, without much detail on the specific roles of particular actors. At the recent Summit, there was very limited space for the involvement of civil society.^{xxii}

³⁸ The study was published by UNECA, one of the five regional commissions of the UN, established in 1958 with the objective 'to promote the economic and social development of its member States, foster intra-regional integration and promote international cooperation for Africa's development'.

Chapter 3

ENDNOTES

- i Banda, F. (2006). 'Blazing a Trail: The African Protocol on Women's Rights Comes into Force'. *Journal of African Law*, 72–84.
- ii AUC. (2005). 'Guidelines for Reporting on the AU Solemn Declaration on Gender Equality in Africa'. Adopted at the First AU Conference of Ministers Responsible for Women and Gender, Dakar, October (AU/MIN/CONF/WG/2 (I)).
- iii African Summit on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases. (2001). *Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases*. Abuja, Nigeria, 24–27 April (OAU/SPS/ABUJA/3).
- iv WHO. (2011). *The Abuja Declaration: 10 Years On*. Geneva: WHO.
- v AUC. (2010). 'MPoA 5 Year Review'.
- vi AUC. (2015). 'MPoA Review Report'.
- vii APHRC. (2010). 'Implementation of the Maputo Plan of Action: Opportunities and Challenges for CSO Action in Promoting Sexual and Reproductive Health and Rights in Sub-Saharan Africa'.
- viii AUC. (2015). 'Agenda 2063: First Ten Year Implementation Plan 2013-2024'.
- ix AUC. (2015). 'African Gender Scorecard'.
- x SOAWR and Equality Now. (2011). *A Guide to Using the Protocol on the Rights of Women in Africa for Legal Action*.
- xi https://au.int/sites/default/files/treaties/7783-sl-protocol_to_the_african_charter_on_human_and_peoples_rights_on_the_rights_of_women_in_africa.pdf
- xii See: <http://www.chr.up.ac.za/wru-documents/achpr-documents>
- xiii For more detailed review of the CARMMA campaign, see the most recent CARMMA evaluation report, submitted to the AU Department of Social Affairs (AUC/SAD/C/155).
- xiv <http://freetoshinefrica.org/>
- xv <https://au.int/en/organs/cj>; AU, OHCHR and UN Women. (2017). *Women's Rights in Africa*.
- xvi <https://au.int/en/organs/cj>
- xvii Ibid.
- xviii For an in-depth discussion of and guidance on the protective mandate of the ACHPR, see Rajab-Leteipan, S. and Kamunyu, M. (2017). *Litigating before the African Commission on Human and Peoples' Rights: A Practice Manual*. Nairobi: Equality Now; Kamunyu, M. (forthcoming 2018). 'Analysing the Gender Responsiveness of the African Commission on Human and Peoples' Rights'. PhD thesis, University of Pretoria.
- xix The analysis here draws heavily on the in-depth analysis and consideration of the promotional mandate of the ACHPR *vis-à-vis* women's rights provided in Kamunyu, M. (forthcoming 2018). 'Analysing the Gender Responsiveness of the African Commission on Human and Peoples' Rights'. PhD thesis, University of Pretoria.
- xx <https://au.int/fr/node/3625>
- xxi UNECA. (2017). *Gender Equality and the African Peer Review Mechanism*. Addis Ababa: UNECA.
- xxii For analysis of the different frameworks in the EU-AU relations, see: *Analysis of Human Development in the EC Draft Negotiating Mandate on EU-ACP relations* (Fact Sheet, March 2018). <https://rightbyher.org/wp-content/uploads/2018/05/Factsheet-EU-Draft-Mandate.pdf>