



# CSO Guide

## Engaging AU Member States on Women's Rights and Gender Equality

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SOLIDARITY FOR  
AFRICAN WOMEN'S RIGHTS



A force for freedom

MOUVEMENT DE SOLIDARITÉ  
POUR LES DROITS  
DES FEMMES AFRICAINES

Une force pour la liberté



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Published in 2022 by Equality Now.

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Design & Layout: James Chunguli



*The development of this publication has been financially supported by the Swedish Development Cooperation through Equality Now*



# FOREWORD

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The adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) on 11 July 2003 marked an important revolutionary moment in the promotion and protection of women's rights. Its inception was a huge milestone towards the realization of women's rights and gender equality in Africa. In light of this, civil society organizations (CSOs), through a united front, formed the Solidarity for Africa Women's Rights (SOAWR) coalition, whose primary objective is to bolster their efforts in ensuring universal ratification, domestication and implementation of the Maputo Protocol by African Union (AU) member states.

In the past 18 years, SOAWR members played a critical role through advocacy efforts to ensure speedy ratification and entry into force of the Maputo Protocol and subsequently have continued engaging state actors to ensure its universal ratification. While the majority of the member states have ratified/acceded to the Maputo Protocol by the end of 2021, 13 AU Member states remained to accede to the Maputo Protocol. Beyond ratification, there are gaps in domestication and implementation, demonstrating the need for SOAWR as well as other civil society actors to accelerate efforts to ensure that the provisions of the Maputo Protocol translate to transforming the lived realities of women and girls in Africa. One of the key strategies that needs to be enhanced is engagement with the African Union through its "All for Maputo Protocol" Programme. This can be done at different levels: national, sub-regional and, continent-wide through effective engagement with the AU human rights system, the AU policy and technical bodies and AU consultative and advisory bodies.

This CSO Guide seeks to enhance the capacity of CSOs across Africa by giving practical guidance on how best to engage with the AU. This is in line with the recognition that CSOs play a crucial role in working towards gender equality and women's rights through representing, supporting and defending vulnerable groups of women, keeping gender equality and women's rights issues on policy makers' agendas by advocating for women's rights at the legislative and policy formulation and implementation levels, as well as by holding governments

and other stakeholders to account over their implementation of gender-related commitments.

The CSO Guide begins by analyzing the existing regional instruments and soft law instruments on women's rights in Africa, thereby providing an opportunity for CSOs to track the commitments made by state actors on realizing gender equality, and subsequently, seek accountability. It proceeds to unpack the existing institutions in the African Union and provides different ways in which CSOs may engage with each of these institutions, such as through participating in the African Commission on Human and Peoples' Rights (ACHPR) sessions; submitting Communications to the ACHPR; and developing and submitting shadow/alternative reports to the ACHPR.

The Guide further draws upon the experiences of practitioners in engaging AU member states on human rights generally and on women's rights and gender equality in particular. It has been developed with a view to equip CSOs with the practical knowledge, tools, tactics and tips required to effectively engage with AU member states at the national level and within the structures and mechanisms established at the regional and sub-regional levels to advance women's rights and gender equality.

In many respects, the CSO Guide offers a one-stop reference that analyzes the key regional, sub-regional and national mechanisms that play a key role in fulfilling, promoting, protecting and respecting the rights of women and girls in Africa. The SOAWR Coalition and Equality Now hope that this CSO Guide will act as a useful tool to sharpen and enhance CSO advocacy efforts to effectively contribute to the All for Maputo Protocol Programme.

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# Abbreviations

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<b>ACDHRS</b>	African Centre for Democracy and Human Rights Studies
<b>ACERWC</b>	African Committee of Experts on the Rights and Welfare of the Child
<b>ACHPR</b>	African Commission on Human and Peoples' Rights
<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>ACtHPR</b>	African Court on Human and Peoples' Rights
<b>AU</b>	African Union
<b>AUC</b>	African Union Commission
<b>CBO</b>	Community-Based Organization
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CIAC</b>	Coalition for the Independence of the African Commission
<b>CIDO</b>	Citizens and Diaspora Directorate
<b>CSO</b>	Civil Society Organization
<b>EAC</b>	East African Community
<b>EACJ</b>	East African Court of Justice
<b>EACSOFF</b>	Eastern Africa Civil Society Organizations Forum
<b>EAHP</b>	Eastern African Health Platform
<b>EALA</b>	East African Legislative Assembly
<b>EALS</b>	East African Law Society
<b>EASSI</b>	Eastern African Sub-Regional Support Initiative for the Advancement of Women
<b>ECCJ</b>	ECOWAS Community Court of Justice
<b>ECOSOCC</b>	Economic Social and Cultural Council
<b>ECOWAS</b>	Economic Community of West African States
<b>EWLA</b>	Ethiopian Women Lawyers Association

<b>FAS</b>	Femmes Africa Solidarité
<b>FGM</b>	Female Genital Mutilation
<b>GIMAC</b>	Gender is My Agenda Campaign
<b>HIV</b>	Human Immunodeficiency Virus
<b>IDP</b>	Internally Displaced Person
<b>NGO</b>	Non-Governmental Organization
<b>NHRI</b>	National Human Rights Institution
<b>OAU</b>	Organization of African Unity
<b>PAP</b>	Pan-African Parliament
<b>PRC</b>	Permanent Representatives Committee
<b>PSC</b>	Peace and Security Council
<b>REC</b>	Regional Economic Community
<b>RISDP</b>	Regional Indicative Strategic Development Plan
<b>RWPC</b>	Regional Women's Parliamentary Caucus
<b>SADC</b>	Southern Africa Development Community
<b>SADCC</b>	Southern African Development Coordination Conference
<b>SDGEA</b>	Solemn Declaration on Gender Equality in Africa
<b>SOAWR</b>	Solidarity of African Women's Rights
<b>SRHR</b>	Sexual and Reproductive Health and Rights
<b>STC</b>	Specialized Technical Committee
<b>WGDD</b>	Women, Gender and Development Directorate
<b>WGYD</b>	Women, Gender and Youth Directorate

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# 1



## Introduction

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### 1.1 Background to the Guide

The adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) on 11 July 2003 marked an important milestone in the promotion and protection of women's rights in Africa. The Maputo Protocol was a fruit of many years of activism and advocacy by Civil Society Organizations (CSOs), with women's rights organizations at the forefront. With the adoption of the Protocol, CSOs around the continent formed the Solidarity for African Women's Rights (SOAWR) to coordinate their advocacy efforts aimed at ensuring speedy ratification and entry into force of the Maputo Protocol. As a testimony to these efforts, the Maputo Protocol attained the minimum number of ratifications in a record time of 28 months, a feat that had rarely been seen in respect of other human rights treaties of the African Union (AU) or its predecessor, the Organization of African Unity (OAU).

In the last 18 years, significant strides have been taken, both at the national and regional levels, towards addressing the myriad and intersecting forms of discrimination against women. For one, challenges and gaps still abound in the promotion and protection of women's rights in Africa. The Maputo Protocol has not received universal ratifications close to two decades after its adoption. Out of the 55 AU member states, 13 have not yet ratified the Protocol. Beyond ratification, there are gaps in domestication and implementation of the Protocol in countries where it has been ratified. This situation points to an inevitable conclusion: The work of SOAWR is as relevant today as it was when it was formed in 2004. This context forms an important operational backdrop for SOAWR as it is currently implementing its Strategic Plan 2020-2024, which was adopted at the beginning of 2020.

One of the central objectives of the SOAWR Strategic Plan is to contribute to the AU's All for Maputo Protocol Programme. The "All for Maputo Protocol Programme" neatly dovetails into one of SOAWR's core objectives, that is, accelerating the universal ratification of the Maputo Protocol, as well as its full domestication and implementation. To realize this objective, SOAWR Coalition members will need to engage with AU member states at multiple levels, including national, sub-regional and regional. However, SOAWR Coalition members, and CSOs in general, have varied technical capacities and expertise in the art of state engagement. This Guide seeks to build the capacity of SOAWR Coalition members, and indeed of all CSOs working on women's rights and gender equality in Africa, by providing practical guidance on how to effectively engage AU member states in respect of the Maputo Protocol.

## 1.2 Structure of the Guide

This Guide draws upon the experiences of practitioners in engaging AU member states on human rights generally and on women's rights and gender equality in particular. It has been developed with a view to equip CSOs with the practical knowledge, tools, tactics and tips required to effectively engage with AU member states at the national level and within the structures and mechanisms developed at the regional and sub-regional levels to advance women's rights and gender equality. Apart from this introduction, the Guide has five substantive sections;

- **Section 1:** This section describes the background and rationale of the Guide. It also explains how the Guide is structured.
- **Section 2:** This section provides an overview of the regional normative and policy framework on women's rights and gender equality in Africa. The focus is on human rights treaties and soft law instruments adopted at the regional and sub-regional levels.
- **Section 3:** This section deals with CSO engagement with AU member states and the relevant institutions at the regional level, that is, within the AU ecosystem. CSO engagement with three different broad categories of AU institutions is described:
  - Engagement with AU human rights treaty bodies;
  - Engagement with AU policy and technical bodies; and
  - Engagement with AU consultative and advisory bodies.
- **Section 4:** This section addresses CSO engagement with AU member states and the relevant institutions established within Regional Economic Communities (RECs). While the AU recognizes eight RECs as its core building blocks, the Guide describes engagement with three of the most prominent: East African Community (EAC), the Economic Community of West African States (ECOWAS), and the Southern African Development Community (SADC).
- **Section 5:** This section focuses on CSO engagement with the AU member states at the national level. Some of the areas of engagement that this section focuses on are as follows: ratification or accession of relevant regional treaties and withdrawal of any existing reservations; domestication of relevant treaties; preparation of shadow reports; follow-up on implementation of concluding observations; monitoring of domestic implementation of the Maputo Protocol and compliance with decisions of treaty bodies; and national litigation.

At the end of the Guide, sources of additional information and guidance are provided.

- *Annex 1* provides links to regional human rights treaties and soft law instruments that are relevant to women's rights and gender equality.
- *Annex 2* provides links to the core working documents of the AU human rights treaty bodies.
- *Annex 3* provides a curated list of additional published resources on CSO engagement with AU member states and the relevant regional and sub-regional institutions. Links to these resources are also provided.

# 2



## Normative and Policy Framework on Women's Rights and Gender Equality in Africa

Human rights are entitlements thereby creating the positions of rights holders and duty bearers. Women and girls are rights holders and they are owed certain rights by duty bearers who include state and non-state actors. CSO actors must accordingly start from the recognition that women's rights are entitlements for which states have various duties, obligations and commitments. Such recognition must begin from a familiarisation with varying state commitments towards women as expressed in human rights treaties and other soft law international standards. The knowledge of these normative standards must also be beyond cursory, including an understanding of the nuances in the varying strengths, weaknesses and opportunities presented by each normative instrument. This Guide will accordingly attempt to elucidate such highlights.

### 2.1 Treaties for women's rights protection in Africa

Treaties are international agreements concluded between states in written form and governed by international law.<sup>1</sup> States that have ratified specific treaties are legally bound by the provisions of those treaties. Those that have signed but not yet ratified treaties equally have a duty not to undermine the objectives of the treaty. Those that have neither ratified nor signed specific treaties are not free from women's rights commitments to their citizens, only that their process of accountability is less straightforward. This section aims to delve into human rights commitments within the African human rights system that portend great significance for women's rights protection.

#### 2.1.1 African Charter

The African Charter on Human and Peoples' Rights (African Charter) is the continent's core human rights treaty. Also referred to as the Banjul Charter, it was adopted in 1981 and came into force in 1986. The African Charter enjoys universal ratification in Africa since it has been ratified by all AU member states (though the status of newest the AU re-entrant, Morocco, remains unclear).

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<sup>1</sup> Vienna Convention on the Law of Treaties, art 2(1)(a).

The African Charter is a binding legal instrument which means that states are obliged to protect and promote all the rights contained in it. In fact, the Charter begins with this exact obligation in article 1, where it provides:

The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

The African Charter has the following main features:

**Indivisibility of rights:** The African Charter contains civil and political rights,<sup>2</sup> socio-economic rights,<sup>3</sup> and third-generation or group or peoples' rights.<sup>4</sup> Accordingly, it respects the notion of indivisibility, interdependence and interconnectedness of all human rights. All the rights contained in the African Charter are justiciable and can be claimed by women. This is particularly important since some national contexts do not recognise the justiciability of socio-economic rights and the Charter can be used to challenge such contexts.

**Equality provisions:** The African Charter has some equality provisions with varying implications.

- Article 2:<sup>5</sup> The Charter contains a general non-discrimination clause which guarantees women the right to enjoy all the rights in the African Charter without discrimination. It is an ancillary/ non-autonomous provision, i.e. it can only be invoked in relation to the protection of a right protected within the African Charter. Its alleged violation is hinged upon the violation of another substantive right.
- Article 3:<sup>6</sup> This article is concerned with a right to procedural equality and unlike article 2, it is not only bound to rights within the Charter, but an allegation of its violation can also extend to national laws.
- Article 18(3): This article provides that states have a duty to ensure the elimination of every discrimination against women and to ensure their protection as stipulated in international declarations and conventions (see detailed discussion below).
- Article 19:<sup>7</sup> The right to equality is similarly extended to people in addition to individuals. This provision can be utilised to assert protection for women in minority groups.

**African character/unique features:** The African Charter is noted for its indigenous nature which is exemplified in various unique features:

- It makes provision for individual as well as peoples' rights. The term 'peoples' was intentionally not defined. In practice, it has mostly been relied on by minorities in making claims of self-determination. Peoples' rights also include rights to development and free disposal of natural resources.

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2 Such as the rights to: life; prohibition of torture; liberty; fair trial; freedom of conscience; information and free expression; association; assembly; movement; and participation in government.

3 Such as the rights to: property; work; health; and education.

4 Such as the rights to: self-determination; free disposal of wealth and natural resources; development; peace; and a satisfactory environment.

5 Article 2: Every individual shall be entitled to the enjoyment of the rights and freedoms recognised 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 any status.

6 Article 3(1): Every individual shall be equal before the law; Article 3(2): Every individual shall be entitled to equal protection of the law.

7 Article 19: All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

- The African Charter is unique in its inclusion of the right to development as a justiciable right. It is also unique in its exclusion of classic rights such as the right to privacy and the right against forced or compulsory labour.
- The Charter is unique in that it bestows on individuals' rights as well as duties (articles 27 – 29) whereas in international human rights law, duties are typically the preserve of states.

**Women's rights-centric provisions:** While all the provisions of the Charter obviously apply to women, it bears to review the African Charter from a specific women's rights lens. In this regard, only article 18(3) explicitly mentions women providing:

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

The following can be noted in this provision:

- It is the key provision for women's rights protection within the Charter.
- It is a stand-alone provision that covers "any" type of discrimination.
- It extends the protection of women to provisions of other international declarations and conventions. Therefore, while the African Charter may not exhaustively cater to the specifics of women's rights protection, states are nonetheless required to ensure the maximum protection of women as provided in other treaties such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Read together with article 60 of the Charter,<sup>8</sup> this provision also requires the African Commission on Human and Peoples' Rights (ACHPR) to draw inspiration from other sources of international human rights law for women's rights protection.

**Supervisory mechanism:** The implementation of the African Charter falls originally and primarily to the ACHPR. There is also the African Court on Human and Peoples' Rights (ACtHPR) which has jurisdiction to entertain matters on the interpretation and application of the Charter.

**Tip:** All the rights in the African Charter are justiciable, which means that states can be held to account in national as well as regional courts.

The African Charter does not contain a limitations clause. This means that states have no avenue to justify a limitation of rights, including in times of conflict, emergencies or any other special circumstances.

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<sup>8</sup> Article 60: The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on Human and Peoples' Rights, the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of Human and Peoples' Rights, as well as from the provisions of various instruments adopted within the Specialised Agencies of the United Nations of which the Parties to the present Charter are members.

## 2.1.2. Maputo Protocol

The Maputo Protocol is a legally binding regional human rights treaty which provides for a comprehensive set of women's and girls' rights. While the African Charter on Human and Peoples' Rights as well as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), existed prior to the adoption of the Maputo Protocol, both were deemed insufficient in respect of fully catering to women and girls on the continent. The Charter on account of its inadequate express protection of women's rights is in stark contradiction to the poor state of women's rights in the continent. As for CEDAW, while it caters for women's rights protection, it was felt that there was a need for an instrument that spoke more expressly to the lived realities of women in Africa.

The Maputo Protocol is celebrated as one of the most comprehensive and innovative binding human rights treaties. Comprehensive in that it contains all generations of rights from a women's rights perspective, including:

- First-generation rights (civil and political rights) such as the right to access to justice and the right to participation in the political and decision-making process.
- Second-generation rights (economic, social and cultural rights) such as the right to education and training and the right to adequate housing.
- Third-generation rights (collective/solidarity rights) such as the right to a healthy and sustainable environment and the right to sustainable development.

### Key provisions:

**Equality and non-discrimination:** Article 2 obliges State Parties to undertake measures, and lists the same, in order to eliminate discrimination against women. Additionally, the Protocol broadly defines discrimination against women as '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'.<sup>9</sup>

**Violence against women:** The Protocol contains extensive provision barring violence against women. Violence against women, as per the Protocol, encompasses sexual violence, trafficking of women, sexual harassment and domestic violence. The Protocol also mandates state parties to undertake a range of measures targeted at ending violence against women such as enacting and enforcing laws that prohibit violence against women and identifying and addressing the root causes of violence against women.

**Harmful practices:** Aside from prohibiting all forms of harmful practices against women, including all forms of female genital mutilation, the Protocol notably calls for the provision of support to victims of harmful practices. Such support ranges from emotional and psychological counselling to vocational training.

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<sup>9</sup> See Article 1(f).

## Women's political participation:

**Marriage rights:** The Protocol provides for a comprehensive bundle of marriage rights, whose realization would be a major impetus to gender equality. Included in this bundle of rights is the requirement for free and full consent as the basis of marriage. The Protocol also sets the minimum age of marriage as 18 years. The Protocol also provides protection to women during separation, divorce or annulment of the marriage.

**Reproductive health and rights:** Article 14 of the Protocol, which provides for health and reproductive rights, is one of the hallmarks of the Protocol. In stark contrast to many domestic laws around the continent, the Protocol authorizes medical abortion albeit only in certain circumstances. While guaranteed in the Protocol, the bulk of health and reproductive rights remain far from realization, largely due to patriarchal-leaning cultures. There is therefore need for increased advocacy in this area.

**Right to positive cultural context:** Article 17 of the Protocol guarantees women's right to live in a positive cultural context. The provision of the right to positive cultural context, in turn, emboldens women to take part in the formulation of cultural policies.

**Intersectionality:** The Protocol recognizes the multiple identities through which women exist and consequently makes provision for groups of women who are further marginalized on account of these identities. The Protocol calls for the protection of widow's rights as well as the special protection of elderly women, women with disabilities and women in distress.

## Innovations:

The Maputo Protocol is celebrated for being the first legally binding human rights treaty to make provision for the following rights:

- The right to medical abortion.
- Women's rights protections in the context of HIV and AIDS.
- Prohibition of harmful practices as well as female genital mutilation (FGM).
- The rights of women in polygamous marriages are also protected (although the Protocol expressly encourages monogamy as the 'preferred' form of marriage).
- The need to adopt a gender perspective in national development procedures, including prioritization of gender budgeting.
- The requirement that the negative effects of globalization, trade and economic programs be reduced for women.

**Supervisory mechanism:** The implementation of the Maputo Protocol falls on the ACHPR and the ACtHPR. As part of the implementation strategy of the Protocol, States Parties ought to document any measures undertaken to implement the provisions of the Protocol in their periodic reports as submitted to the ACHPR in accordance with Article 62 of the African Charter on Human and Peoples' Rights.

### 2.1.3. African Children's Charter

The African Charter on the Rights and Welfare of the Child (African Children's Charter) is the premier regional instrument on the rights of children. The African Children's Charter builds on the Declaration on the Rights and Welfare of the African Child, which elaborated on the need to adopt appropriate measures to protect and promote the rights of children in Africa. Whereas the African Children's Charter contains provisions which seek to protect the rights of children generally, it does contain provisions which cater to the rights of girls.

The African Children's Charter has the following salient features:

- Provision for the best interests of the child as the main consideration when making decisions affecting the child.<sup>10</sup>
- Guarantee of the right to nationality. The African Charter on Human and Peoples' Rights does not contain a provision on the right to nationality – an omission which has spurred rates of statelessness on the continent. In a bid to seemingly remedy the omission in the Banjul Charter, the African Charter on the Rights and Welfare of the Child makes explicit the right of African children to acquire a nationality and mandates States Parties to make constitutional provision for the manner in which children may acquire nationality.
- The Charter acknowledges that parents (and those fulfilling this role) bear the primary responsibility for a child's upbringing and consequently enumerates parental responsibilities.

**African character/ unique features:** The African Children's Charter is noted for its indigenous nature, which is exemplified in various unique features:

- It makes specific provision for the prioritization of the needs of children living under Apartheid.
- It also imposes certain responsibilities on children in respect of the family and society at large.

**Girls' rights-centric provisions:** The African Children's Charter does not expressly contain provisions for the rights of girls. However, it contains the following provisions which have an impact on girls' lives as girls remain disproportionately affected by certain acts:

- It protects girls from economic exploitation as well as any work that is likely to interfere with their 'physical, mental, spiritual, moral or social development'.<sup>11</sup>
- It further calls for the protection of the girl child from abuse, including sexual abuse, which it acknowledges can occur when the child is in the care of a parent, child, school authority or any other persons charged with caring for the child.
- It also mandates states parties to protect girls from harmful social and cultural practices and specifically prohibits child marriage and betrothal of girls.

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<sup>10</sup> Article 4(1): In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.

<sup>11</sup> Article 15(1).



- Additionally, it calls for the protection of children from all forms of sexual exploitation and sexual abuse. The Charter further obliges states to take measures aimed at preventing the inducement and coercion of children into sexual activity of any kind.

### **Supervisory mechanism:**

The African Children's Charter establishes the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) and tasks it with the protection and promotion of the rights of children as enshrined in the Charter. The ACERWC also takes primacy in the interpretation of the provisions of the Charter and receives reports on the progress of implementation of the rights in the Charter from State Parties through the Secretary General.

### **2.1.4. Kampala Convention**

The AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), which entered into force on 6<sup>th</sup> December 2012, confers a myriad of obligations on State Parties. The Convention sets out general obligations of State Parties as well as specific obligations in relation to the protection and assistance of internally displaced persons (IDPs).

Uniquely, the Convention, in recognition of the resultant displacement of persons in situations of armed conflict, bars members of armed groups from, among other things:<sup>12</sup>

- Arbitrarily displacing persons;
- Interfering with protection and assistance initiatives;
- Restricting the freedom of movement of IDPs; and
- Infiltrating IDP shelter zones.

### **Women's rights-centric provisions:**

- As part of the prohibitions accruing to armed groups, the Kampala Convention bars armed groups from engaging in sexual slavery and trafficking of women.
- State parties to the Convention bear the responsibility to prevent all forms of sexual and gender-based violence in respect of IDPs.
- The Convention contains a further provision on the protection and provision of assistance to a broad category of women, which includes female heads of households and expectant mothers.
- Additionally, the Convention guarantees the reproductive and health rights of internally displaced women and requires states to protect the same.

### **Implementation mechanism:**

The Conference of State Parties to the Kampala Convention is the body tasked with monitoring the implementation of the Convention. The Conference is also tasked with enhancing state

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<sup>12</sup> See Article 7(5).

cooperation and support under the Convention. Periodic reports are required to outline the measures state parties have taken to implement the Convention.

### **2.1.5. Protocol on the Rights of Persons with Disabilities**

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa is premised on Article 18(4) of the African Charter on Human and Peoples' Rights which guarantees persons with disabilities the right to special protection measures commensurate to their physical and moral needs. The Protocol is further premised on the Kigali Declaration on Human Rights of 8<sup>th</sup> May 2003, which called upon states to develop a protocol for the protection of persons with disabilities.

The Protocol has the following main provisions:

#### **Equality provisions:**

The Protocol has extensive provisions on equality, beginning with its non-discrimination clause which includes broad non-exhaustive grounds of discrimination.<sup>13</sup> The Protocol also guarantees the right to equality and defines equality as including 'the full and equal enjoyment of all human and peoples' rights'.<sup>14</sup> The attendant obligations accruing to states on account of the right to non-discrimination and the right to equality include the taking up of appropriate measures that do away with discrimination against persons with disabilities and those that promote their equality. There are additional measures imposed on the state with respect to the equal recognition of persons with disability before the law. These range from the recognition of persons with disability as being equal before and under the law to undertaking measures that ensure that persons with disabilities have control over their financial affairs.<sup>15</sup>

#### **Women's rights-centric provisions:**

Whereas the Protocol caters for women and girls in its entirety, it contains an additional provision on the rights of women and girls with disabilities.<sup>16</sup> In addition to this provision, the Protocol contains further provisions on children, youth and older persons with disabilities which could further apply to women, given their multiple intersectional identities.

#### **Supervisory mechanism:**

States are required to include the progress made in implementing the Protocol in their periodic reports. The bodies vested with supervision of the implementation of the Protocol are the ACHPR and the ACtHPR.

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13 Article 5(1): Every person with a disability shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Protocol without distinction of any kind on any ground including race, ethnic group, colour, sex, language religion, political or any other opinion, national and social origin, fortune, birth or any status.

14 Article 6(2).

15 Article 7.

16 See Article 27.

## 2.1.6. Protocol on the Rights of Older Persons

The Protocol to the African Charter on Human and Peoples' rights on the Rights of Older Persons in Africa supplements the provisions of Article 18(4) of the African Charter on Human and Peoples' Rights which guarantees older persons the right to special measures commensurate to their physical and moral needs. As of December 2021, the Protocol on the Rights of Older Persons had yet to enter into force.

The Protocol has the following main features:

**Equality provisions:** The Protocol contains the following provisions on equality:

- **Article 3:** This provision places an obligation on State Parties to not only prohibit discrimination against older persons but also take corrective measures and support all measures ranging from local to international aimed at eliminating discrimination against older persons. This provision does not envisage particular grounds of discrimination; rather, its object is all forms of discrimination.
- **Article 4:** This provision concerns access to justice and equal protection before the law. The resultant provisions accruing to states largely fall in the legal sector in the sense that states must not only develop and review existing legislation but also provide legal assistance and train the police and other law enforcement organs to effectuate the rights of older persons.

**Women's rights-centric provisions:** The Protocol contains a special provision for the protection of older women. This provision mandates State Parties to ensure the protection of the rights of older women in addition to enacting legislation that specifically protects older women's right to inheritance and protects older women from land rights related abuse.<sup>17</sup>

**Implementation mechanism:** The Protocol takes on an implementation mechanism similar to that of the African Charter by requiring States to indicate the progress of implementation of the Protocol in the periodic reports submitted to the ACHPR.<sup>18</sup> The Protocol also vests on the ACHPR the mandate to interpret the provisions of the Protocol<sup>19</sup> and it may refer any matters of implementation and enforcement and/or any dispute arising from the application of the Protocol to the ACtHPR.<sup>20</sup> On its part, the ACtHPR has the power to hear and determine any such disputes.<sup>21</sup>

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17 Article 9: States Parties shall: (1) Ensure the protection of the rights of Older Women from violence, sexual abuse and discrimination based on gender; (2) Put in place legislation and other measures that guarantee protection of Older Women against abuses related to property and land rights; and (3) Adopt appropriate legislation to protect the right of inheritance of Older Women.

18 Article 22(1): States Parties shall ensure the implementation of this Protocol and shall indicate in their periodic reports submitted to the African Commission in accordance with Article 62 of the African Charter, the legislative and other measures undertaken for the full realisation of the rights recognized in this Protocol.

19 Article 22(2): In the implementation of this Protocol, the African Commission shall have the mandate to interpret the provisions of the Protocol in accordance with the African Charter.

20 Article 22(3): The African Commission may refer matters of interpretation and enforcement or any dispute arising from the application or implementation of this Protocol to the African Court on Human and Peoples' Rights.

21 Article 22(4): Where applicable, the African Court on Human and Peoples' Rights shall have the mandate to hear disputes arising from the application or implementation of this Protocol.

### 2.1.7. SADC Protocol on Gender and Development

The Protocol on Gender and Development, which entered into force on 22<sup>nd</sup> December 2013, seeks to mainstream gender issues into the SADC Programme of Action and Community Building initiatives. The objectives of the Protocol as listed in its 3<sup>rd</sup> Article include the elimination of discrimination and achievement of gender equality and equity through the 'development and implementation of gender-responsive legislation, policies, programmes and projects'.<sup>22</sup>

The Protocol has the following main features:

**Domestic provision:** The Protocol requires State Parties to guarantee gender equality and equity in their constitutions by the year 2015 (since passed). Under the Protocol, such constitutional provision should not be compromised by any other provisions, laws or practices.<sup>23</sup> The Protocol further requires State Parties to enact legislation aimed at eliminating all practices hindering the fulfilment of the fundamental rights of women, men, girls and boys.<sup>24</sup> The Protocol also places an obligation on State Parties to review, amend (and/) or repeal all laws whose points of discrimination are based on sex or gender by the year 2015 (since passed).

**Women's and girls' rights-centric provisions:** While the Protocol is contemplated in its entirety to address gender as encompassing women, men, girls and boys, it contains provisions that specifically cater to women. These include:

- Affirmative action (article 5)
- State obligation to enact laws and other measures to eliminate discrimination (article 6(2))
- Women's access to justice (article 7)
- State obligation to protect the girl child (article 11)

**Supervisory mechanism:** The Protocol creates a multi-tiered supervisory mechanism. The three institutions tasked with the implementation of the Protocol are:

- Committee of Ministers Responsible for Gender/Women's Affairs. Responsible for the supervision of the work of any (sub)committee created by the Protocol.
- Committee of Senior Officials Responsible for Gender/Women's Affairs. Responsible for supervision of the Secretariat.
- SADC Secretariat mandated to facilitate and monitor the reporting by states.

**Implementation:** As part of its implementation mechanism, State Parties are required to submit reports in respect of the progress of implementation of the Protocol every two years to the Executive Secretary of the SADC.<sup>25</sup> The Executive Secretary ought to then submit progress reports to the Council and Summit for their consideration.<sup>26</sup>

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22 Article 3.

23 Article 4(1): States Parties shall endeavour, by 2015, to enshrine gender equality and equity in their Constitutions and ensure that these rights are not compromised by any provisions, laws or practices.

24 Article 4(2): States Parties shall implement legislative and other measures to eliminate all practices which negatively affect the fundamental rights of women, men, girls and boys, such as their right to life, health, dignity, education and physical integrity.

25 Article 35(4): State Parties shall submit reports to the Executive Secretary of SADC once every two years, indicating the progress achieved in the implementation of the measures agreed to in this Protocol.

26 Article 35(5): The Executive Secretary of SADC shall submit progress reports to Council and Summit for consideration.

## 2.2 Soft law

Soft law is the umbrella term used to refer to a wide range of international law instruments that are legally non-binding. Unlike treaties, soft law instruments do not impose legal obligations on states. However, soft law instruments are nevertheless important normative tools as they flesh out or elaborate upon the specific contents of treaties. They include declarations, guidelines, guiding principles, resolutions, and general comments. In this section, the following soft law instruments are discussed: AU Agenda 2063; All for Maputo Protocol Programme; Solemn Declaration on Gender Equality in Africa; and ACHPR and ACERWC general comments and guidelines.

### 2.2.1 AU Agenda 2063

Agenda 2063 is the continent's 'blueprint and master plan for transforming Africa into a global powerhouse of the future'.<sup>27</sup> The Agenda outlines women-centred aspirations for the continent, which include:

- **Aspiration 4** – A peaceful and secure Africa: It is aimed that by 2063, Africa will have a culture of human rights, gender equality and peace and be free from gender-based violence, which has been acknowledged to be a threat to human security, peace and development.
- **Aspiration 6** – An Africa whose development is people-driven, relying on the potential of the African people, especially its women and youth, and caring for children: One of the goals sought to be achieved under this aspiration is a continent that has achieved gender equality in all spheres of life. Additionally, the continent seeks to achieve gender parity with regard to leadership positions in the public and private spheres. Moreover, the AU hopes to end gender-based violence and harmful practices against women and girls.

The Agenda also lists practical and achievable actions which can be implemented by states progressively so as to achieve the aspirations envisaged in the Agenda by 2063.<sup>28</sup>

### 2.2.2 AU Strategy for Gender Equality and Women's Empowerment

The AU has in place a strategy for gender equality and women's empowerment (GEWE) for the period 2018 - 2028 adopted during the AU Summit in February 2019. The strategy aims to strengthen women's agency and participation in Africa in economic, political and social affairs. It aims to do so by mitigating and eliminating that hinder GEWE in Africa. In particular, the strategy should be used to inform transformative programmes for women and girls according to the following pillars:<sup>29</sup>

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<sup>27</sup> See <https://au.int/en/agenda2063/overview> (accessed 9 July 2021).

<sup>28</sup> See 'A Call to Action' to AU Agenda 2063 available on [https://au.int/sites/default/files/documents/36204-doc-agenda2063\\_popular\\_version\\_en.pdf](https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf) (accessed 9 July 2021).

<sup>29</sup> African Union Strategy for Gender Equality and Women's Empowerment. Available at <https://au.int/en/articles/au-strategy-gender-equality-and-womens-empowerment>.

**Pillar 1** – focuses on maximising opportunities, outcomes and e-tech dividends. In a bold move, the GEWE strategy proposes to mount a continental campaign to declare “illiteracy a harmful traditional practice and make “out of school” a punishable offence.

**Pillar 2** – focuses on dignity, security, and resilience and recognises that the rights of women and girls to dignity, security and bodily and psychological integrity are often compromised when women are subjected to violence and violations. The GEWE strategy accordingly proposes to implement AU guidelines on Ending Violence against Women and Girls (VAWG) and fund national projects to penalise VAWG.

**Pillar 3** - highlights the need for effective laws, policies and institutions to promote and protect women’s rights. In line with this pillar, the AU designed the All for Maputo Protocol Programme.

### **All for Maputo Protocol Programme**

The All for Maputo Protocol Programme is one of the key flagship projects under the AU Strategy for Gender Equality and Women’s Empowerment aimed at mobilizing support and advocating for the ratification of the Maputo Protocol by 2020 and its subsequent implementation. The Strategy for Gender Equality and Women’s Empowerment lists the implementation of the All for Maputo Protocol as one of the AU’s activities and such implementation is forecasted to include funding and training for select states, women’s rights defence organisations, private sector and independent scholars, among others. CSOs can plug into this programme by raising awareness on the Maputo Protocol and conducting activities aimed at popularising the Protocol and securing its ratification.

**Pillar 4** - focuses on leadership, voice and visibility. This pillar recognises that for women to have a voice, they need to be equally represented in all areas of decision-making and be able to participate with impact through the removal of all forms of barriers. Led by the AU Women’s Gender and Development Directorate, the strategy proposes to integrate gender in the rewriting of the African narrative through various knowledge products including ranging from a state of women’s rights reports to documentation of women’s historical contribution to liberation struggles.

CSOs should accordingly pursue the implementation of plans and programmes along with these pillars from governments.

### **2.2.3 Solemn Declaration on Gender Equality in Africa**

The Solemn Declaration on Gender Equality in Africa (SDGEA) was adopted by the Heads of State and Government in their 3<sup>rd</sup> Ordinary Session held in Addis Ababa, Ethiopia, in July 2004. The AU Member States agreed under the Solemn Declaration to undertake a number of continuing measures, including:

- Ensuring the participation and representation of women in peace processes;
- Launching, within two years of the Declaration, sustained public campaigns on gender-based violence and trafficking in women;

- Ratifying the Maputo Protocol by the end of 2004 (since passed);
- Establishing the African Trust Fund for Women; and
- Undertaking annual reporting on the progress made in so far as gender mainstreaming and other issues raised in the Declaration are concerned.

While the measures listed in the Declaration are continuous and non-binding, some have already been achieved. For example, the Fund for African Women was created and is currently transitioning into the Trust Fund for African Women under the auspices of the African Union Commission Internal Committee on the Fund for African Women.<sup>30</sup>

## 2.2.4 African Commission's Soft Law

As part of its promotional mandate, the ACHPR develops non-binding texts which provide interpretation of the scope and meaning of specific treaty provisions.

### i) General Comment No. 1 on Women and HIV

This General Comment provides specific interpretative guidance on the scope of Article 14 (1) (d) and (e) of the Maputo Protocol on the right to protection against sexually transmitted infections and the right to be informed on one's health status respectively. The following are the innovations included in the General Comment:

- The definition of health status to include the physical, mental and social well-being of a person.
- Elaborate that the right to be informed of one's health status includes pre-HIV test and post-HIV test counselling.
- No requirement for disclosure of health status, including HIV status.
- State obligation to integrate women-centred methods of preventing the spread of HIV.
- State obligation to facilitate redress for sexual and reproductive health violations.

### ii) General Comment No. 2 on Sexual and Reproductive Health and Rights

The purpose of the General Comment on Sexual and Reproductive Health and Rights (SRHR) is to provide interpretive guidance geared towards 'promoting the effective domestication and implementation of Article 14 of the Maputo Protocol'.<sup>31</sup> The following are the innovations included in the General Comment:

- Limitation of the right to conscientious objection to health professionals directly involved in family planning services as opposed to institutions.
- The detention of women on grounds of suspicion of procuring an illegal obligation whilst they are seeking post-abortion care is a violation of women's rights to privacy and confidentiality.

30 See <https://au.int/en/pressreleases/20210219/african-union-commission-inaugurates-committee-fund-african-women-revitalize>

31 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, Preamble.

- The assessment of risks to a woman's health in respect of medical abortions must include an assessment of her physical, mental and social well-being.
- With reference to abortion, evidence of prior psychiatric examination is not necessary to establish the risk of mental health.
- State obligation to increase women's access to safe abortion.

### **iii) Guidelines on Combating Sexual Violence against Women**

The Guidelines on Combating Sexual Violence and its Consequences in Africa were adopted by the ACHPR to provide direction and support to the AU Member States in effecting their obligations to combat sexual violence and its consequences. The following are the salient features of the Guidelines:

- Inclusion of marital rape and corrective rape in the definition of rape.
- Acknowledgement of the broad effects of sexual violence, which include sexually transmitted infections, shame and guilt.
- Inclusion of a non-exhaustive list of forms of sexual violence, which includes virginity tests, forced sterilization and human trafficking for purposes of sexual exploitation or slavery.
- Recognition of both individual and collective victims of sexual violence.
- Acknowledgment that women and girls are especially vulnerable to sexual violence as well as the existence of certain factors which may increase such vulnerability. These include disability, socio-economic status and sexual orientation and gender identity.

### **iv) Joint General Comment on Child Marriage**

The Joint General Comment of the ACHPR and the ACERWC on Ending Child Marriage was adopted with the aim of elaborating on the nature of obligations arising from Article 6(b) of the Maputo Protocol and Article 21(2) of the African Children's Charter. The following are the salient features of the Guidelines:

- Recognition of the interrelation of children's and women's rights.
- The prohibition of any exceptions to the set minimum age (18) for betrothal and marriage.
- The prohibition of exceptions to the requirement of full and free consent as reflected in the Maputo Protocol.
- Emphasis that women and men enjoy equal rights in marriage.

### **v) General Comment on Equitable Sharing of Matrimonial Property**

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)) seeks to assert women's right to



an equitable share in matrimonial property. The following are the salient provisions of the General Comment:

- Adoption of a comprehensive definition of equitable distribution to mean ‘the apportionment of marital property in excess of half of the property on the basis of awarding material recognition to both the unequal enjoyment of property rights that the woman endured during marriage and the non-monetary contribution of the woman to the household and the family.’
- Recognition of non-monetary contribution as a form of contribution by women.
- Recognition of the concept of substantive equality between men and women as the primary consideration in equitable sharing of matrimonial property.
- Expansion of the scope of the right to property to include access as well as free possession, utilisation and control of property.

# 3

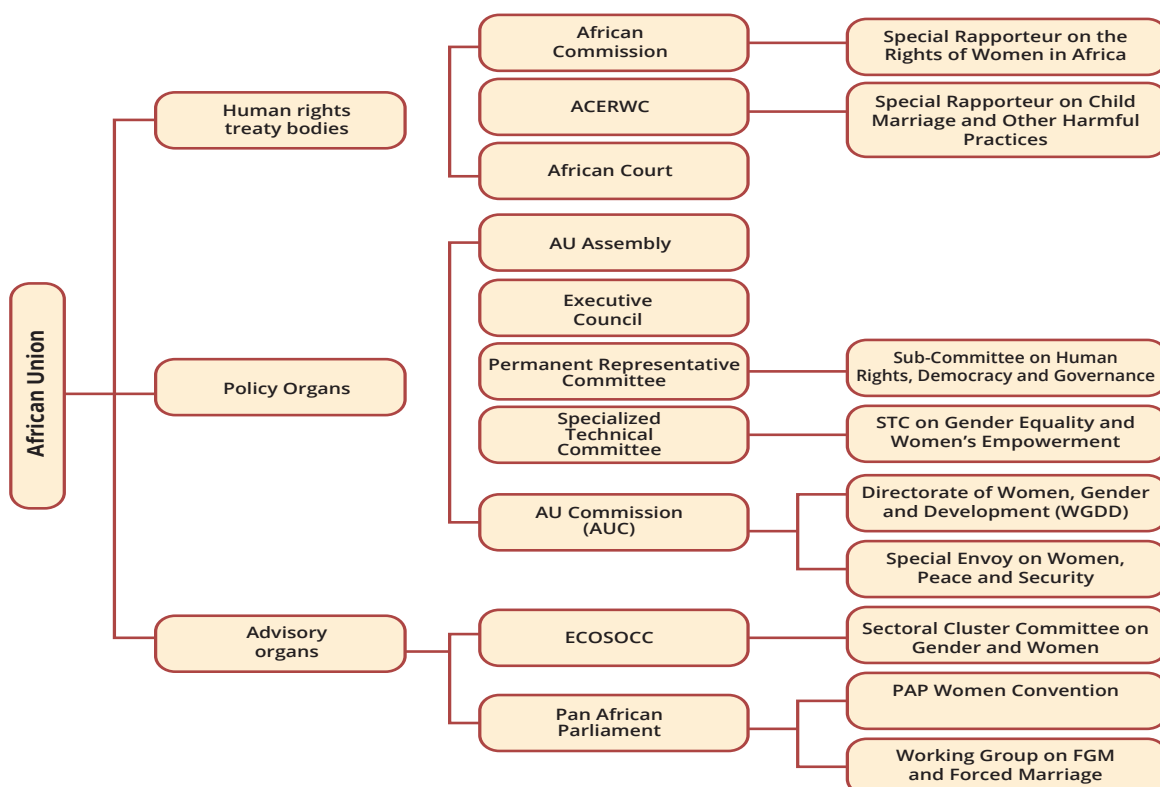


## Civil Society Engagement with States and Relevant Institutions at the Regional Level

Civil society engagement with states at the regional level on matters of women’s rights and gender equality mainly takes place within the auspices and structures of the African Union. In this context, a relatively elaborate institutional framework or architecture has been established at the regional level to advance women’s rights and gender equality in Africa. The bodies, structures, mechanisms and institutions that comprise this framework are generally responsible for monitoring, guiding and supervising AU member states’ compliance with and implementation of the normative standards described in Section 2 above. There are three broad categories of such institutions: human rights treaty bodies; policy and technical organs; and consultative and advisory organs.

This chapter of the Guide describes how to engage with the different categories of AU institutions. It also describes how to engage with AU member states within the spaces and platforms created by the various AU institutions.

**Diagram: AU institutional framework**



## 3.1 Engaging AU human rights treaty bodies

Within the AU institutional architecture, the primary responsibility for advancing women's rights and gender equality falls on the human rights treaty bodies. Three such bodies have been established and are operational at the AU level: ACHPR; ACERWC; and ACtHPR.

While the ACHPR and the ACERWC are quasi-judicial in nature, the ACtHPR is a judicial body with the capacity to issue binding judgments. In order to execute their respective promotional mandates, the ACHPR and the ACERWC have established subsidiary or special mechanisms to lead their work on women's rights and gender equality. In this regard, the ACHPR's relevant special mechanism is the Special Rapporteur on the Rights of Women in Africa while within the ACERWC the most consequential for the rights of girls is the Special Rapporteur on Child Marriage and Other Harmful Practices.

### 3.1.1 African Commission

Based in Banjul, The Gambia, the ACHPR is the regional human rights treaty body responsible for monitoring AU member states' implementation of the African Charter and the Maputo Protocol. The ACHPR has been operational since 1987. It is thus the oldest regional human rights treaty body in Africa. It is composed of 11 part-time commissioners elected and appointed into office by the relevant AU policy organs (AU Assembly and Executive Council). The criteria for election as a member of the ACHPR is stated to be: "African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights".<sup>32</sup>

The core mandate of the ACHPR is to promote and protect human rights in Africa:<sup>33</sup>

- **Promotional mandate:** This mandate entails a list of mutually reinforcing functions, including conducting studies on human rights issues, undertaking in-country visits or missions, convening seminars and conferences, and formulating normative standards.<sup>34</sup> Under its promotional mandate, the ACHPR is also charged with examining periodic reports of state parties on the extent to which they have implemented the African Charter and the Maputo Protocol.<sup>35</sup>
- **Protective mandate:** The ACHPR's protective mandate involves receiving and determining complaints or communications regarding violations of the rights enshrined in the African Charter and the Maputo Protocol.<sup>36</sup>

The ACHPR's efforts to promote women's rights and gender equality are spearheaded by the **Special Rapporteur on the Rights of Women in Africa**. This is a special mechanism established by the ACHPR in April 1998 in order to "place particular emphasis on the problems

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32 African Charter, Art 31.

33 African Charter, Art 30.

34 African Charter, Art 45(1).

35 African Charter, Art 62; Maputo Protocol, Art 26.

36 African Charter, Art 45(2).

and rights specific to women in Africa”.<sup>37</sup> The initial focus of the Special Rapporteur involved the finalization of the Draft Protocol to the Rights of Women in Africa. Following the adoption of the Protocol on the Rights of Women in Africa in 2003, the Special Rapporteur shifted the focus to, *inter alia*, the following activities:

- encouraging states to ratify and domesticate the Maputo Protocol;
- elaboration of the 2010 State Reporting Guidelines under the Maputo Protocol;
- standard-setting through the elaboration of soft law (see section 2 above);
- Undertaking promotional and advocacy missions;
- publication of reports and studies on topical issues; and
- protection of women victims of human rights through dispatching urgent appeals to concerned member states.

Since its inception, the ACHPR has acknowledged the important role of CSOs in supporting its work and, more generally, in advancing greater respect for and protection of human rights in Africa. Indeed, Article 45(1)(c) requires the ACHPR to “cooperate with other African and international institutions concerned with the promotion and protection of human and peoples’ rights”. The formal relationship between the ACHPR and CSOs is defined under the ***Resolution on the Criteria for Granting and Maintaining Observer Status to Non-Governmental Organizations Working on Human and Peoples’ Rights in Africa***. This Resolution is the

**Note: NGOs do not require observer status to submit communications or attend ACHPR public sessions. However, in addition to the specific benefits that come with it, having observer status is crucial in establishing close partnership and cooperation with the ACHPR.**

basis of the ACHPR’s practice of granting observer status to NGOs. The practice dates back to 1988 and by 30 June 2021, the ACHPR had granted observer status to 535 NGOs. The most obvious benefit for an NGO with observer status is the right to address the ACHPR during its public sessions. Other benefits include access to relevant ACHPR’s documents, invitation to meetings, and the right to propose agenda items for ACHPR ordinary sessions.

To be granted observer status, an NGO must satisfy the following criteria:

- Its objectives and activities must be in consonance with the fundamental principles and objectives enunciated in the AU Constitutive Act and the preamble to the African Charter and the Maputo Protocol.
- It must be working in the field of human rights in Africa.

The process of applying for observer status is as follows:

- An application to be granted observer status must be sent to the ACHPR at least three months prior to the ordinary session in which the application is expected to be considered.

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<sup>37</sup> Resolution of the Designation of the Special Rapporteur on the Rights of Women in Africa, ACHPR/Res.38(XXV)99

- The application is then assessed by the ACHPR Secretariat for conformity with the eligibility criteria and availability of the accompanying documentation (see checklist below).
- The file containing the Secretariat's assessment and recommendation are then handed over to the ACHPR commissioners for a final decision.
- The decision to grant or deny observer status to an NGO is then made during a public session of the ACHPR.

### **Checklist for observer status application to the ACHPR**

The *Criteria for the Granting and Maintaining Observer Status with the ACHPR* requires an application for observer status to contain the following documents:

- (a) A letter of application addressed to the ACHPR Secretariat requesting observer status;
- (b) A list of the board of members and other members of the NGO;
- (c) The signed and authenticated constitutive statute of the NGO;
- (d) The certificate of the legal status of the NGO issued by the relevant government authority in the country in which the NGO is based;
- (e) The sources of funding of the NGO;
- (f) The latest independently audited financial statement of the NGO;
- (g) The latest annual activity report of the NGO;
- (h) A current comprehensive plan of action or strategic plan of the NGO signed or approved by the relevant members of the NGO, which covers a minimum of two years, and which contains the objectives of the NGO during the specified period, the list of activities to be carried out, the timeline for their realisation, the places of implementation, the strategies to implement them and the target groups.

There are a multiplicity of opportunities, avenues and platforms for CSOs to advance women's rights and gender equality through engagement with the ACHPR and the Special Rapporteur on Women's Rights. The following working methods of the ACHPR are particularly relevant as advocacy platforms and pathways for seeking State accountability: ordinary sessions; communications procedure; state reporting procedure; country missions; and standard-setting. These working methods also serve as platforms for CSO to meet with and engage with representatives of AU member states.

#### **(i) Engaging in ACHPR sessions**

The ordinary sessions of the ACHPR brings together hundreds of relevant actors engaged in the promotion and protection of human rights in Africa. As such, the sessions are a valuable site and platform for CSOs to interface and engage with not only the ACHPR, but also with AU member states. The following are the key features of ACHPR ordinary sessions:

- The ACHPR traditionally holds two ordinary sessions in a year: the first ordinary session takes place in April/May, while the second takes place in October/November
- The ACHPR may also hold extraordinary sessions as and when deemed necessary, although since 2008, the ACHPR has held two standard extraordinary sessions per year.
- Most ordinary sessions of the ACHPR take place at its headquarters in Banjul, The Gambia. However, the ACHPR can and has held many sessions in different cities and countries across the continent.
- With the outbreak of the COVID-19 pandemic in 2020, the ordinary sessions of the ACHPR have been held virtually.
- Each ordinary session of the ACHPR usually takes about 21 days or three weeks.
- Each ordinary session has two distinct parts: A public session that is open to the public and a private session in which the ACHPR holds deliberations in closed doors.
- CSOs are actively encouraged to attend the public segment of ACHPR ordinary sessions. However, prior registration is required for purposes of attendance.
- In advance of a session, the ACHPR usually invites NGOs (and states, NHRIs, media practitioners, etc.) to register for the session. The invitation is posted on the ACHPR's website a few weeks before the commencement of the session.

**Note: Pursuant to Rule 33(3) of the ACHPR Rules of Procedure 2020, NGOs with observer status may also make proposals on items that they think should be included in the agenda of ACHPR ordinary sessions. This proposal should be made not later than 45 days before the opening of the ordinary session at which the proposed item is intended to be discussed.**

During the ordinary sessions of the ACHPR, CSO may conduct a range of advocacy activities on the subject of women's rights and gender equality. These may include the following: participation in the NGO Forum preceding the session; delivery of oral statements before the ACHPR; organisation or participation of side events; holding of bilateral advocacy meetings with the Special Rapporteur on the Rights of Women, other members of the ACHPR and state representatives and networking with women rights organizations.

### **Engaging in women's rights advocacy during ACHPR sessions**

**(a) Participate in the NGO Forum:** The NGO Forum, formally known as *"The Forum on the Participation of NGOs in the Ordinary Sessions of the ACHPR,"* is an advocacy platform that aims to foster partnership with the ACHPR and consolidate collaboration between and among NGOs. Coordinated by the Banjul-based African Centre for Democracy and Human Rights Studies (ACDHRS), the two or three-day event is usually held just before the start of ACHPR sessions. Key agenda items or activities during the NGO Forum include presentation of sub-regional reports on the situation of human rights, panel presentations and discussions, and special interest group discussions. A special interest group discussion on "the rights of women in Africa" is usually convened during the Forum.

The main outcome of the NGO Forum is a set of resolutions and recommendations on a variety of human rights themes and issues. These are then presented to the ACHPR for consideration. A summary of the deliberations and conclusions of the Forum is also usually read out as the “NGOs statement” during the official opening of ACHPR sessions. With hundreds of NGO delegates from across the African continent and beyond participating, the NGO Forum is an important avenue for networking, and most importantly, for channelling relevant information and advocacy calls to the ACHPR. Registration for participating in the NGO Forum is usually opened by the ACDHRS a few weeks before the start of ACHPR sessions. It is also at this time that CSOs intending to hold panel discussions within the NGO Forum are invited to express interest.

**(b) Deliver oral statements:** Any CSO can participate in the public segments of ACHPR sessions as these are open to the public. However, only those CSOs that have been granted observer status before the ACHPR can submit oral statements. There are at least two specific junctures during which CSOs working on women’s rights may deliver oral statements: (i) Under the agenda item on “human rights situation in Africa”; and (ii) under the agenda item on “activity reports of the members of the Commission and special mechanisms.” Under the latter option, an oral statement on an issue relating to women’s rights and gender equality would be ordinarily delivered after the Special Rapporteur on Women’s Rights in Africa has submitted her activity report. However, a women’s rights CSO may also deliver oral statements following the presentation of the activity reports of the other ACHPR special mechanisms, albeit with a focus on issues relating to women’s rights and gender equality.

As the time allocated for NGO oral statements is usually between 3-5 minutes, it is critical that an oral statement is concise and focused, highlighting very specific concerns, developments or issues. The statement should end with a clear call or recommendation to the ACHPR.

**(c) Organize and/or participate in side events:** Organising side events on the margins of the ACHPR sessions is a tactical strategy for maximising the opportunity presented by the availability and accessibility of a wide range of actors and stakeholders in these sessions. Side events may take different formats, including panel discussions, photo exhibitions, workshops, trainings, and seminars. Side events may be used to disseminate and publicise the findings of research undertaken by CSOs and mobilise wider support for a particular action. For side events touching on women’s rights, it is advisable to invite and secure the presence of the Special Rapporteur on the Rights of Women in Africa, the ACHPR commissioner(s) responsible for the country or countries concerned, the relevant state representatives, and AU officials.

**(d) Hold bilateral advocacy meetings:** ACHPR sessions offer unique opportunities for CSOs to pursue and secure bilateral meetings with ACHPR commissioners and state representatives. Bilateral meetings are particularly impactful when they are used to share targeted briefings and advocate for the ACHPR to take specific actions. While it is often difficult to meet with state representatives in home countries, it is relatively easy to do so at ACHPR sessions. Such bilateral meetings are vital avenues for engaging with state

representatives and establishing contact and working relationships. As they involve one-on-one discussions, it is critical to be adequately prepared for bilateral meetings. In particular, CSOs should go into bilateral meetings well prepared to do at least three things: (a) provide clear facts and evidence of the human rights situation or issue in question; (b) make a strong case for the action(s) they intend the ACHPR and/or the concerned state to undertake; and (c) anticipate and persuasively respond to any questions or (counter) arguments that may be posed by the ACHPR commissioners or the state representatives they are meeting.

**(e) Contribute to plenary discussions:** The ACHPR has established a practice of holding panel discussions on topical human rights issues during its ordinary sessions. Panellists usually include ACHPR commissioners and representatives of states, AU, NHRIs and CSOs. CSOs may contribute to panel discussions either as panellists or by way of contributions from the plenary floor. Over the years, the ACHPR has held panel discussions on different aspects relating to women's rights and gender equality. For example, it held a panel discussion on "reviewing the Beijing Declaration and Platform of Action of 1995" during its 65<sup>th</sup> ordinary session held in October/November 2019. Most recently, the ACHPR held a panel discussion on "Violence against women in vulnerable situations" during its 68<sup>th</sup> (virtual) ordinary session held in April/May 2021.

**(f) Network and build CSO collaborations and alliances:** The ACHPR ordinary sessions are a melting pot of different human rights stakeholders. They are thus a site for networking and building new CSO collaborations and alliances aimed at advancing particular human rights causes and actions. It is also important to note that there are already several collaborative initiatives and groupings that meet regularly on the margins of ACHPR ordinary sessions. These include the Group of Litigants for Strengthening the Protective Mandate of the African Commission (**Litigants Group**) and the Coalition for the Independence of the African Commission (**CIAC**). Collaborative initiatives with a specific focus on women's rights also usually have a presence during ACHPR sessions. They include the **Women's Rights Platform** and the **Africa Coalition for Safe Abortion**.

## **(ii) Engaging the ACHPR communications procedure**

The ACHPR communications or complaints procedure is essentially an avenue for litigating human rights cases at the regional level. It is designed to hold states accountable for the obligations they have voluntarily undertaken by ratifying or acceding to regional human rights treaties. It also seeks to protect and provide legal redress to victims of human rights violations when avenues for seeking redress at the domestic level are unavailable, ineffective or inadequate.

The ACHPR is mandated to receive and determine communications from states (inter-state communications),<sup>38</sup> although states have rarely used the ACHPR communications procedure. Individuals and CSOs may also submit communications to the ACHPR for adjudication.<sup>39</sup> Indeed, the majority of communications received and decided by the ACHPR have been filed by individuals

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38 African Charter, Arts. 47-54.

39 African Charter, Art. 55.



and NGOs. Unlike those by states, communications filed by individuals and NGOs must meet a set of seven admissibility requirements laid out in Article 56 of the African Charter. In particular, the following requirements must be satisfied for the ACHPR to consider a communication:

- a) The communication must indicate the author even if anonymity has been sought;
- b) The communication must be compatible with the AU Constitutive Act or with the African Charter;
- c) The communication must not be written in a disparaging or insulting language directed to the state concerned and its institutions or to the AU;
- d) The communication must not be based exclusively on the news disseminated through the mass media;
- e) The communication must be submitted to the ACHPR after exhausting local remedies, if any, unless it is obvious that local remedies are unavailable or unduly prolonged;
- f) The communication must be submitted within a reasonable period from the time local remedies are exhausted or from the date the ACHPR is seized of the matter; and
- g) The communication must not deal with cases which have been settled by the states involved in accordance with the principles of the UN Charter, AU Constitutive Act or the provisions of the African Charter.

**ACHPR mailing address**  
**The Secretariat**  
**African Commission on Human**  
**and Peoples' Rights**  
**31 Bijilo Annex Layout**  
**Kombo North District**  
**P.O. Box 673 Banjul**  
**The Gambia**  
**Tel: (220) 441 05 05 / 441 05 06**  
**Email: [au-banjul@africa-union.org](mailto:au-banjul@africa-union.org)**

The ACHPR step-by-step procedure of considering communications is outlined in its **Rules of Procedure 2020**. In September 2021, the ACHPR issued Practice Directives that resolve some ambiguities in the 2020 Rules of Procedure. In particular, the **Practice Directives** make it clear that the 2020 Rules of Procedure apply to communications filed on or after 2 June 2020, when the Rules came into effect. For communications filed before 2 June 2020, the 2010 Rules of Procedure continue to apply until the finalization of those communications.

## **ACHPR communications process**

- The communications process is triggered by the filing or submission of a communication alleging that a state party has violated one or more rights guaranteed in the African Charter and/or the Maputo Protocol. A communication is 'filed' by sending it to the ACHPR's Secretary.
- There was no standard format of how to structure communications prior to the publication of ACHPR's Practice Directives in September 2021. However, the ACHPR, in its **Information Sheet No. 2** provided some guidance on what kind or nature of information to include in communications. The September 2021 Practice Directives now require all complaints or communications to be submitted by filling the **Complaint Form** provided by the ACHPR on its website ( [African Commission on Human and Peoples' Rights Announcement \(achpr.org\)](https://www.achpr.org/)).

- Complainants must fill out the form as clearly and concisely as possible (see below for the information required in the Complaint Form). At the stage of filling out the Complaint Form, the complainant is not required to make submissions on the admissibility and/or merits of the communication.
- After receiving a communication, the ACHPR will register it by giving it a reference number.<sup>40</sup> Communications are registered in the order in which they are received. The ACHPR Secretary will then examine the communication to ascertain whether it contains all relevant information for purposes of seizure.<sup>41</sup> The Secretary may request for any missing information. When the Secretary is satisfied that all relevant information is in place, she shall declare the ACHPR seized of the communication.

### **Notes on submitting communications**

1. The Complaint Form must be filled out in one of the working languages of the ACHPR (Arabic, English, French and Portuguese).
2. The Complaint Form must be filled out in font size 12, with single spacing.
3. The completed Complaint Form must not exceed 35 pages, excluding appendixes.
4. Supporting documentation and other attachments should, to the extent possible, be in the same language as the communication.
5. If any document is in another language, a translation to an ACHPR working language is required. A certificate by a sworn translator must accompany the document.
6. Submit copies of documents and not the originals.
7. The completed Complaint Form must be signed or stamped by the complainant.
8. The completed and signed Complaint Form together with appendixes should be sent to the ACHPR via email.
9. If the appendixes cannot be submitted by email, they should be sent by courier.

## **Information required to be filled in the ACHPR Complaint Form**

### **1. Information on the complainant(s)**

- Provide personal and contact details of the person(s) or organization(s) submitting the complaint and of the legal representative(s) if applicable.
- Indicate whether the complaint is submitted on one's own behalf or on behalf of the victim(s).
- If the complaint is submitted on behalf of the victim(s), provide their personal details, including name, date of birth, gender, etc.
- Indicate if the complainant is acting with the knowledge and consent of the victim(s) and provide proof of the victim's consent.

<sup>40</sup> ACHPR Rules of Procedure 2020, Rule 88.

<sup>41</sup> ACHPR Rules of Procedure 2020, Rule 115.

- If you are not authorized by the victims to submit the complaint, explain why proof cannot be obtained and why you consider it appropriate to bring the complaint on their behalf.
- Indicate if the victim(s) request anonymity.

## 2. Facts of the complaint

- Name the state responsible for the alleged violation(s).
- Detail, in chronological order an account of the act or situation complained of, specifying the place, date, nature of incident and any person(s) involved or witness to the alleged violations.
- Indicate the articles of the African Charter or Maputo Protocol alleged to have been violated.
- Identify the person(s) or authorities who you consider responsible for the facts alleged.
- Indicate any public authority that has taken cognisance of the facts or situation alleged.

## 3. Prayers

- Indicate your prayers and what remedies you think the ACHPR should provide if it finds the concerned state has violated the African Charter or the Maputo Protocol.

## 4. Annexes

- Attach copies of any documentary evidence in your possession.

## 5. Solemn Declaration

- Provide your signature in the declaration section to attest that the information you have provided is true in substance and facts.

- The seizure of the ACHPR is followed by written pleadings or submissions by both parties on the admissibility of the communication. If necessary, an oral hearing may be held on the issue of admissibility. An oral hearing may be initiated by the ACHPR or it may be requested by any of the parties.<sup>42</sup>

- The ACHPR will then make its decision on admissibility. The procedure ends if the communication is declared inadmissible. However, if the communication is declared admissible, then it moves to the merits stage where the ACHPR considers whether a violation of the African Charter and/or the Maputo Protocol has been established.

**Note:** Pursuant to Article 59 of the African Charter, the ACHPR communications procedure is confidential in nature. This means that the ACHPR and the parties are not permitted to disclose or publicize any material aspects of the communication, including facts and pleadings. The final decision of the ACHPR is also neither shared with the parties nor published until publication is authorized by the AU Assembly.

<sup>42</sup> ACHPR Rules of Procedure 2020, Rule 102.

- As part of determining the merits of the communication, the ACHPR will request written submissions on the merits or any other relevant additional information or evidence. It may also hold oral hearings. After deliberating on the submissions of both parties, the ACHPR will adopt a decision on the merits of the communication.
- In order to reach a just and fair decision, the ACHPR may, on its own initiative or at the request of any of the parties, undertake investigations to clarify the facts of the case.<sup>43</sup> The investigations may involve an on-site visit or collection of evidence by any appropriate means. The ACHPR may also call and hear witnesses, experts or any other persons who appear likely to assist it in the examination of the communication.<sup>44</sup>
- The ACHPR may also invite or grant leave to an *amicus curiae* or a third party with an interest in the communication to intervene.<sup>45</sup> Unlike a third party with an interest in the communication, an *amicus curiae* is neutral and contributes to the proceedings with the primary aim of helping the ACHPR arrive at an appropriate decision. Along this line, the 2020 ACHPR Rules of Procedure define an *amicus curiae* as “a third party having no interest in the outcome of the communication, and potentially able to assist the Commission in determining the factual or legal issue arising in a communication.”<sup>46</sup>

**Note: CSOs may participate in communications before the ACHPR as amici curiae. Rule 104(2) of the ACHPR Rule of Procedure 2020 provides that “any third party may submit a request to intervene as *amicus curiae* in any communication before the African Commission.”**

It is also important to note that at any stage of considering a communication filed by an individual or NGO, the ACHPR may offer its good offices at the disposal of the parties with the objective of facilitating an amicable settlement or friendly resolution.<sup>47</sup> The option of pursuing an amicable settlement may be initiated by the ACHPR or by one of the parties. However, the initiation or the continuation of an amicable settlement process is subject to the consent of the parties. In any event, the ACHPR may terminate an amicable settlement process if it finds that the matter is not susceptible to such a resolution or that one of the parties no longer consents to its continuation or does not display the willingness to reach a settlement.

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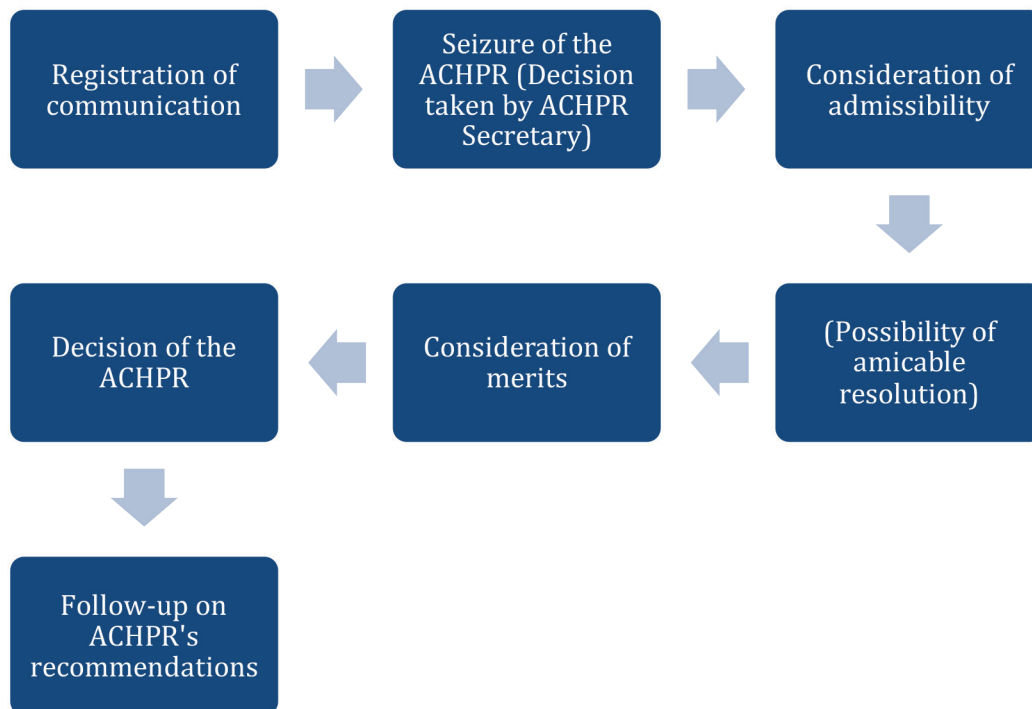
43 ACHPR Rules of Procedure 2020, Rule 101.

44 ACHPR Rules of Procedure 2020, Rule 103.

45 ACHPR Rules of Procedure 2020, Rules 104-106.

46 ACHPR Rules of Procedure 2020, Rule 2.

47 ACHPR Rules of Procedure 2020, Rule 123.



Although individuals and CSOs have filed hundreds of communications before the ACHPR since its inception, very few of these have raised issues directly relating to women’s rights and gender equality. Indeed, the ACHPR has issued only two decisions on the merits that explicitly focus on violations of women’s rights.

- **Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt:**<sup>48</sup> In this communication, four female journalists were physically attacked and sexually assaulted by a group of protestors during a political demonstration. Although police officers were present and witnessed the attacks, they encouraged instead of intervening to prevent or stop the attacks. Efforts by the victims to pursue justice were met with threats and official obstruction. In the end, the state dropped the investigations relating to the attacks ostensibly for the inability to identify the perpetrators.

In a December 2011 decision, the ACHPR held that Egypt had failed in its duty to protect the victims and diligently investigate the attacks. It found that Egypt’s conduct had violated its obligation under Article 18(3) to eliminate discrimination against women and ensure the protection of the rights of women. The ACHPR also found that Egypt had violated several other provisions of the African Charter, including articles 2 (freedom from discrimination), Article 3 (equality before the law), article 5 (freedom from torture), article 9(2) (freedom of expression), Article 16 (right to health), and Article 26 (independence of the courts). The ACHPR recommended that Egypt, *inter alia*, pays compensation to the victims, investigate the violations and bring the perpetrators to justice. The ACHPR also urged Egypt to ratify the Maputo Protocol.

48 ACHPR communication 323/06, Decision adopted during ACHPR 10<sup>th</sup> extra-ordinary session, 12-16 December 2011.

- **Equality Now and Ethiopian Women Lawyers Association (EWLA):**<sup>49</sup> This communication concerned the practice of forced marriage, or “marriage by abduction” as commonly known in parts of Ethiopia. The case was filed by Equality Now and EWLA on behalf of Woineshet Zebene Negash. She was abducted and raped when she was 13 years old. The perpetrator was arrested but released on bail soon thereafter. He abducted Negash once again. This time round, he held her captive for a month and forced her to sign a purported marriage contract. After she managed to escape, a lower court convicted and sentenced the perpetrator to 10 years’ imprisonment without parole for the abduction and rape. However, on appeal, the High Court quashed the conviction on the ground that the evidence suggested that the victim had consented to the sexual intercourse and marriage. The High Court’s decision was upheld both by the regional supreme court and the federal supreme court.

In a decision adopted in November 2015, the ACHPR held that Ethiopia had failed in its duty under the African Charter to protect Negash from abduction and rape, and that more broadly, it had failed to adopt adequate and comprehensive measures to deal with the rampant practice of marriage by abduction. The ACHPR found that in respect of Negash, this failure manifested in different ways that respectively amounted to violations of provisions of the African Charter, particularly articles 3 (equality before the law), article 4 (right to integrity of the person), article 5 (right to dignity), article 6 (right to liberty and security of the person), and article 7(1)(a) (right to be heard). In its recommendations, the ACHPR asked Ethiopia to pay Negash a compensation of USD 150,000 for the non-material damage she had suffered. It also asked Ethiopia to implement “escalated measures” to deal with the practice of marriage by abduction and to diligently investigate and sanction perpetrators.

The two cases highlighted above demonstrate that litigation before the ACHPR can be a powerful tool for advancing women’s rights and gender equality in Africa. The table below presents some tips on effective litigation before the ACHPR. It is important to note that a key factor that defines successful litigation is the identification of an appropriate case for submission to the ACHPR. CSOs are thus encouraged to be constantly on the lookout for potential cases that may be submitted to the ACHPR for litigation.

### **Tips on effective litigation before the ACHPR**

(NB: The tips outlined below apply, with necessary changes, to litigation before other regional and sub-regional judicial or quasi-judicial bodies)

**(a) Litigation surgery:** After preparing a communication but before filing it before the ACHPR, it is good practice to conduct a “litigation surgery.” This involves bringing together selected relevant CSOs and litigation experts to scrutinize the communication and help strengthen it. A litigation surgery is also important in developing a litigation strategy and building wider support for the communication. If it is not possible to hold a litigation surgery, consider directly consulting or seeking advice from groups or individuals who have litigated before or engaged with the ACHPR.

49 ACHPR communication 341/2007, Decision adopted during the 19<sup>th</sup> extra-ordinary session, 16-25 February 2016.

**(b) Prompt filing:** Although the African Charter provides that communications to the ACHPR must be submitted within a reasonable time after exhausting local remedies, it is advisable to do so within six months. In determining what is “reasonable time,” the ACHPR has historically adopted a flexible or a case by case approach. However, it is increasingly leaning towards the six-month period applicable in the European and Inter-American human rights systems.

**(c) Legal representation:** Litigation before the ACHPR may be conducted by laypersons as the communications procedure is relatively simple and straightforward. However, it is still advisable to seek the help of a lawyer trained in conducting human rights litigation at the regional or international level. Such a lawyer would be better placed to understand and deal with any technical aspects of the communication and the ACHPR procedure.

**(d) Thorough research:** It is critical to support your legal submissions by citing ACHPR’s case law, soft law and other normative documents. This requires thorough research on what the ACHPR has previously said or held regarding the issues raised in your communication. Citing the provisions of relevant global and regional human rights treaties (e.g., Convention on Elimination of All Forms of Discrimination Against Women) and the jurisprudence of regional and UN human rights treaty bodies is also beneficial. In this context, it bears recalling that the ACHPR is required under Article 60 of the African Charter to draw inspiration from international human rights law and practice.

**(e) Diligent prosecution:** Acknowledge correspondence from the ACHPR and promptly take the action required of you. Ensure that you keep the ACHPR informed of any changes in contact or mailing information. Persistent failure to reply to correspondence from the ACHPR or to file pleadings may result in the communication being dismissed or struck out for lack of diligent prosecution.

**(f) Observation of timelines:** Ensure that you file your submissions or pleadings within the stipulated timelines. If you anticipate that you will not be able to meet the deadline, apply or request for an extension of time, citing the relevant provisions of the ACHPR Rules of Procedure.

**(g) Specific remedies:** The ultimate purpose of litigation before the ACHPR is to seek specific remedies for the violation suffered. In submitting your communication, clearly articulate the remedies you are seeking and provide an explanation as to the appropriateness of those remedies. Remember that there are many types of remedies, including restoration, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

### **(iii) Engaging the ACHPR state reporting procedure**

The ACHPR state reporting procedure is anchored on Articles 62 and 26 of the African Charter and the Maputo Protocol, respectively. The two provisions require states parties to present a report to the ACHPR every two years on the legislative and other measures they have taken to give effect to the rights enshrined in the two regional treaties. The primary purpose of

the reporting procedure is to conduct an impartial and objective assessment of a country's human rights record by means of a constructive dialogue between the ACHPR and the state party concerned.

The reporting procedure begins with the state preparing its initial or periodic report. The report must be prepared in accordance with the ACHPR guidelines on the content and format of state party reports. In this regard, there are two main applicable guidelines:

- Guidelines for National Periodic Reports; and
- Guidelines for State Reporting under the Maputo Protocol.

One of the basic requirements is that a state party report must be structured in two distinct parts: Part A, addressing the implementation of the African Charter; and Part B, addressing the implementation of the Maputo Protocol. The ACHPR has also issued additional sets of guidelines that focus on how to report on specific thematic issues or provisions of the African Charter. The following three sets of subject-specific guidelines currently exist:

- State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter (Tunis Reporting Guidelines);
- State Periodic Reporting under Article 62 of the African Charter: Indicative Questions to State Parties in respect of Article 5 of the African Charter; and
- State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment.

After preparing its report, the state submits or transmits an electronic version to the ACHPR through the appropriate diplomatic channels. On receiving the report, the ACHPR Secretary will publish the report on its website and indicate when the report will be considered by the ACHPR.<sup>50</sup> Before the consideration of the report, the ACHPR may formulate questions arising from its desk review of the report and send these to the state party. The state party will be required to respond to these questions within a stipulated timeline.

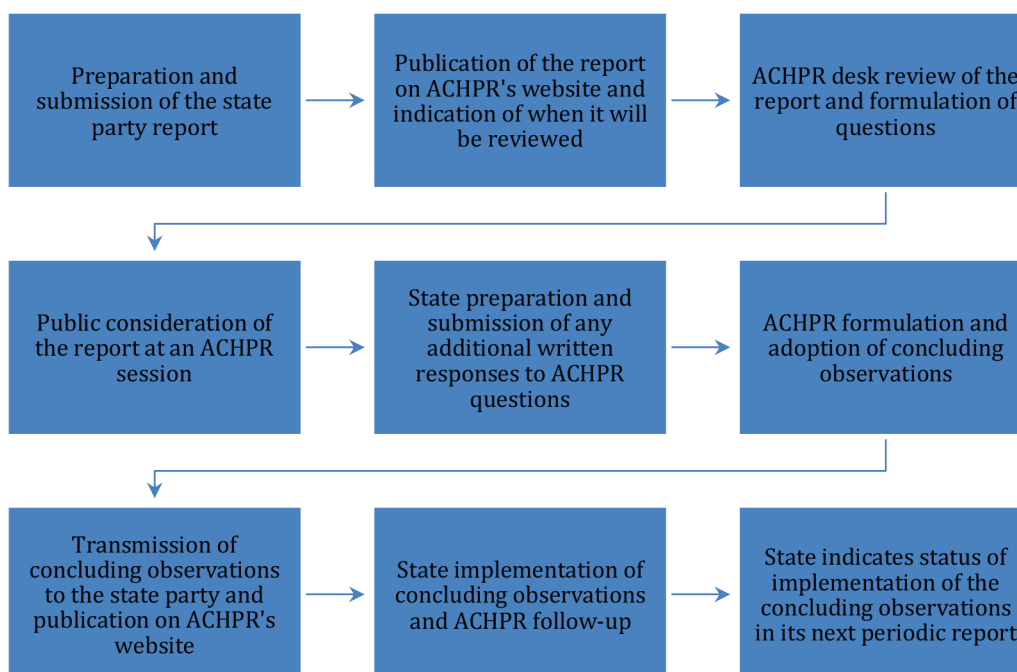
During the public consideration of the report, the state delegation is given an opportunity to orally present the contents of the report. The presentation is followed by questions that are posed by each member of the ACHPR, with the country rapporteur going first. However, if a member of the ACHPR is a national of the state presenting its report, then that member shall only observe the process. She cannot pose any questions to the delegation or take part in consideration of the report.<sup>51</sup> The state delegation then responds to the questions posed. The state may also submit additional responses in writing within a timeline agreed with the ACHPR.

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50 ACHPR Rules of Procedure, Rule 79(2).

51 ACHPR Rules of Procedure, Rule 79(5).





The official outcome of the state reporting procedure is a set of concluding observations of the ACHPR. Separate from introductory remarks, the ACHPR concluding observations usually have three main substantive parts:

- a part that indicates positive aspects of the country's human rights record;
- a part that outlines the ACHPR areas of concern; and
- a part that lists down the ACHPR recommendations to address the concerns it has identified.

After adoption, the concluding observations are transmitted to the state party concerned and published on the ACHPR's website.<sup>52</sup>

As discussed below (Section 4.3), the preparation and submission of shadow or alternative reports is the primary mode of CSO engagement with the ACHPR's state reporting procedure. However, there are additional advocacy activities that CSOs may undertake at different stages of the state reporting procedure as reflected in the box below.

### **Tips on in-session advocacy activities during ACHPR's review of your country's state party report**

(a) Hold bilateral advocacy meetings with the ACHPR secretariat and commissioners to brief and encourage them to raise concerns and questions you have documented in your shadow report. At the very least seek to brief the country rapporteur, that is, the ACHPR commissioner responsible for monitoring the human rights situation in your country).

<sup>52</sup> ACHPR Rules of Procedure, Rule 82(3).

- (b) Engage directly with the state delegation on the contents of the state party report.
- (c) Before the ACHPR examines the state party report, consider organising a side event to serve as a forum for discussion on the contents of the state party report. Invite the ACHPR and state party representatives to the side event.
- (d) Address a specific content of the state party report in your oral statement before the ACHPR either under the agenda on “human rights situation in Africa” or under the agenda on “activity reports of the members of the Commission and special mechanisms”.
- (e) Encourage the NGO Forum to address a specific content of the state party report in the “NGOs statement” that is read out during the opening ceremony of the ACHPR.

#### **(iv) Engaging the ACHPR country missions**

The ACHPR and its Special Mechanisms may typically conduct two types of country missions: fact-finding and promotional missions. Fact-finding or protection missions are conducted with the aim of investigating specific violations of human rights. Fact-finding missions may be initiated by the ACHPR or by an AU policy organ or institution, such as the PSC.<sup>53</sup> Promotion missions are conducted with the aim of popularising the regional human rights treaties and the work of the ACHPR.<sup>54</sup> Both protection and promotion missions require the consent of the state in question before they are conducted. The outcome of a country mission is a report that documents the findings and recommendations of the ACHPR. The “findings” will differ depending on whether the mission is protective or promotional in nature.

Country missions offer an opportunity to CSOs to engage with the ACHPR within the countries they are based. However, many African countries rarely invite or accept requests by the ACHPR to undertake country missions. In this context, CSOs may undertake the following advocacy initiatives:

- Ask your government to issue a standing or open invitation to the ACHPR and/or its special mechanisms to conduct promotion and protection missions in your country. CSOs working on women’s rights may specifically make the case for the invitation of the Special Rapporteur on the Rights of Women in Africa;
- Urge the ACHPR or its special mechanisms to request invitation or authorisation of your government to undertake a promotion or protection mission;

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<sup>53</sup> ACHPR Rules of Procedure, Rule 86(1).

<sup>54</sup> ACHPR Rules of Procedure, Rules 75-76.

## Using academic visits as alternative to promotion/protection missions

If advocacy efforts to secure a promotion or protection mission proves difficult because of lack of the necessary state consent or authorization, CSOs may of their own volition invite into their country a specific ACHPR commissioner(s) or special mechanism(s) for an “academic visit.”

Academic visits, which may take the form of a workshop, conference, training, or any other appropriate event, do not require the formal consent of the state. These kind of visits are envisaged under Rule 77 of the ACHPR Rules of Procedure 2020, which require the ACHPR to undertake “other promotion activities,” including seminars, conferences and symposia, either on its own initiative or in collaboration with partners.

Academic visits provide an opportunity, albeit limited, for the ACHPR to engage with victims of human rights violations, CSOs and other relevant actors. This may result in ACHPR’s better understanding of a specific issue or the general human rights situation in a country.

### 3.1.2 African Committee

The ACERWC is the regional human rights treaty body responsible for monitoring states parties’ implementation of the African Children’s Charter. It is composed of 11 part-time expert members who are elected by the AU Assembly on account of their “high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child.”<sup>55</sup> The Secretariat of the ACERWC was based at the headquarters of the AU in Addis Ababa, Ethiopia, from its inauguration in April 2002 to December 2020. It has now relocated to Maseru, Lesotho, its permanent seat.

Like the ACHPR, the ACERWC has a dual mandate. It promotes and protects human rights, albeit with an exclusive focus on children’s rights:<sup>56</sup>

- Under its promotional mandate, the ACERWC conducts studies, formulates normative standards, undertakes country missions, and convenes meetings on the rights of children in Africa.<sup>57</sup> The ACERWC also receives and examines state party reports under its promotional mandate.<sup>58</sup>
- Under its protective mandate, the ACERWC performs an adjudication function. It receives and determines communications or complaints alleging violations of the rights guaranteed in the ACRWC.<sup>59</sup> It may also conduct investigations under its protective mandate.<sup>60</sup>

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55 ACRWC, Art. 33.

56 ACRWC, Art 32.

57 ACRWC, Art 42(a).

58 ACRWC, Art 43.

59 ACRWC, Art 44.

60 ACRWC, Art 45.

The ACERWC advances women's rights and gender equality through its focus on the rights of the girl child. Over the years, the ACERWC has established subsidiary or special mechanisms to serve as focal points and offer leadership in respect of its work on specific thematic areas. It has designated 10 special rapporteurs and established five working groups.<sup>61</sup> All the 15 special mechanisms are relevant in terms of promoting and protecting the rights of the girl child. However, the most consequential is the **Special Rapporteur on Child Marriage and Other Harmful Practices** which was established in December 2017. As they disproportionately affect girls, child marriage and other harmful practices are a manifestation of the deep gender inequalities that exist in Africa. For this reason, the work of the Special Rapporteur mainly concerns the plight of girls. The specific terms of reference of the Special Rapporteur are outlined in the box below.

### **The Mandate of ACERWC's Special Rapporteur on Child Marriage and Other Harmful Practices**

- (a) Analyze the root causes of child marriage and other harmful practices;
- (b) Seek, receive, examine and act upon information on the situation of child marriage and other harmful practices;
- (c) Mobilize action and political support to end child marriage and other harmful practices in Africa;
- (d) Generate renewed concern on the harmful effects of child marriage and other harmful practices to promote behavioral and social change, and to achieve effective progress;
- (e) Cooperate and engage in dialogue with the Member States, National Human Rights Institutions, relevant intergovernmental organizations, international and regional mechanisms, UN Agencies and CSOs to end child marriage and other harmful practices;
- (f) Develop strategies to end child marriage and other harmful practices;
- (g) Formulate recommendations and proposals on appropriate measures and activities to end child marriage and other harmful practices;
- (h) Conduct activities, which could raise awareness on the impact of child marriage and other harmful practices;
- (i) Issue statements on child marriage and other harmful practices where appropriate and if decided by the ACERWC;
- (j) Take the lead on the development of the ACERWC's documents, including General Comments and resolutions, related to child marriage and other harmful practices;
- (k) Serve as a focal point in the area of child marriage and other harmful practices; and
- (l) Report to the ACERWC annually on the activities undertaken under the mandate.

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<sup>61</sup> The special rapporteurs cover the following thematic areas: violence against children; children and armed conflict; birth registration, name and nationality; child marriage and other harmful practices; child participation; children in vulnerable situations; health, welfare and development; children on the move; children in conflict with the law; parental responsibilities and child responsibilities; and education. The working groups cover the following thematic areas: implementation of decisions of the ACERWC; children's rights and climate change; children's rights and business; children with disabilities; and children affected by armed conflict.

Under Article 42 of the African Children’s Charter, one of the functions of the ACERWC is to “cooperate with other African, international and regional institutions and organisations concerned with the promotion and protection of the rights and welfare of the child.” CSOs have emerged as a key constituency with which the ACERWC has sought to work closely. In 2006, the ACERWC adopted the **Criteria for Granting Observer Status to Non-Governmental Organizations (NGOs) and Associations**. On the basis of these Criteria, the ACERWC has granted observer status to a total of 34 NGOs.

To be eligible for observer status, an NGO must satisfy the following conditions:

- It must be registered in a state party to the ACRWC. The registration must have taken place at least three years prior to the submission of the request for observer status.
- It must show proof of official recognition and a record of its activities in the past three years.
- It must have recognized headquarters, executive organ, democratically adopted statute, a representative structure, and an administration comprising a majority of African citizens or Africans from the diaspora. This requirement is not applicable to international NGOs.

Applications for observer status must be submitted to the ACERWC three months before the session in which it is expected the ACERWC will consider them. CSOs that have been granted observer status enjoy several rights or privileges, including the following:

- invitations into meetings;
- access to relevant documents;
- right to address the ACERWC; and
- right to request for the inclusion of specific issues to be placed on the agenda of ACERWC sessions.

**Note: An NGO that practices discrimination on the basis of any prohibited ground or engages in any activity that could amount to abuse of children or worst forms of child labour cannot enjoy observer status.**

This does not mean that NGOs with no observer status cannot engage with the ACERWC at all. They may, for example, submit communications and interact with the ACERWC during its country missions.

NGOs with observer status before the ACERWC are expected to submit a report of its activities and financial situation every two years. The content and format of the report must comply with the guidelines outlined in the ACERWC’s **Guidelines for Reporting by Non-Governmental Organizations (NGOs) and Associations with Observer Status**.

## Checklist for observer status application to the ACERWC

According to the *Criteria for Granting Observer Status to NGOs and Associations*, an NGO seeking observer status before the ACERWC must submit the following documents as part of its application:

- (a) A written application addressed to the ACERWC requesting observer status;
- (b) A copy of the NGO's statute or charter;
- (c) An updated list of the members of the NGO;
- (d) All the details concerning the NGO's different sources of financing including, voluntary contributions from external sources, the amounts and the names of donors;
- (e) A memorandum of the NGO's past and present activities;
- (f) Details of the NGO's links within and outside of Africa;

The opportunities, platforms and pathways for CSO engagement with the ACERWC are more or less similar to those available in respect to the ACHPR. This is mainly because the mandate and working methods of the two regional human rights bodies almost mirror each other. In this context, CSOs may engage with the ACERWC through the following ACERWC platforms or working methods: ordinary sessions; communications procedure; reporting procedure; country missions; and standard-setting.

### (i) Engaging in ACERWC sessions

The ACERWC holds two ordinary sessions in a year, with each session lasting between 3-14 days. The ACERWC may also hold extraordinary sessions as and when it is needed. The ACERWC's Rules of Procedure also provide for the possibility of the ACERWC to hold joint sessions with the ACHPR and the ACTHPR.<sup>62</sup> The ordinary sessions are a combination of open sessions to which the public is invited and closed sessions which are held on camera. For close to two decades, most ordinary sessions of the ACERWC took place in Addis Ababa, with only a few being held outside of Ethiopia. With the relocation of the ACERWC's seat to Maseru, most sessions will now take place here. It is also noteworthy that with the outbreak of the COVID-19 pandemic, ordinary sessions of the ACERWC have shifted to a virtual platform.

Ordinary sessions are the main site for CSO interaction and engagement with the ACERWC and states parties to the ACRWC. The sessions also attract a wide range of relevant actors involved in the promotion and protection of children's rights in Africa, including AU organs, UN agencies, NHRIs, and academic institutions. For CSOs working on women's rights and gender equality, the ACERWC's ordinary sessions offer several opportunities for advocacy on the rights and protection of girls. In particular, CSOs may undertake the following activities during ACERWC's ordinary sessions:

- Address the ACERWC and draw its attention to specific issues or themes relating to the rights and protection of girls. At every session, the ACERWC usually has specific

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<sup>62</sup> ACERWC Rules of Procedure, Rule 28.

time slots dedicated to receiving presentations or statements by CSOs with Observer Status. CSOs also have an opportunity to speak during the “Day of General Discussion” (see box below for details).

- Seek and hold bilateral advocacy meetings with expert members and Secretariat of the ACERWC.
- Interact with state representatives participating in the sessions with a view to building rapport and drawing their attention to specific issues and recommendations on the rights and protection of girls in your country.
- Network with CSOs from around the continent and beyond through participation in the CSO Forum and other formal and informal events organized on the side of ordinary sessions.

**Tip: ACERWC and ACHPR ordinary sessions are a beehive of activities. Securing meetings and getting the attention of commissioners, expert members or state delegates is typically difficult. There is always very limited time for advocacy meetings which tend to take place during breaks and along corridors. CSOs must always be ready to deliver “elevator pitches”: quick and persuasive advocacy messages delivered in the shortest time possible (sometimes in less than a minute).**

### **Understanding select advocacy platforms during ACERWC’s ordinary sessions**

**Day of General Discussion:** Rule 78 of the ACERWC Rules of Procedure provides that the ACERWC may devote one or more parts of its ordinary sessions to a general discussion on one specific article of the ACRWC or a thematic area. This general discussion is intended to enhance a deeper understanding of the content and implications of ACRWC. Pursuant to Rule 78, the ACERWC usually holds a “Day of General Discussion” during its ordinary sessions. These discussions offer an opportunity for CSOs to speak about their work, positions and recommendations on specific topics. The themes selected for the general discussion are sometimes specifically relevant to women’s rights and gender equality, as was the case during the ACERWC’s 37<sup>th</sup> ordinary session held in March 2021, when the theme of the discussion was “sexual and reproductive health rights of adolescents.”

**CSO Forum:** The CSO Forum on the African Charter on the Rights and Welfare of the Child, popularly known as the CSO Forum, is a platform for fostering and institutionalising collaboration between CSOs and the ACERWC. It is also a meeting point for child-focused organizations in Africa to build partnerships and chart common strategies for the advancement of child rights in Africa. The CSO Forum began as a meeting of 13 participants who convened ahead of the 13<sup>th</sup> ordinary session of the ACERWC held in April 2009 in Addis Ababa. The forum has since exponentially grown, and it now brings more than 100 participants from across Africa and beyond. The main output of the CSO Forum is an outcome statement or a communique. It provides a synopsis of the Forum’s deliberations and observations. More importantly, it outlines specific recommendations that are addressed to the ACERWC, states and other relevant actors. A representative of the CSO Forum is usually given the opportunity to speak during the opening ceremony of ACERWC’s ordinary sessions.

## **(ii) Engaging the ACERWC communications procedure**

The ACERWC draws its mandate to receive and determine complaints or communications from Article 44 of the ACRWC. Article 44(1) provides that the ACERWC may receive communications from four different actors: individuals, NGOs recognised by the OAU/AU, member states, and the UN. Article 44(2) provides that “every communication to the Committee shall contain the name and address of the author and shall be treated in confidence.” This provision does not say much in terms of how the ACERWC handles communications. As such, the detailed procedure of examining communications by the ACERWC is spelt out in its *Revised Guidelines for the Consideration of Communications*. The procedure outlined in the Revised Guidelines is very much similar to the procedure adopted by the ACHPR.

### **ACERWC communications procedure**

- To begin with, a communication addressed to the ACERWC must meet the requirements it has set down relating to form and content. On the form of communications, Section II(2) of the Revised Communications Guidelines provide that the ACERWC will not consider a communication if:
  - a. it is anonymous;
  - b. it is not written in one of the official languages of the ACERWC;
  - c. it concerns a state that is not party to the ACRWC; and
  - d. it is not duly signed by the complainant or his/her representatives.
- On the contents, Section II(3) provides that communications must contain the following information:
  - a) Clear particulars of the complainant or complainants and party or parties against whom such complaint has been made.
  - b) Where possible, the name of the victim or victims, in case they are not the complainant or complainants, and of any public official or authority who has taken cognisance of the fact or situation alleged;
  - c) Whether or not the complainant wishes that his or her identity or the identity of any victim or victims be withheld from the State Party against which the communication is brought;
  - d) The State the complainant considers responsible, by act or omission, for the violation of any of the rights and welfare of the child recognised by the ACRWC;
  - e) An account of the act or situation that is the subject matter of the complaint, specifying the place and date of the alleged violations;
  - f) Where possible, the provision of the ACRWC allegedly violated;

**ACERWC mailing address**  
**The Secretary**  
**African Committee of Experts on**  
**the Rights and Welfare of the Child**  
**Nala House,**  
**Balfour Road, Maseru,**  
**Kingdom of Lesotho**  
**Email: [info@acerwc.africa](mailto:info@acerwc.africa)**



- g) The remedies sought by the complainant to redress the alleged violations
- h) Any steps taken to exhaust domestic remedies, or the impossibility or ineffectiveness of doing so;
- i) An indication of whether the communication has been submitted to another international settlement procedure; and
- j) The address for receiving correspondence from the ACERWC and, if available, a telephone number, facsimile number and email address.

### ACERWC communications process

- Following registration and preliminary review by the Secretariat, the ACERWC will first consider the admissibility of a communication submitted to reviewing written submissions and/or hearing oral submissions. The admissibility requirements are the same as those listed under Article 56 of the African Charter and applied by the ACHPR in its communications procedure (see section 3.1.1 above).
- If the communication is declared admissible, then the ACERWC will proceed to determine the merits of the communication. However, before it considers the merits of a communication, the ACERWC may set a time period for the parties to express interest in reaching an amicable settlement.<sup>63</sup>
- The ACERWC determines the merits of communications mainly on the basis of written submissions. However, if it deems it necessary or if a party requests, then it may hold oral hearings.<sup>64</sup> Along the same line, the ACERWC may also hear witnesses, experts or any other person who is considered relevant to the communication. It may also conduct an on-site investigation to collect evidence or information.<sup>65</sup> The ACERWC may also solicit or accept interventions by third or interested parties and *amici curiae*.<sup>66</sup>
- After deliberating on the merits of a communication, the ACERWC is required to adopt a decision within 90 days. Such a decision is made public after the AU Assembly or Executive Council has approved the publication of the ACERWC's activity report in which the decision is contained.

**Note: One unique feature of ACERWC's communications procedure relates to participation of children. Section XI(6) of the Revised Guidelines on Communications requires the ACERWC to proactively take measures to ensure effective and meaningful participation of the child or children concerned by any communication before it.**

**Note: In September 2020, the ACERWC declared the case of *Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzania girls) v Tanzania* admissible. This case challenges the practice of forced pregnancy testing of primary and secondary school girls and the expulsion from schools of those found pregnant or married. The determination of the communication on the merits was still pending as the time of writing this Guide (September 2021).**

63 ACERWC Revised Guidelines on Communications, Sections X(2) and XIII.

64 ACERWC Revised Guidelines on Communications, Section XI.

65 ACERWC Revised Guidelines on Communications, Section XV.

66 ACERWC Revised Guidelines on Communications, Section XVII.

For CSOs working on women's rights and gender equality, the ACERWC's communications procedure offers a litigation forum for holding states accountable for violations of the rights of girls as protected under the ACRWC. Indeed, the ACERWC has finalized one case that explicitly relates to gender equality (see box below)

### **Institute for Human Rights and Development in Africa (IHRDA) and Finders Group Initiative on behalf of TFA (A minor) v Cameroon<sup>67</sup>**

This case concerns states' duty to investigate and prosecute perpetrators of rape and other forms of sexual violence against girls. TFA was repeatedly raped by a prominent and influential figure in the area where she lived. Even after the case was reported to the police, no concrete investigations were carried out, and as a result, the perpetrator had not been brought to justice five years after committing the crime. The ACERWC found that by failing to investigate the rape case, Cameroon violated Article 1 (general obligation of states parties), article 3 (non-discrimination), and Article 16 (protection against child abuse and torture) of the ACRWC.

In terms of remedies, the ACERWC asked Cameroon to ensure that the perpetrator of rape against TFA was immediately brought to justice, pay TFA 50 million CFA as compensation, and enact legislation on the elimination of all forms of violence against children, including sexual violence. Other recommendations of the ACERWC required Cameroon to train its criminal justice actors on the protection of children, create specialized police units to handle cases of violence against children, establish monitoring units to provide support to child victims of violence and develop awareness raising aimed at eradicating violence against children.

### **(iii) Engaging the ACERWC reporting procedure**

Like the ACHPR, the ACERWC is mandated to examine state reports. Under article 43 of the ACRWC, every state party is required to submit periodic reports to the ACERWC on the measures it has adopted to give effect to the ACRWC:

- The initial report should be submitted two years after ratifying the ACRWC.
- Subsequent reports should be submitted every three years.

The ACERWC views the reporting procedure as a non-adversarial process that is based on the principle of constructive dialogue and the aim of which is to provide state parties with the opportunity for self-reflection and assessment of the extent to which the rights guaranteed in the ACRWC are enjoyed in practice.

Article 43(2) of the ACRWC requires state party reports to contain sufficient information on the implementation of the ACRWC and to indicate the factors and difficulties affecting the fulfilment of the obligations stipulated in the ACRWC. The specific details of the information

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<sup>67</sup> ACERWC communication No. 006/Com/002/2015, Decision No. 001/2018 adopted during 31<sup>st</sup> ordinary session, Bamako, Mali, May 2018.

and date to include in state party reports are described in the ACERWC's *Guidelines on the Form and Content of Periodic Reports*.

The ACERWC's reporting procedure provides a platform for CSOs working on women's rights and gender equality to undertake advocacy on issues relating to the rights of girls under the ACRWC. Like in the case of the ACHPR, the main mode for CSOs' engagement with the ACERWC's reporting procedure is through the submission of **shadow or complementary reports**. In this regard, the ACERWC's Rules of Procedure require that ahead of examining any state party report, the ACERWC should inform all relevant stakeholders, including NGOs, and invite them to submit relevant information or complementary/shadow reports within a specified timeframe. CSOs working on women's rights and gender equality may thus use this opportunity to submit shadow reports that focus on issues relating to the situation of girls in the country in which they are based or work on.

The ACERWC also organizes **Pre-Session Working Groups** as part of examining state party reports. The following are the key features of ACERWC's pre-session working groups:

- A pre-session working group is convened by a member of the ACERWC who is the country rapporteur for the concerned state party.
- The purpose of the working group is to identify a list of issues to be raised with the state party concerned and to determine if additional information is required ahead of the examination of the report.
- Pre-session working groups are held in private and the discussions are confidential.
- Participation in pre-session working groups is by invitation. The potential contribution that one brings to the table serves as a crucial factor in determining who is to be invited. It follows that CSOs that have submitted shadow reports stand a good chance of receiving an invitation.
- During pre-session working groups, participating CSOs are given the opportunity to make presentations. This is an opportunity to draw the attention of the ACERWC to specific issues that should be raised with the concerned state party.

### **Tips on effective engagement in ACERWC pre-session working groups**

- (a) When submitting a shadow or complementary report to the ACERWC, remember to indicate in your cover letter or email that you would wish to attend the pre-session working group.
- (b) If your oral presentation is summarized in a written format (e.g. talking points or PowerPoint presentation), ensure you send it to the ACERWC ahead of the pre-session working group or immediately after its conclusion.
- (c) As the time allocated for pre-session working groups is often short and limited, it is crucial to be clear, precise and succinct in your oral presentation.
- (d) As pre-session working groups often involve individuals who speak the different official languages of the ACERWC, simultaneous interpretation is always needed. It is

thus crucial for presenters to speak slowly and clearly to allow for accurate and smooth translation.

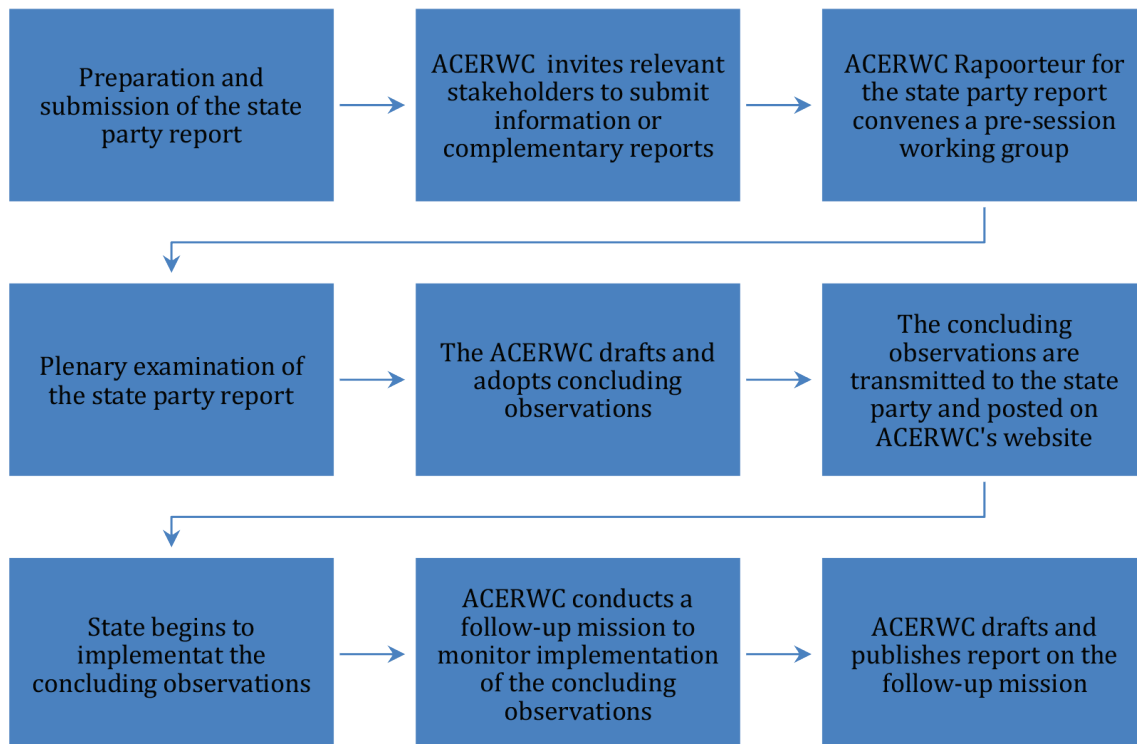
(e) If you refer to any report, research or data during your presentation, it is advisable to have copies at hand to submit to the ACERWC if necessary.

Following a pre-session working group, the ACERWC compiles a list of issues which it sends to the concerned state party. The state party is requested to submit written responses to these issues ahead of the examination of its periodic report, which takes place in public during an ordinary session of the ACERWC.

During the plenary examination of a state party report, CSOs may conduct additional advocacy. This may include the following:

- Meeting with the ACERWC to, among other things, update them on any relevant latest developments in the concerned country that needs to be considered during the examination of the report.
- Meeting representatives of the concerned state party to discuss specific human rights concerns or issues.

Concluding Observations are the official outcome of ACERWC's examination of a periodic report. In the concluding observations, the ACERWC outlines the positive steps the concerned state has taken to implement the ACRWC, the principal areas of concern and the ACERWC's recommendations.



#### (iv) Engaging the ACERWC country missions

Article 45(1) of the ACERWC provides that the ACERWC may resort to any appropriate method of investigating any matter that falls within its scope of the mandate. This provision essentially allows the ACERWC to carry out country visits or missions. The procedure for undertaking such missions is contained in the *Guidelines on the Conduct of Investigations by the ACERWC*. Pursuant to Article 2 of the Guidelines, the ACERWC conducts country missions for different purposes, and in particular to:

- a) assess the general situation of the rights of children in a country;
- b) clarify the facts and establish responsibility for violations against children; or
- c) promote the implementation of the ACERWC.

In terms of its objectives for country missions, the ACERWC may conduct three broad types of country missions:

- i. Investigative Missions:** These are prompted by specific allegations of violations of the rights of a child or children in a named country. The allegations may be contained in a communication, but a communication need not be pending before the ACERWC for it to conduct an investigative mission.
- ii. Advocacy Missions:** These are meant to generally assess the situation of children in a country and advocate for better protection or to promote the general implementation of the ACERWC.
- iii. Follow-up Missions on Concluding Observations:** These are missions conducted after the examination of a state party report and aimed at monitoring the implementation of the concluding observations of the ACERWC. In this regard, Rule 74 of the ACERWC's Rules of Procedure provides that following up on its concluding observations is "one of the core activities of its promotional mandate."

Once the ACERWC decides to undertake a mission to a country, it must seek the consent of the concerned state. During the mission, the ACERWC will meet with and gather information from different stakeholders. At the end of the mission, but before leaving the country, the ACERWC will convene a press conference to present its preliminary results to the government and the media. The ultimate outcome of the mission is a final report in which the ACERWC provides an analysis of the violations or issues it investigated during the mission. The final report also contains recommendations to the concerned state party and other relevant actors.

#### Tips on effective engagement with ACERWC's country missions

- (a) The ACERWC may be requested to undertake a mission by an interested party, or it may initiate a mission of its own volition. Where the circumstances warrant, CSOs should encourage the ACERWC to conduct a mission to a specific country.

(b) If the ACERWC receives a state's consent to undertake a mission, it will issue a notice inviting the public to contribute to the mission. CSOs should submit information to the ACERWC relating to the violations or issues they will be investigating or covering during the mission.

(c) In addition to providing information on substantive violations or issues, CSOs may also provide suggestions to the ACERWC on where to visit and who to meet during the mission.

(d) After the ACERWC has published the final report of a country mission, CSOs should disseminate and popularise the report at the domestic level.

### 3.1.3 African Court

Unlike the ACHPR and the ACERWC which are quasi-judicial in nature, the ACtHPR is a judicial body. It is established under the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol). The primary aim of the ACtHPR is to complement the communications procedure or the protective mandate of the ACHPR.<sup>68</sup> It issues binding judgments in cases submitted to it concerning claims of violation of the African Charter, the African Court Protocol

and "any other relevant human rights instrument ratified by the States concerned."<sup>69</sup> The ACtHPR may also issue advisory opinions on legal matters relating to the African Charter and the Maputo Protocol as long as the matter in question is not being examined by the ACHPR.

The ACtHPR has been operational since 2006. It is based in Arusha, Tanzania. The following are some of the key features of the ACtHPR:

- The ACtHPR is composed of 11 judges elected and appointed by the relevant AU policy organs (AU Assembly and Executive Council).
- Individuals nominated and elected to the ACtHPR must be jurists who are nationals of member states of the AU and considered to be of high moral character possessing recognised practical, judicial or academic competence and experience in the field of human and peoples' rights.<sup>70</sup>
- The president of the ACtHPR serves on a permanent basis and is the only judge required to reside at the seat of the ACtHPR. The other judges serve on a part-time basis.

**Note:** Article 27 of the Maputo Protocol explicitly provides that the ACtHPR "shall be seized with matters of interpretation arising from the application or implementation of this Protocol." However, this provision does not take away the mandate of the ACHPR to determine complaints submitted to it in respect of the Maputo Protocol.

68 African Court Protocol, Art 2.

69 African Court Protocol, Art 3(1).

70 African Court Protocol, Art 11.

- The ACtHPR holds four ordinary sessions in a year, that is, in March, June, September and December.

Article 5 of the African Court Protocol provides for the entities that may directly submit cases to the ACtHPR. These are:

- a) The ACHPR;
- b) A state party which has lodged a complaint at the ACHPR;
- c) A state party against which a complaint has been lodged at the ACHPR;
- d) A state party whose citizen is a victim of a human rights violation;
- e) African intergovernmental organizations; and
- f) Individuals and NGOs with observer status before the ACHPR as long as the requirements of Article 34(6) have been met.

In terms of Article 5(3) of the African Court Protocol, the ACtHPR may also entitle individuals and NGOs to directly submit cases to it, but only if the states against which the cases are brought have made a declaration allowing individuals and NGOs to directly access the ACtHPR. The requirement for a declaration is provided under Article 34(6) of the African Court Protocol, which also emphasises that the ACtHPR “shall not receive any petitions under article 5(3) involving a state party which has not made such a declaration”. Although the African Court Protocol has been ratified by 31 AU member states, only eight have made the “**Article 34(6) declaration**”. These are **Burkina Faso, The Gambia, Ghana, Guinea Bissau, Malawi, Mali, Niger** and **Tunisia**. Four states that had also made the declaration have since withdrawn them. These are Benin, Côte d’Ivoire, Rwanda and Tanzania.

**Tip: If a country has ratified the African Court Protocol but has not made the Article 34(6) declaration, individuals and NGOs may indirectly access the ACtHPR by first submitting their complaint to the ACHPR and then encouraging it to refer the complaint to the ACtHPR.**

The procedure of filing and litigating cases at the ACtHPR is elaborated in the **Rules of Court 2020**. Additional guidance is provided in the **Practice Directions** issued by the ACtHPR in 2012. Litigation before the ACtHPR commences with the submission or filing of an application:

- The application must be written in one of the working languages of the ACtHPR (Arabic, English, French and Portuguese).
- An application may be filed physically by depositing a hard copy at the ACtHPR’s registry in Arusha, electronically by sending it via email, or by sending it by registered post.
- If the application is filed electronically, a hard copy must be subsequently forwarded to the ACtHPR.

**ACtHPR’s mailing address**  
The Registrar  
African Court on Human and Peoples’ Rights  
Dodoma Road, P.O Box 6274  
Arusha, Tanzania  
Tel: +255 27 2970430/31/32/33/34  
Email: registrar@african-court.org

The ACtHPR requires applications to be in a specific format. It particularly requires applicants to use the **Application Form** that is available on its website ([Forms for Parties | African Court on Human and Peoples' Rights \(african-court.org\)](https://www.african-court.org)). The information that is required to be set out in the Application Form is as follows:

- a) The personal and contact details of the applicant or if the applicant is a legal person, the details of its incorporation and official address. If the applicant does not wish her identity to be disclosed to the public, she should make a written request to the ACtHPR, which will consider the request and decide on it.
- b) The name and contact details of the legal representative. If the applicant has several legal representatives, only one should be designated to correspond with the ACtHPR's registry.
- c) The name of the state party or parties against which the application is made;
- d) Statement of the facts;
- e) Statement of the alleged violations of specified human rights instruments and relevant arguments.
- f) Statement confirming the applicant's compliance with admissibility requirements laid down in Article 56 of the African Charter;
- g) Statement on the forms of relief sought. The ACtHPR has published the **Fact Sheet on Filing Reparations Claims** to aid litigants in formulating the appropriate forms of relief.

The Application Form must be signed and accompanied by copies of all supporting documents. Supporting documents may include copies of relevant judicial decisions at the domestic level and documentary evidence of the alleged violation.

### ACtHPR process of determining cases

- Upon receiving an application, the ACtHPR's registry will register and transmit it to the respondent state with a request for it to file its pleadings.
- If the respondent state files a response, the applicant will then have the opportunity to reply, whereupon the written pleadings would be deemed to have ordinarily closed.
- In determining the case, the ACtHPR will consider issues relating to jurisdiction, admissibility and merits.
- In addition to examining the written pleadings, the ACtHPR may hold oral hearings. Oral proceedings will in most cases involve the parties and their representatives. In certain cases, the ACtHPR may also hear witnesses, experts, or any other persons that it decides to hear.

**Tip: A key factor that defines successful litigation at the ACtHPR (and ACHPR and ACERWC) is identification of an appropriate case. CSOs are thus encouraged to be constantly on the look for potential cases that may be submitted to the ACtHPR for litigation.**

For CSOs working on women's rights and gender equality, the ACtHPR offers the possibility of litigating cases before a regional court and obtaining a binding decision. Although it has finalized 106 cases by September 2021, only one of these, **APDF and IHRDA v Mali**,<sup>71</sup> explicitly tackled issues relating to women's rights and gender equality.

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71 ACtHPR Application No. 046/2016, Judgment of 11 May 2018.



## APDF & IHRDA v Mali

At issue in this case was Mali's Family code which sets 18 as the minimum age of marriage for boys and 16 for girls. It also allows boys to marry from age 15 with the consent of both parents but only with the father's consent in respect of girls. The case also challenged Mali's Family Code insofar as it allows for traditional or religious marriage ceremonies that prevent the parties, particularly women, from consenting to marriage. The Code also allows religious and customary practices that disinherit children born out of wedlock. The case also raised questions relating to Mali's obligation to eliminate harmful practices.

In a judgment delivered in May 2018, the ACtHPR held that the impugned Family Code violated Mali's obligations under the African Charter, the Maputo Protocol and the ACRWC relating to setting a minimum age of marriage for girls, the right to consent to marriage, the right to inheritance, and the elimination of all harmful practices. The ACtHPR ordered Mali to amend its Family Code with a view to harmonising it with regional human rights treaties. It also ordered Mali to take appropriate measures to stop the various violations of the rights of women and girls in the context of marriage and inheritance.

## 3.2 Engaging AU policy and technical organs

The work of the regional human rights treaty bodies is complemented and supported by a range of AU policy organs. These organs are primarily engaged in decision-making and/or policy implementation within the AU. They include the following:

- AU Assembly;
- Executive Council;
- Permanent Representative Council (PRC);
- Specialized Technical Committees (STCs); and
- AU Commission (AUC).

Apart from the AUC, the policy and technical organs of the AU are composed of representatives of AU members, ranging from heads of state in the AU Assembly to ministers or senior state officials in the STCs. These organs draw their respective mandates from the AU Constitutive Act. They pursue the broad objectives of the AU and operate in accordance with the principles laid down in the Constitutive Act. In this regard, it bears recalling that one of the objectives of the AU is to "promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments."<sup>72</sup> In the same vein, one of the principles that guides the operations of the AU is the "promotion of gender equality" and "respect of democratic principles, human rights, the rule of law

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<sup>72</sup> AU Constitutive Act, Art 3(h).

and good governance.<sup>73</sup> The AU policy organs are thus enjoined by the Constitutive Act to promote these objectives and principles, both as a collective and as separate entities.

It follows that the above AU policy and technical organs have a role to play in relation to advancing women's rights and gender equality. At the very least, they are routinely engaged, to varying degrees, in the process of adopting policies and decisions that are directly or indirectly relevant to women's rights and gender equality.

### 3.2.1 AU Assembly

The Assembly sits at the apex of the institutional and decision-making hierarchy of the AU. It is the supreme and highest decision-making organ. The Assembly is composed of heads of state and government from all the 55 AU member states. It is responsible for adopting AU decisions, policies and priorities and monitoring their implementation. Some of the key features of the AU Assembly are as follows:

- **AU Chairperson:** For every calendar year, one of the heads of state is elected as the Assembly Chairperson or the AU Chairperson to lead its meetings, activities and external engagement. The position of the AU Chairperson rotates across the five geographical regions of the continent (Central Africa, Eastern Africa, Northern Africa, Southern Africa, and Western Africa).
- **Bureau:** The AU Chairperson is assisted by a Bureau composed of three vice-chairpersons and a rapporteur.
- **Troika:** In 2017, the Assembly decided to also establish a troika of the outgoing, current and incoming chairpersons to ensure continuity and effective implementation of the decisions of the Assembly.
- **AU Summits:** The AU Constitutive Act provides that the Assembly must meet in ordinary sessions at least once a year and in extraordinary sessions at the request of a member state and with the approval of two-thirds of all AU member states. The Assembly traditionally met in ordinary sessions twice a year. Since 2019, the Assembly meets only once in late January or early February. The Assembly's ordinary sessions, also popularly known as **AU Summits** are mostly held at the AU headquarters in Addis Ababa, Ethiopia, but they are sometimes hosted in other cities around the continent.

The AU Summits are a key site for CSO or stakeholder engagement with AU member states at the regional level. The summits are particularly important for the following reasons

- a) Critical decisions concerning the AU and the continent at large, including on women's rights and gender equality, are usually made at the Summits. Some of the prominent decisions of the AU Assembly concerning women's rights include the adoption of treaties and normative instruments such as the Maputo Protocol and the SDGEA.

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73 AU Constitutive Act, Art 4(l) & (m).

- b) The AU Assembly also adopts the AU's annual **"Theme of the Year."**
- c) The AU Assembly has also established the practice of appointing a head of state to champion and draw attention to particular continental causes and issues. Known as **AU Champions**, these heads of state work to mobilise political support and promote ownership of AU programmes and activities at the highest level possible. During AU Summits, the AU Champions submit progress reports on their respective areas of focus. The themes covered by current AU champions include gender and development, child marriage and Female Genital Mutilation (FGM).
- d) The AU Summits are also important because they are preceded by statutory meetings or ordinary sessions of the other AU policy organs, mainly the Executive Council and the PRC. Additionally, many important meetings and events convened by the various AU institutions and other stakeholders do take place on the margin of AU Summits.

### **AU champions on women's rights-related themes**

- (1) AU Champion on Gender and Development Issues in Africa: Nana Akufo-Addo, President of Ghana
- (2) AU Champion on Ending Child Marriage in Africa: Edgar Chagwa Lungu, Former President of Zambia
- (3) AU Champion on Elimination of Female Genital Mutilation: Roch Marc Christian Kabore, President of Burkina Faso

Representatives of AU stakeholders, such as non-African governments, UN agencies, development partners, and CSOs may be accredited to attend AU Summits as observers. With accreditation, representatives of AU stakeholders are permitted to attend only the opening and closing ceremonies of AU Summits. However, presence at the Summits allows AU stakeholders to hold advocacy and networking meetings with a range of relevant actors, including representatives of AU member states, AU officials, donors, and CSOs. Stakeholders may also convene their own advocacy events (e.g., report launch or panel discussion).

If capacity and funding does allow, it is advisable that CSOs working on women's rights and gender equality seek to be accredited to attend AU summits. But even without accreditation, CSOs still travel to the city where the Summit is being held and arrange to hold advocacy meetings in venues other than where the Summit is taking place (e.g., in a hotel venue nearby). CSOs may also attend events that take place prior to or on the side-line of AU Summits.

A key meeting that regularly happens prior to every ordinary AU Summit is the **Pre-Summit Consultative Meeting on Gender Mainstreaming in the African Union**, also popularly known as **Gender is My Agenda (GIMAC) Session**. Beginning with a two-day meeting preceding the January 2005 AU Summit, GIMAC sessions have become a standard and influential gathering of women's rights organizations and other stakeholders that takes place before AU ordinary summits. The purpose of GIMAC sessions is to create a platform

for CSOs to assess progress in the implementation of the SDGEA. The sessions also seek to influence AU decisions with a view to ensuring that these decisions promote gender equality and women's empowerment.

### **Tips on effective advocacy engagement at AU Summits**

(a) **Pre-Summit advocacy:** The AU and its member states usually begin preparation for AU summits 2-3 months in advance. It is during the pre-summit period that a summit agenda is set, and draft decisions prepared. By the time an AU Summit is held, most critical decisions have already been largely agreed upon and are most likely to be endorsed at the Summit with minimal changes. For CSOs, this means that advocacy seeking to influence AU decisions must begin at least at the same time that member states begin to prepare for a summit. It also means that understanding the AU policy-making process and cycle is important (see below for details on AU policy-making process).

(b) **Application for accreditation:** CSOs seeking accreditation to an AU Summit must send their requests to the AU Citizens and Diaspora Directorate (CIDO) so as to be added to the list of invitees to the Summit. The request must be made early enough, preferably several weeks before the Summit begins. Other AU directorates and departments usually arrange for the CSOs they work with to be invited to Summits. Therefore, CSOs may seek accreditation to a Summit, for example, through the Women, Gender and Development Directorate (WGDD) or the Department of Political Affairs, Peace and Security.

(c) **Tactical messaging:** It is always important for CSOs undertaking advocacy at the AU to frame their messaging to align with AU priorities. For CSOs working on women's rights and gender equality, the starting point for understanding AU's priorities would be Agenda 2063 and the ***AU Strategy for Gender Equality and Empowerment 2018-2028***. Advocacy messaging may also be framed in such a way that it speaks to the AU Theme of the Year for a specific year.

(d) **Country mapping:** Decisions at the AU Summits are taken by member states. It is thus important to have a good understanding of the role of specific AU member states at every stage of the AU decision-making prior to and during AU summits. Good advocacy practices in this regard include the following:

- Know which countries are the members of the AU Assembly Bureau for the current or upcoming year and seek to engage them. The Bureau is critical in determining the agenda of the AU summit and priorities for the year.
- Identify the countries which are likely to be supportive to your cause and engage with them directly or through other CSOs with access to these countries.
- Study the positions taken by AU member states on the specific issue of concern over time. This will enable you to know what position they are likely to take on a similar current issue. With this knowledge, develop an appropriate advocacy strategy.

### 3.2.2 Executive Council

The Executive Council is the second highest organ within the AU institutional and decision-making structure. It is composed of Ministers of Foreign Affairs (or other designated ministers) of all the 55 AU member states. Article 13 of the AU Constitutive Act mandates the Executive Council to take decisions on policy decisions in at least 12 different areas, ranging from foreign trade to matters relating to Persons with Disabilities (PWDs). Over the years, the AU Assembly has delegated additional powers to the Executive Council, including making certain final decisions. The Executive Council is also responsible for monitoring the implementation of policies adopted by the AU Assembly.

Like the AU Assembly, the Executive Council has a Bureau consisting of a chairperson, three vice-chairpersons and a rapporteur. The Executive Council Bureau positions are held by the same member states that form the AU Assembly Bureau. The Executive Council traditionally meets twice a year in ordinary sessions, usually in late January/early February and late June/early July. At the request of a member state and with the approval of two-thirds of all AU member states, the Executive Council may also meet in an extraordinary session. The ordinary sessions of the Executive Council usually precede those of the Assembly. Indeed, the Executive Council is responsible for preparing the sessions agendas of the AU Assembly and drafting decisions for the consideration of the Assembly.

**Tip: Advocacy targeting the Executive Council should ideally start at the domestic level. CSOs should seek to engage with their Ministries of Foreign Affairs before the start of the sessions of the Executive Council**

One of the important decisions taken by the Executive Council in the early years of the AU relates to CSO engagement. In July 2005, the AU adopted the **Criteria for Granting Observer Status and for A System of Accreditation within the AU**.<sup>74</sup> A CSO seeking observer status must satisfy the following criteria:

- The CSO must be registered in an African state or in the diaspora;
- The management of the CSO must be a majority of African citizens or Africans in the diaspora;
- The CSO must derive at least two-thirds of its income from membership contributions.

Applications for observer status are processed by the AUC and then submitted to the Executive Council through the PRC for approval. CSOs with observer status may access open sessions of AU Summits. They may also be invited to closed sessions of AU meetings in respect of their specific area(s) of interest. The attendant obligation accruing to CSOs with such status is that they are required to submit a report every three years on their cooperation with the AU.

#### Checklist for observer status application to the AU

According to the *Criteria for Granting Observer Status and for a System of Accreditation within the AU*, an NGO seeking observer status before the AU must submit the following documents as part of its application:

<sup>74</sup> Decision EX.CL/Dec. 230 (VII), adopted during the 7<sup>th</sup> ordinary session of the Executive Council, 28 June – 2 July 2005, Sirte, Libya.

- (a) A written application to the AUC indicating intention to be granted observer status at least six months before the sessions of the Executive Council at which the application will be considered.
- (b) Proof of registration in an AU member state or the diaspora for a minimum of three years prior to the submission of the application for observer status.
- (c) The constitution or charter of the NGO.
- (d) An up-to-date list of members of the NGO.
- (e) Indication of the sources of the finances of the NGO, including copies of its most recent balance sheets.
- (f) Memorandum of the past and present activities of the NGO.
- (g) Indication of any external connections to Africa and any other relevant information that will assist the AU in determining the identity of the NGO.
- (h) For NGOs in the diaspora, references from two AU member states or two NGOs recognised by the AU.

### 3.2.3 Permanent Representatives Committee

The PRC is composed of AU member states' Permanent Representatives to the AU, who by virtue of their diplomatic or representative role, are based at the AU headquarters in Addis Ababa. Acting under the instructions of the Executive Council, the PRC is engaged on issues regarding the detailed and day-to-day functioning of the AU, including monitoring the implementation of policies, reviewing financial budgets, and consideration of activity reports of AU institutions. The PRC is also charged with facilitating communication between member states and the AU. Similar to the AU Assembly and the Executive Council, the PRC is headed by a bureau consisting of a chairperson, three vice-chairpersons and a rapporteur. The PRC bureau positions are held by the same member states that form the AU Assembly and Executive Council bureaus.

**Tip: The ideal time for CSOs to meet and engage with PRC members is during the AU inter-summit period. During summits, PRC members are usually extremely busy and have many meetings to attend. It is thus best to meet them when they are not attending AU summits and related meetings. If funding allows, CSOs should consider making periodic advocacy visits to Addis Ababa to engage with PRC members and AU officials.**

The PRC meets at least once a month to transact business. It also holds two ordinary sessions every year, and if warranted, it may also convene extraordinary sessions. The ordinary sessions usually precede those of the Executive Council. The PRC and Executive Council ordinary sessions were traditionally just days apart. Since 2019, the PRC ordinary sessions are held at least two weeks before the start of the ordinary sessions of the Executive Council. The PRC sessions are closed to the public and usually involve detailed discussions and debates on agenda items. The majority of decisions relating to human rights issues that are eventually adopted by the Executive Council and the AU Assembly, including on women's rights and

gender equality, are as a standard procedure initially tabled before the PRC for debate and consideration. This makes the PRC an important organ for CSO engagement working on human rights generally and on women's rights and gender equality in particular.

Article 21 of the AU Constitutive Act provides that the PRC may set up sub-committees or working groups as it may deem necessary. In this regard, the PRC has established a total of 14 sub-committees, two of which have explicit human rights mandates. These are:

- PRC Sub-Committee on Refugees, Returnees and Internally Displaced Persons in Africa; and
- PRC Sub-Committee on Human Rights, Democracy and Governance.

CSOs should seek to know and establish working relationships with the chairpersons and members of these two PRC sub-committees. As they serve in committees with express human rights mandates, chairpersons and members of the two sub-committees may be allies of human rights CSOs or champions of specific issues within the PRC.

### 3.2.4 Specialized Technical Committees

Article 14 of the AU Constitutive Act provides for the establishment of STCs in different thematic areas. Pursuant to this provision, a total of 14 STCs have been established. These STCs are composed of member states' ministers or senior officials responsible for sectors falling within their respective areas of competence. Within the hierarchical structure of the AU, the STCs report to the Executive Council. Within its field of competence, each STC prepares AU projects and programmes and ensures their coordination and harmonization. The STCs are critical actors in the AU policy-making process. They are responsible for the technical review of draft AU policy and normative documents falling within their thematic focus. The PRC and the Executive Council rely on the recommendations of the STCs regarding the adoption of the draft policy and normative documents.

The Constitutive Act in Article 16 provides that subject to any directives issued by the Executive Council, each STC may meet as often as necessary. In this regard, four of the existing STCs meet in an ordinary session once a year, while the other 10 meet once every two years. Three of the STCs have explicit human rights mandates. These are:

- STC on Justice and Legal Affairs;
- STC on Gender Equality and Women's Empowerment; and
- STC on Migration, Refugees and Internally Displaced Persons (IDPs).

The **STC on Gender Equality and Women's Empowerment** is obviously the most relevant to CSOs working on women's rights and gender equality. It is one of the four STCs that meet once every year. The overall objective of this STC is to advance gender equality and women's empowerment in Africa. It leads on the formulation of AU decisions and policies, conducts advocacy on ratification of the Maputo Protocol, mobilizes funds for AU's programmes on women's rights, and promotes sharing of best practices among member states. The bureau of the STC on Gender Equality and Women's Empowerment is elected every two years on a rotational basis.

## Bureau of the STC on Gender Equality and women's Empowerment

Nov 2020-Nov 2022

- Chairperson: Benin
- First vice-chairperson: Uganda
- Second vice-chairperson: (to be appointed)
- Third vice-chairperson: Zimbabwe
- Rapporteur: Democratic Republic of Congo (interim, pending consultations by the Central Africa region)

### 3.2.5 African Union Commission

The AUC is the secretariat of the AU. It is responsible for executing the day-to-day operations of the AU and implementing projects and programmes to give effect to policy decisions. The AUC's top leadership is composed of the Chairperson, Deputy Chairperson and six Commissioners, all of whom are elected by the Executive Council and appointed into office by the AU Assembly. Each member of the AUC top leadership serves for a term of four years, renewable once. The AUC Chairperson is the Chief Executive Officer of the AU and is accountable to the Executive Council. The Deputy Chairperson assists the Chairperson in the discharge of his or her duties. Functionally, the Deputy Chairperson is responsible for the finance and administration docket of the AU.

Over the years, the office of the AUC Chairperson has incrementally prioritized the integration of gender equality within the AU and more broadly, the advancement of women's rights on the continent. The following structures within the AUC are particularly concerned with women's rights and gender equality:

- **Women, Gender and Youth Directorate (WGYD):** This directorate falls directly under the AUC chairperson. Previously known as the Women, Gender and Development Directorate (WGDD), the WGYD is mandated to promote gender equality and youth development within the AU and across member states. It implements programmes and projects to give effect to AU policies relating to women and youth.
- **Special Envoy for Women, Peace and Security:** Appointed in January 2014, the mandate of the Special Envoy is to promote the protection and advancement of the rights of women and girls affected by violent conflicts in Africa and to ensure gender mainstreaming and equal participation of women in conflict prevention, management, resolution and peacebuilding. The position of the Special Envoy has

**Tip:** A key factor that defines effective and successful advocacy at the AU is the ability to establish and maintain trust and working relationship with AU officials as well as representatives of AU member states based at the AU headquarters. For CSOs working on women's rights, it is essential to establish cordial relations with the Women, Gender and Youth Directorate, the Special Envoy for Women, Peace and Security, and the relevant staff of the Department of Political Affairs, Peace and Security and the Department of Health, Humanitarian



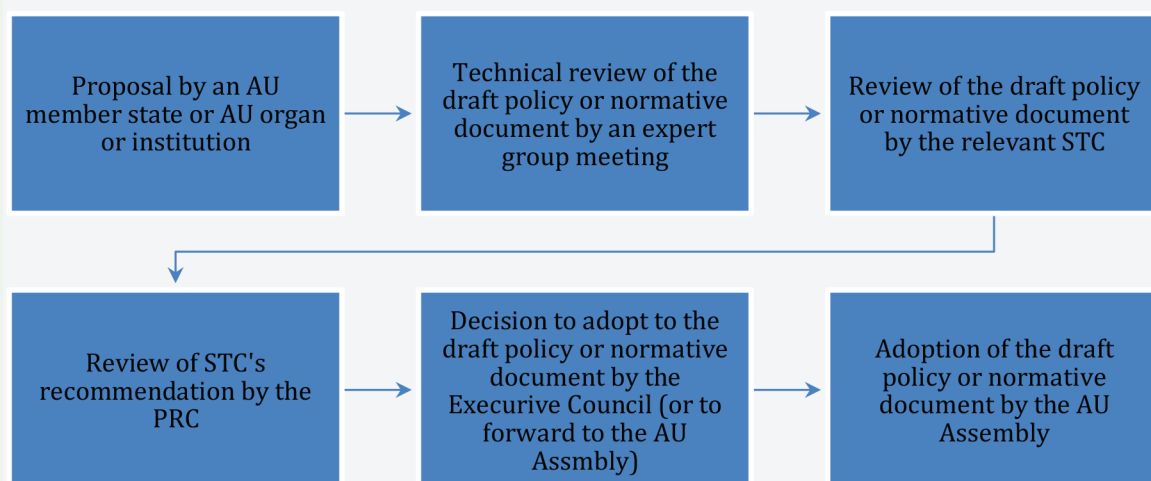
been held by **Bineta Diop**, the founder of Femmes Africa Solidarité (FAS), since its inception.

Each of the six AUC Commissioners heads a department of the AUC. Two of these have a particular relevance to human rights, including women's rights and gender equality. These are: The **Department of Political Affairs, Peace and Security (PAPS)** and the **Department of Health, Humanitarian Affairs and Social Development**.

## Understanding AU policy-making process and cycle

Policy decisions adopted during AU summits are usually a culmination of a long process involving multiple AU organs and institutions. In an ideal setting, policy-making at the AU would involve at least six stages. CSOs should strive to inject their voice and recommendations at each of these stages through research, advocacy and campaigns.

- **Stage 1:** policy-making at the AU usually begins with a proposal in the form of a policy document by a member state or an AU organ or institution.
- **Stage 2:** This draft is then scrutinized in an expert group meeting.
- **Stage 3:** Following this scrutiny, the draft policy document is discussed and refined by the relevant STC, which is composed of ministers or senior government officials responsible for specific thematic sectors. The STC will prepare a report making a recommendation on the adoption of the draft policy document.
- **Stage 4:** The PRC, through its relevant sub-committee and/or in a full meeting, will consider the recommendation of the STC and determine whether the draft policy document should be placed on the agenda of the Executive Council.
- **Stage 5:** The Executive Council will review the recommendation of the PRC and make a final decision by way of adoption.
- **Stage 6:** In some cases, depending on the nature of the policy document, the Executive Council will forward the draft policy document to the AU Assembly for final adoption.



## 3.3 Engaging AU consultative and advisory organs

Specific AU organs, mainly the Economic, Social and Cultural Council (ECOSOCC) and the Pan-African Parliament (PAP) play an advisory and consultative role within the AU institutional ecosystem. These advisory organs are equally important and are indeed engaged in implementing initiatives or projects that seek to advance women's rights and gender equality. The two organs have specific structures dedicated to women's rights. The ECOSOCC has in place the Sectoral Cluster Committee on Gender and Women while PAP has the Women's Convention and the Working Committee on Elimination of Female Genital Mutilation and Forced Marriage.

### 3.3.1 Economic, Social and Cultural Council

The ECOSOCC is an advisory organ of the AU. Its purpose is to provide 'an opportunity for African Civil Society Organisations to play an active role in contributing to the AU's principles, policies and programmes.'<sup>75</sup> The ECOSOCC comprises of two CSOs from each AU member state; 10 CSOs operating at sub-regional level and eight at the continental level; 20 CSOs from the African Diaspora, as defined by the Executive Council and covering the continents of the world; and six CSOs, in ex officio capacity, nominated by the AUC. Generally, CSO members of ECOSOCC, NGOs, Community-Based Organisations (CBOs) and social groups such as those representing women and youth.

The Citizens and Diaspora Directorate (CIDO) of the AUC previously served as the secretariat of ECOSOCC. In December 2019, the seat of ECOSOCC was relocated to Lusaka, Zambia, where its independent and permanent secretariat is now based. The ECOSOCC engaged in matters of women's rights and gender equality through its **Sectoral Cluster Committee on Women and Gender**.

**Note:** The criteria for CSO membership in ECOSOCC are contained in the ECOSOCC Statute. One particular requirement has prevented the majority of African CSOs from joining ECOSOCC membership. This is the requirement that at least 50% of a prospective NGO must be derived from contributions of its members. Even with this restriction, CSOs may still engage in public activities of ECOSOCC that do not require membership.

### 3.3.2 Pan African Parliament

The PAP is currently a regional legislature, albeit with only consultative and advisory powers. It is envisaged that, ultimately, the PAP will evolve into an institution with full legislative powers whose members are elected by universal adult suffrage.<sup>76</sup> In the meantime, the PAP is composed of five members from each AU member state that has ratified the PAP Protocol. The five members are designated by the respective national legislatures of member states rather than by direct election by citizens. The primary objective of PAP is to "ensure the full participation of African peoples in the development and economic integration of the continent."<sup>77</sup>

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<sup>75</sup> See <https://au.int/en/about/ecosocc>

<sup>76</sup> PAP Protocol, Art 2(3).

<sup>77</sup> AU Constitutive Act, Art 17.

The PAP has an explicit human rights mandate. Article 3(2) of the PAP Protocol provides that one of the objectives of PAP is to “promote the principles of human rights and democracy in Africa”. Article 11 of the PAP Protocol further provides that “matters pertaining to the respect of human rights” is one of the issues that PAP should examine and discuss as part of its core functions and powers. On the specific issues relating to women’s rights and gender equality, the PAP works through its **Committee on Gender, Family, Youth and Peoples with Disabilities**. The **Committee on Justice and Human Rights** is equally important. Based in Midrand, South Africa, the PAP holds two ordinary sessions in a year. The different committees of PAP also meet twice a year, in March and August.

The PAP operates more or less like national parliaments. This means that, like engaging national parliaments, CSO engagement with PAP may involve different activities, including the following:

- If resources are available, attendance of PAP plenary proceedings which are open to the public;
- Formally petition the PAP to take up particular issues and concerns. Rule 72 of the PAP Rules of Procedure provides that a citizen of a member state may individually or in the association of others petition the PAP;
- Propose a motion to be tabled and discussed by PAP through a Member of PAP;
- Participation in public hearings convened by PAP; and
- Propose the formulation of specific model laws by PAP and/or participate in consultation meetings convened by PAP as part of its process of developing model laws.

**Tip: An entry point for CSO understanding of and engagement with PAP is through participating in the PAP CSO Forum. This Forum is held on the sideline of PAP’s ordinary sessions. It seeks to foster collaboration amongst CSOs engaging with PAP and between CSOs and PAP. The CSO Forum is coordinated by the Centre for Human Rights at the University of Pretoria.**

# 4



## Civil Society Engagement with States and Relevant Institutions at the Sub-Regional Level

Regional Economic Communities (RECs) are sub-regional groupings of states, largely based on geographical location, formed with the primary aim of facilitating economic integration between member states. Whereas the protection of human rights may not appear to be within the focal range of RECs, most if not all RECs have incorporated human rights into their constitutive treaties.<sup>78</sup> Such incorporation arguably stems from the individual and collective member states' commitment to respecting human rights, as evidenced by their ratification of various regional and international human rights instruments. In addition, the interrelationship between human rights and economic development has become more pronounced over the years – economic growth is sustained in a society which respects and protects human rights and human rights can be better effected by economic growth.<sup>79</sup>

While the AU recognises eight RECs, this Guide focuses on the three that portend the most form of a human rights perspective and accordingly women's rights.

### 4.1 East African Community

The East African Community (EAC) was formed in 1967. It was dissolved in 1977 and later revived in 2000. The EAC is a regional economic community comprising Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda. The EAC is home to over 177 million people and covers a land area of 2.5 million square kilometres.<sup>80</sup> Its constitutive treaty is the Treaty for the Establishment of the East African Community (EAC Treaty), which entered into force on 17<sup>th</sup> July 2000. Some of the fundamental principles of the Community, as listed in Article 6(d) of the EAC treaty, include gender equality and the 'recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter.'

Article 5(3)(e) of the EAC Treaty provides an entry point for the promotion of women's rights as it requires the EAC to ensure 'mainstreaming of gender in all its endeavours and the enhancement of the role of women in cultural, social, political, economic and technological

78 O Ruppel Regional economic communities and human rights in East and southern Africa (2009) 277.

79 O Ruppel Regional economic communities and human rights in East and southern Africa (2009) 279.

80 See <https://www.eac.int/overview-of-eac>

development.’ Article 121 of the Treaty goes on to call upon member states to ‘recognise and enhance the role of women and girls in socio-economic development through legislative and other measures on participation in decision-making; addressing harmful practices and discrimination; and awareness creation aimed at countering prejudices against women and girls’.

### Checklist for observer status application at the EAC

#### Broad criteria

- Interest in and acceptance of the fundamental principles underlying the EAC
- Contribution towards the strengthening of regional integration in East Africa
- Ability to enhance development partnership

#### Specific criteria

- The NGO should have objectives of common interest to the EAC partner states
- The NGO’s activities should have a regional dimension, with the NGO being registered in each of the EAC partner states
- In its regional activities, the NGO should have a track record of at least three years of active operation.

#### 4.1.1 East African Court of Justice

The East African Court of Justice (EACJ) was established under Chapter 8 of the EAC Treaty with the power to hear and determine disputes on the interpretation and application of the Treaty, among other things.<sup>81</sup> Article 27 of the Treaty for the Establishment of the East African Community (EAC Treaty) also confers on the EACJ the jurisdiction to determine disputes pertaining to human rights, **only if so agreed by the Council** – the policy organ of the EAC.<sup>82</sup> The EACJ is yet to be properly vested with the requisite human rights jurisdiction (that is, by the Council), resigning the same to be a contentious issue<sup>83</sup> but not divesting the court of any power to determine human rights cases. Nonetheless, the EACJ has relied on the provisions of Article 6, 7(2) and 27 of the EAC Treaty to justify its adjudication over cases with human rights underpinnings. More importantly, however, the EACJ has itself pronounced that:<sup>84</sup>

*“While the Court will not assume jurisdiction to adjudicate on human rights disputes, it will not abdicate from exercising its jurisdiction of interpretation under Article 27 (1) merely because the reference includes allegation of human rights violation.”*

81 Article 27(1): The Court shall initially have jurisdiction over the interpretation and application of this Treaty: Provided that the Court’s jurisdiction to interpret under this paragraph shall not include the application of any such interpretation to jurisdiction conferred by the Treaty on organs of Partner States.

82 Article 27(2) [as read with Article 14(1)].

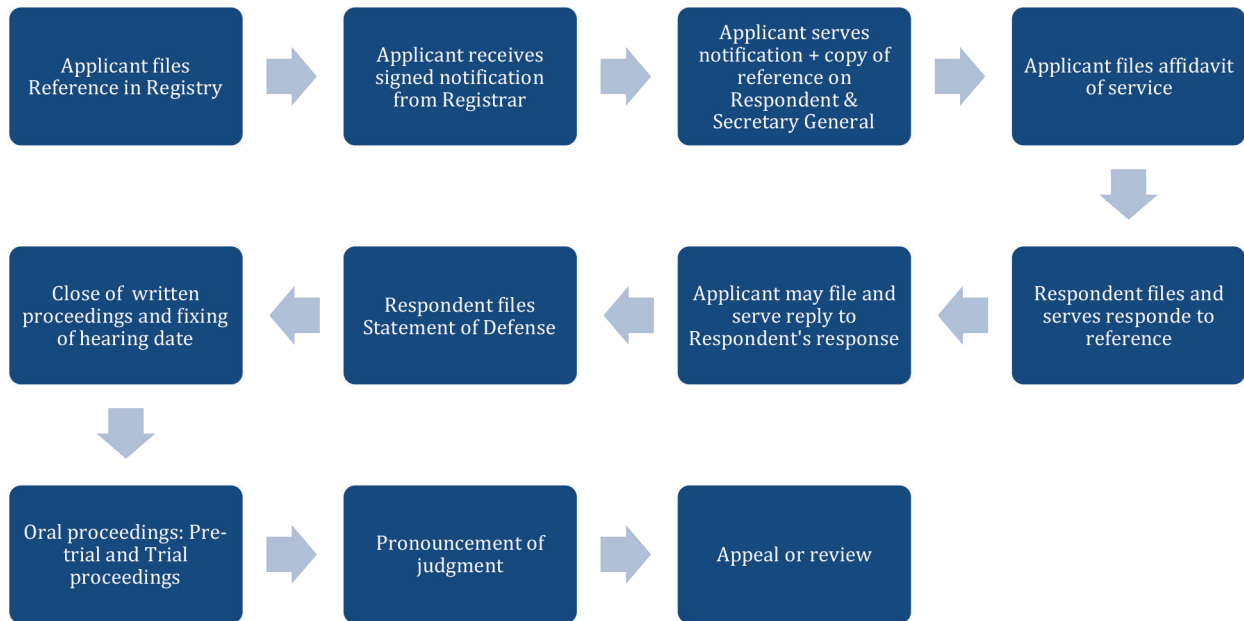
83 J. Gathii, ‘Mission Creep or a Search for Relevance: The East African Court of Justice’s Human Rights Strategy’, (2014) Duke Journal of Comparative and International Law 24, 250.

84 James Katabazi and 21 Others v Secretary General of the East African Community and Attorney General of the Republic of Uganda (Ref. no. 1 of 2007) First instance judgment (31 October 2007).

## Litigating before the EACJ

Matters may be instituted at the EACJ either through reference by States; reference by the Secretary General; or reference by legal and natural persons. Legal persons, such as CSOs, may challenge the legality of any Act, regulation, directive, decision or action of a member state or institution of the EAC, in keeping with the provisions of Article 30 of the EAC Treaty.

### Institution of a claim (First Instance Division)



## Key pointers to note when litigating before the EACJ

- **Procedure:** All documents filed must be in accordance with the EACJ Rules of Procedure 2019
- **Standing:** Cases can be brought by a number of parties, including EAC citizens and residents, EAC legal persons such as CSOs as well as states
- **Timelines:** The EAC Treaty provides that cases must be brought before the EACJ within two months of the decision or alleged violation. While the provision informing this very short timeline has been interpreted strictly by the EACJ, there is relief in the manner that the EACJ has interpreted its application. The EACJ has indicated that the two months begin to run when the action complained of occurs or in the alternative, when it is demonstrated that the complainant first learns of the action or court decision. This latter interpretation somewhat eases the application of the strict two-month rule.
- **Pleadings:** The pleadings are required to contain the following aspects:<sup>85</sup>
  - The initial pleadings are made via a statement of reference containing:
    - The name, designation and address of both the applicant and the respondent

<sup>85</sup> Guidance as interpreted from the East African Court of Justice Rules of Procedure 2019

- The subject matter of the reference and a summary of the points of law on which the reference is based
  - Where appropriate, the nature of any evidence to be offered in support
  - The reliefs sought by the applicant
  - Where the reference seeks to challenge the legality of a law, regulation, decision or action, the statement of reference must be accompanied by an affidavit
- o The respondent responds to the statement of reference via a response to reference. The applicant's reply to the response to reference focuses on bringing out the key issues that divide the parties.
- o The EACJ Rules of Procedure 2019 also give further guidance on the contents of the content of the main pleadings including:
- A precise statement of material facts (and not evidence) upon which the party's claim is based
  - The necessary particulars of any claim or other matter pleaded including details of the claimed misrepresentation, fraud, negligence or violation
  - Parties are required to include in their pleadings all matters which if alleged would defeat the other party's case and those matters which would catch the other party by surprise.
  - Parties are required to include all issues of fact that were not included in the initial pleadings (statement of reference)
  - Parties are allowed to plead any other matter which has arisen at any time whether before or since the filing of the statement of reference
  - Parties are required to include annexures of relevant documents that support the contentions claimed in the pleadings and include a list of all such annexures
  - The pleadings must be signed by the parties or their duly authorised representatives such as advocates

**Tip:** The EACJ does not require parties to have exhausted local remedies before approaching it. This position is supported by silence in the EAC Treaty on such a requirement and the EACJ has similarly pronounced itself confirming that exhaustion of local remedies is not one of the conditions for its access

## Appeals and reviews

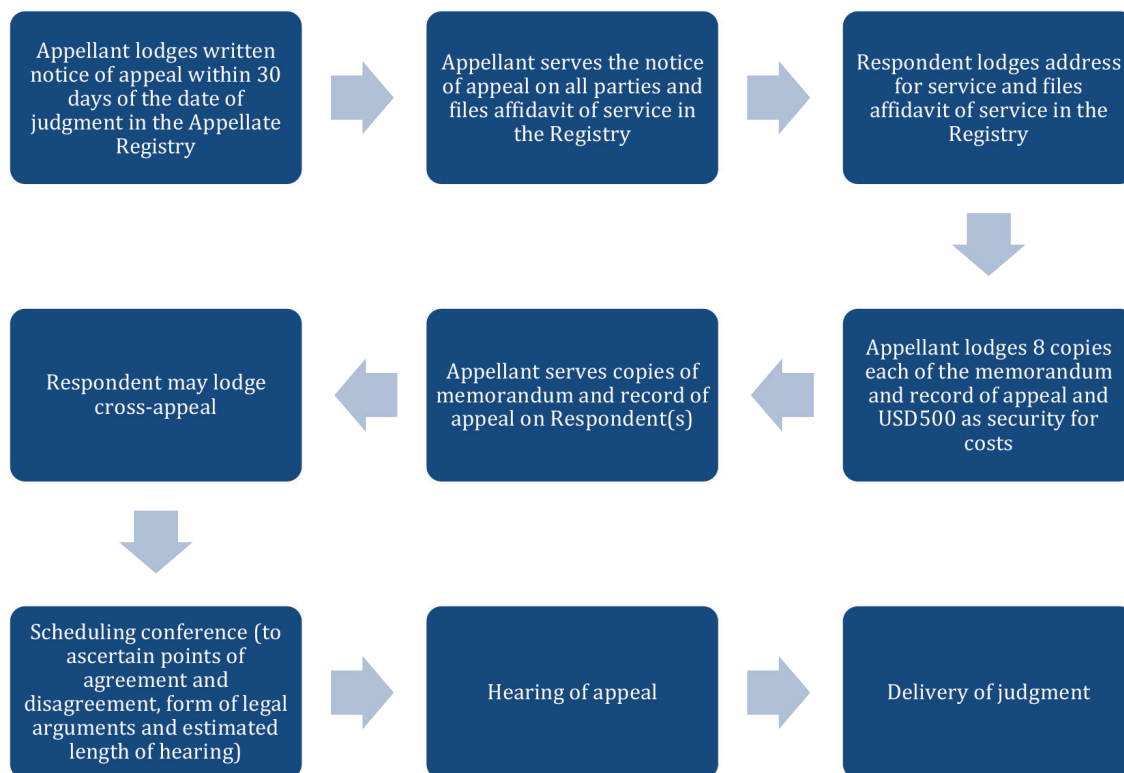
A party may apply to the EACJ for review of a judgment in the following circumstances:

- (i) Where there has been discovery of new and important matter relating to the case;
- (ii) Where evidence that was not within the party's knowledge or could not be produced at the time of the judgment is now available;

- (iii) Where there has been a mistake, fraud or error; or
- (iv) Where injustice has been occasioned;

Upon application by a party, the EACJ will either deny such application or grant it and rehear the case or make any other appropriate orders.

On the other hand, the procedure for appeals is as follows:



**Tip:** CSOs may join ongoing cases as *amici curiae* (friend of the court) by applying to the EACJ to be enjoined as so. In considering such an application, the EACJ will seek to satisfy itself of the applicant’s expertise, neutrality and fidelity to the law.

**Tip:** The EACJ launched the Case Management System and Recording System (“CMRS”) in 2017, through which stakeholders may file cases electronically. Consequently, litigants need not travel to Arusha to file matters. Additionally, lawyers may also e-file at the court sub-registries of the various Partner States.

### 4.1.2 East African Legislative Assembly

The East African Legislative Assembly (EALA) is one of the organs of the East African Community established under Article 9 of the EAC Treaty. It is the legislative arm of the EAC and its functions, as delineated in Article 49 of the Treaty include liaising with the National Assemblies of the Partner States on matters relating to the Community.



CSOs have an avenue for advocacy through EALA via legislative drafting and lobbying for the passage of Bills of interest in the legislative assembly. Usually, CSOs work with private members to develop Private Members' Bills which are then debated on the floor of the assembly before being passed.

### **i) Engaging with the EAC Gender Bill**

The Gender Equality, Equity and Development Bill, 2016 was introduced to the floor of the Assembly by Kenyan representative, Honourable Nancy Abisai. The Bill was passed on International Women's Day (8<sup>th</sup> March) 2017 after a successful 2<sup>nd</sup> reading and 3<sup>rd</sup> reading. The Bill reflects the Community's commitment to gender equality as outlined in the EAC Treaty and seeks to harmonise gender equality commitments. The latter is especially important because Burundi has signed the Maputo Protocol but is yet to ratify it.

Notably, the Bill adopts the same definition of gender-based violence as the Maputo Protocol and prohibits the same along with other harmful practices such as female genital mutilation, early and forced marriage and widow inheritance. Further, the Bill calls on states to undertake measures to ratify, domesticate and implement the Maputo Protocol.

The Bill places a number of obligations on member states of the EAC to ensure the realization of the rights of women and girls. Despite the Bill failing to explicitly mention the role of CSOs, there are multiple avenues for partnership with states.

**Tip: CSOs could partner with states to develop and integrate training programmes which facilitate the development and enhancement of women's entrepreneurial skills pursuant to Clause 11 of the Bill. Additionally, CSOs could undertake advocacy to ensure that women have equitable access to and control of land, as stipulated in Clause 13 of the Bill.**

The Eastern African Sub-Regional Support Initiative for the Advancement of Women (EASSI), which played a pivotal role in the development of and advocacy for the Gender Bill, developed the EAC Gender Equality and Development (GED) Barometer to track implementation of the EAC's gender equality and development legislation. The GED Barometer is not in operation yet, but it is intended to be used by member states to monitor, measure and document the progress of gender equality in key result areas.

### **ii) Engaging with the EAC Secretariat: Gender Unit**

The Gender Department, which is located within the office of the EAC Secretariat, is the lead on gender and gender-related mainstreaming. Additionally, the Department is tasked with overseeing the inclusion of children, youth, persons with disabilities and the elderly as well as matters of community development.

### **iii) Engaging with EAC Gender Regional Advocacy Networks/ CSOs**

The EAC Consultative Dialogue Framework for the Civil Society and Private Sector provides for East African Civil Society Organisations Forum (EACSOF) which is the umbrella forum for the participation of civil society and non-governmental organisations. The Forum's membership

is open to all CSOs registered in the Member States as well as regional CSOs with an interest in regional integration. The Secretary General of the Consultative Dialogue Framework holds an annual Secretary General's Forum, which brings together CSOs and private sector actors who then make resolutions on agreed matters.

The East African Health Platform (EAHP) brings together the voices of civil society, private sector and faith-based institutions working primarily on matters of health. EAHP carries out advocacy on reproductive health rights issues, HIV and sexually transmitted infections (STIs).

The East African Law Society (EALS) is yet another regional advocacy network. EALS is a regional bar association which undertakes advocacy and public interest litigation on human rights issues, including women and girls' rights issues, within the East African region. EALS has observer status before the EAC as well as access to many regional institutions.

## **4.2 Southern African Development Community (SADC)**

The formation of the Southern African Development Community (SADC) was preceded by that of the Southern African Development Coordination Conference (SADCC) in 1980. SADCC was established with the aim of advancing liberation in Southern Africa. In 1992, the then heads of government of the region agreed to transform SADCC to SADC, whose main aim would then be regional economic integration. The membership of this community consists of the following 16 countries: Angola, Botswana, Comoros, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

The constitutive treaty of the SADC, the Treaty of the Southern Development Community, lists human rights and equity as some of the cardinal principles of the SADC. In addition, one of the objectives of the SADC, as reflected in Article 5 of the Treaty, is to mainstream gender. There is also a prohibition lying to both the SADC and member states, outlined in Article 6 of the Treaty, against discrimination on the basis of gender, among other grounds. Aside from these key provisions hinging on the rights of women and girls, Article 23 of the Treaty provides for the participation of stakeholders, such as CSOs, in SADC through SADC National Committees.

### **4.2.1 Engaging with the SADC Gender Unit**

The Gender Unit of the Southern African Development Community (SADC) Secretariat was established in June 1998 pursuant to the SADC Protocol on Gender and Development. Its aim is to facilitate, coordinate and monitor the implementation of SADC Gender Commitments at both national and regional levels.<sup>86</sup> The Gender Unit also bears the additional mandate of facilitating the development and application of skills in gender analysis and gender mainstreaming in SADC budgets, policies and programmes.

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<sup>86</sup> See Southern African Development Community Protocol Gender and Development, Article 10.

The Regional Indicative Strategic Development Plan (RISDP) identifies the following as the priority areas for the SADC Gender Unit:

- Policy development and harmonisation;
- Gender mainstreaming;
- Institutional capacity building;
- Women's empowerment;
- Communication, information sharing and networking; and
- Research, monitoring & evaluation.

CSOs have an avenue with SADC generally via the RISDP which provides for broad participation of as many stakeholders in order to achieve ownership of output.<sup>87</sup> Additionally, there is the SADC Council of Non-Governmental Organisations (SADC-CNGO), whose purpose is Secretariat, to facilitate meaningful engagement of CSOs with the SADC Secretariat at the regional level and with the member states at the national level through the national NGO umbrella bodies. The SADC-CNGO runs a civil society forum as a side event during official SADC meetings.

#### **4.2.2 Committee of SADC Ministers Responsible for Gender/Women's Affairs**

The SADC Committee of Ministers Responsible for Gender/Women's Affairs is one of the institutional mechanisms tasked with the implementation of the SADC Protocol on Gender and Development.<sup>88</sup> The Committee comprises of Ministers responsible for Gender/Women's Affairs in the respective SADC Member States<sup>89</sup> and aside from its implementation mandate, the Committee also supervises the work of committees and subcommittees as may be established under the Protocol.<sup>90</sup>

#### **4.2.3 Engaging the SADC Parliamentary Forum**

The SADC Parliamentary Forum (SADC-PF) was established pursuant to Article 9 (2) of the SADC Treaty.<sup>91</sup> The Forum's Constitution lists its objectives as including: the promotion of gender equality and other principles within the SADC region; providing a Forum to facilitate discussion on matters of common interest to SADC; promotion of cooperation with other parliamentary organisations and other stakeholders.<sup>92</sup>

The Constitution of the SADC Parliamentary Forum also establishes the Regional Women's Parliamentary Caucus (RWPC) as one of the organs of the Forum. The RWPC, which comprises of Chairpersons of National Women Parliamentary Caucuses of Member Parliaments and all-

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87 Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons 'The Civil Society Guide to Regional Economic Communities',<sup>99</sup>.

88 Southern African Development Community Protocol Gender and Development, Article 2.

89 Southern African Development Community Protocol Gender and Development, Article 8.

90 Southern African Development Community Protocol Gender and Development, Article 9(b).

91 Constitution of the Southern African Development Community Parliamentary Forum, Article 3.

92 Constitution of the Southern African Development Community Parliamentary Forum, Article 6.

female Representatives of the Forum,<sup>93</sup> is tasked with carrying out of the following functions:<sup>94</sup>

- Undertaking lobbying and advocacy on equal and equitable representation of women in political and decision-making positions in the SADC Member States;
- Establishing a platform for women parliamentarians through which they can mobilise in respect of women's agenda on equality, equity and effective representation of women in Parliament and political parties;
- Capacity building of women Parliamentarians; and
- Creating avenues for knowledge sharing by women Parliamentarians at Regional level.

CSOs can engage the RWPC in the foregoing functions with a view to influencing matters related to their cause. For example, influencing and supporting the training agenda for women parliamentarians to include topics such as violence against women, harmful practices etc

It must be noted that at present, the SADC Summit is yet to formally endorse the SADC-PF as a regional parliament with legislative and oversight powers, therefore impeding civic participations and its ability to influence policies.<sup>95</sup> Nevertheless, SADC-PF does have access to and a working relationship with the Summit and other SADC organs. CSOs can therefore engage SADC-PF to influence the matters that SADC-PF will engage these organs in.

#### 4.2.4 Engaging with SADC Regional Advocacy Networks

The SADC Gender Protocol Alliance (SGPA) was established in 2005 and was instrumental in the adoption of the SADC Protocol on Gender and Development.<sup>96</sup> The Alliance comprises of 15 national gender networks and 10 regional NGOs. It has developed a gender equality barometer, which it publishes annually, as its basis for promoting and advocating for women and girls' rights in the region.<sup>97</sup>

Gender Links is another organisation which works with partners such as members of the SGPA as well as local governments to conduct grassroot workshops aimed at raising awareness on the key provisions of the SADC Gender Protocol among citizens.<sup>98</sup>

### 4.3 Economic Community of West African States

The Economic Community of West African States (ECOWAS) was established on 28<sup>th</sup> May 1975 by the Economic Community of West African States Treaty (ECOWAS Treaty). Similar to the above-discussed RECs, ECOWAS was formed with the aim of promoting economic and political cooperation within the region. At present, its member states are the following: Benin,

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93 Constitution of the Southern African Development Community Parliamentary Forum, Article 15(1).

94 Constitution of the Southern African Development Community Parliamentary Forum, Article 15(5).

95 Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons 'The Civil Society Guide to Regional Economic Communities',109.

96 Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons 'The Civil Society Guide to Regional Economic Communities',121.

97 Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons 'The Civil Society Guide to Regional Economic Communities',110.

98 As above.

Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea-Bissau, Guinea, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

Notably, ECOWAS has embedded women-centric provisions into its Revised Treaty. For instance, Article 63 mandates member states to undertake formulation, harmonisation, coordination and establishment of 'appropriate policies and mechanisms for the enhancement of the economic, social and cultural conditions of women.' With reference to CSOs, the same Article further mandates member states to establish a mechanism for cooperation with bilateral, multilateral and non-governmental organisations.

### 4.3.1 ECOWAS Community Court of Justice

The Revised Treaty of the Economic Community of West African States (ECOWAS Treaty) established the Community Court of Justice under Article 15. Article 9 of Protocol A/P.1/7/91 on the Community Court of Justice prescribes the jurisdiction of the ECOWAS Community Court of Justice (ECCJ) as being the settlement of disputes referred to it as arising between member States, member States and institutions of the Community and in respect of the interpretation or application of the ECOWAS Treaty. The ECCJ may also render advisory opinions on legal questions of the ECOWAS Treaty as may be requested by the Authority, Council, Executive Secretary, member State or any other institution of the Community.<sup>99</sup>

#### **Checklist for observer status application at the ECOWAS**

The CSO must demonstrate that:

- (a) It is concerned with matters that fall within the competence of ECOWAS.
- (b) It has a constitution which is in conformity with the ideals of ECOWAS.
- (c) Its constitution provides for the determination of policy and for the election of a policy-making body.
- (d) It is not under the control of any government.
- (e) It is not a profit-making body.
- (f) It represents a majority of persons within the particular field of interest in which it operates.
- (g) It has established headquarters and an executive officer.
- (h) Its headquarters are in Africa.
- (i) It has branches in at least two African states.
- (g) Its leadership comprises of African nationals;
- (h) Its basic resources are derived from contributions of its members, national affiliates or other recognized institutions.

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<sup>99</sup> Protocol A/P.1/7/91 on the Community Court of Justice, Article 10.

## Litigating before the ECCJ

Cases may be instituted before the ECCJ through an application addressed to the ECCJ's Registry.<sup>100</sup> Such an application ought to elaborate the subject matter of the dispute, the parties, a summary of the argument and the relief(s) sought.<sup>101</sup> Once the application is lodged, the Chief Registrar serves notice of it and all attendant documents on the other party, who is required to file their defence.<sup>102</sup> Usually, the dates and times of ECCJ sessions are set by the President of the ECCJ<sup>103</sup> and deliberations occur in a closed session.<sup>104</sup> Each party bears its own costs.

**Tip: As per the Practice Directions on Electronic Case Management and Virtual Sessions (2020), parties and lawyers are expected to commence the legal process electronically as opposed to physically. Thus, filing and service of documents are to be carried electronically while court sessions will be held virtually.**

CSOs may institute cases pertaining to human rights violations on behalf of victims who would otherwise not be able to access the ECCJ. As the Court attaches a victim requirement to individual access, public interest litigation by CSOs is only available where collective third-generation rights are under threat of violation or have been violated.<sup>105</sup>

### 4.3.2 ECOWAS Gender Infrastructure

#### i) ECOWAS Gender Commission

The ECOWAS Gender Commission was established in 2003 and 'provides technical expertise on policy formulation and implementation within ECOWAS'.<sup>106</sup> The Commission partners with CSOs, including women and youth organizations, in the fulfilment of its mandate.

#### ii) ECOWAS Gender Development Centre

The ECOWAS Gender Development Centre (EGDC) is an ECOWAS specialized agency specifically dedicated to gender and development. The EGDC takes the lead in so far as implementation, coordination and monitoring of strategies and programmes designed to incorporate gender issues into integration programmes of the ECOWAS member states is concerned. Included in the structure of the EGDC is a CSO desk through which the centre coordinates with local and international CSOs.

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100 Protocol A/P.I/7/91 on the Community Court of Justice, Article 11.

101 As above.

102 As above.

103 Rules of the Community Court of Justice of the Economic Community of West African States (2002), Article 21 (1).

104 Rules of the Community Court of Justice of the Economic Community of West African States (2002), Article 23 (1).

105 Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons 'The Civil Society Guide to Regional Economic Communities', 66.

106 See Decision A/DEC.7/12/03 On the Establishment of An ECOWAS Technical Commission to Address Issues Relating to Gender Equality.

### 4.3.3 Engaging ECOWAS Regional Advocacy forums

The ECOWAS Gender Development Centre has facilitated the formation of a number of regional advocacy networks in an effort to promote women's and girls' rights. CSOs should seek to work with or join these networks in order to ease and facilitate their participation and engagement with various ECOWAS institutions. These networks include:

- **West African Civil Society Forum (WACSOF):** is a CSO umbrella network that is one of the officially recognised and privileged platforms for CSO engagements by ECOWAS. It engages ECOWAS along various themes including women and gender equality. Owing to its official recognition, WACSOF's are invited and able to participate in various high-level ECOWAS engagements, such as Heads of States summits, Council of Ministers meetings and ECOWAS parliamentary sessions, where they can among other things make statements or communique on behalf of CSOs. Accordingly, CSOs should engage WACSOF to ensure that their endeavours are representative of women's rights causes.
- **Network on Peace and Security for Women in the ECOWAS Region (NOPSWECO):** The purpose of this network is 'to coordinate and optimise the role and initiatives of women in conflict prevention, peacekeeping, security and the promotion of human rights, particularly for women and other vulnerable groups for a sustainable peace in the ECOWAS region'.<sup>107</sup> The network aims to promote strategic partnerships geared towards women and girls' empowerment as well as gender equity and equality by bringing together women's organisations in the ECOWAS region.<sup>108</sup>
- **West African Network of Young Women Leaders (*Réseau Ouest Africain des Jeunes Femmes Leaders, ROAJELF*):** This network was created in 2009 with the objective of empowering young female leaders and to encourage them to rectify the existing gender imbalances between men and women in decision-making processes in their various countries.<sup>109</sup> The network initiates and leads programmes that promote the rights of women and girls.<sup>110</sup>
- **Association of ECOWAS Female Parliamentarians (ECOFEPA):** This is a network of women parliamentarians within the ECOWAS region whose aim is to 'create greater collaboration of female parliamentarians and to foster regional integration within the sub-region'.<sup>111</sup>
- **Mano River Women's Peace Network (MARWOPNET):** This network brings together women's groups organisations specifically from Guinea, Liberia and Sierra Leone against the security situation in the region and seeks to ensure the full participation of women and girls at all levels of peace-building and decision-making.<sup>112</sup>

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107 EGDC. (2011). 'Gender Training Manual, Module 5: Gender Peace, Democracy and Security – Creating Equitable, Safe and Secure Society'.

108 The State of African Women available on <https://www.faithtoactionnetwork.org/wp-content/uploads/2018/09/RightBy-Her-Report-Chapter-4-Regional-Economic-Communities.pdf>

109 As above.

110 As above.

111 As above.

112 As above.

# 5



## Civil Society Engagement with States at the National Level

The domestic level where the state wields dominant power is the primary locus of human rights violations and abuses, including those relating to women and girls. It is also at this level that the protection and promotion of human rights, including the provision of remedies for any violations and abuses, should ideally take place. CSO engagement with states at the national level is thus particularly important. This section of the Guide describes the different areas of CSO engagement at the domestic level in order to advance women's rights and gender equality. The section specifically focuses on the following areas of engagement: ratification or accession of relevant regional treaties and lifting of any existing reservations; domestication of relevant treaties; preparation of shadow reports; participation in the development of state party reports; follow-up on the implementation of concluding observations; monitoring of domestic implementation of the Maputo Protocol and compliance with decisions of treaty bodies; and national litigation.

### 5.1 Advocacy on ratification

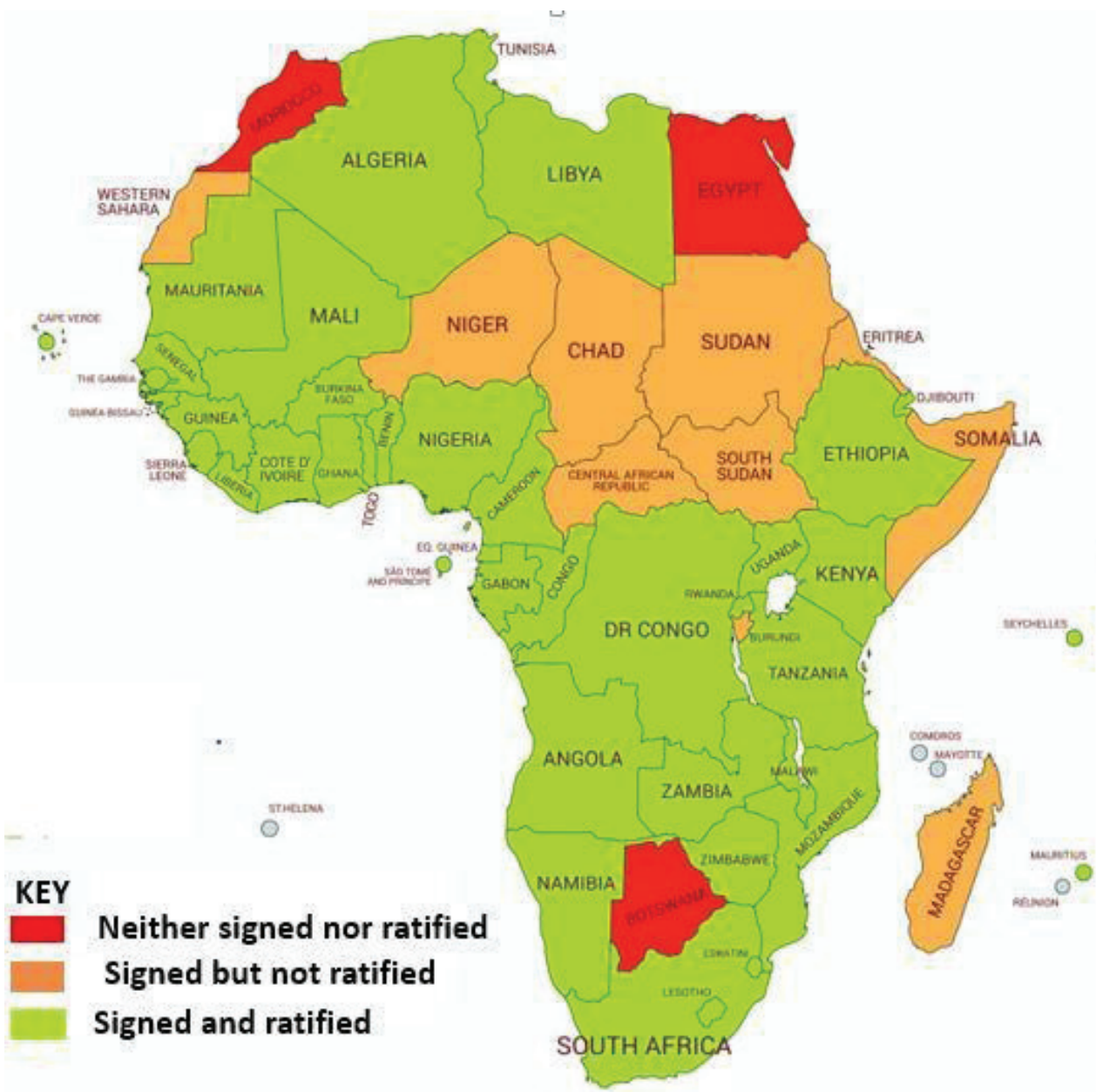
As at the end of June 2021, the Maputo Protocol had been ratified by a total of 42 AU member states. This means that 18 years after its adoption, the Protocol is yet to receive universal ratification within the continent. In particular, the following 13 AU member states are yet to ratify or accede to the Maputo Protocol: Botswana, Burundi, Central African Republic (CAR), Chad, Egypt, Eritrea, Madagascar, Morocco, Niger, Sahrawi Arab Democratic Republic, South Sudan, Sudan, and Somalia. Of these 13 states, three (Botswana, Egypt, and Morocco) have not even signed the Maputo Protocol. The rest of the countries have signed but have not yet ratified it.

**Note:** Signature of a human rights treaty signifies the intention of a state to be bound by it in the future. Ratification or accession of a treaty that makes it binding on a state. **Ratification** applies to states that participated in the drafting or negotiation of the treaty and had signed it to authenticate the text. **Accession** applies to states that did not participate in the drafting or negotiation of the treaty and had not sign it.

CSOs in AU member states that are not yet parties to the Maputo Protocol should engage in continuous advocacy with their governments with the aim of encouraging them to ratify or accede to the Protocol. In this context, the CSOs in these countries may do the following:



- Hold bilateral private meetings with relevant government officials and members of parliament to impress on them the importance of ratifying the Maputo Protocol.
- Conduct public campaigns to put pressure on the government to ratify the Maputo Protocol.
- Petition or write private or open letters to the relevant authorities, explaining the importance and urgency of ratifying or acceding to the Maputo Protocol. Equality Now has prepared a template for this kind of letter (see below). CSOs in the concerned AU member states may adapt and tweak this letter to suit their particular national context.



## Template of a letter calling for ratification of the Maputo Protocol

Dear

I am writing to urge you to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the "Maputo Protocol") before the 2020 deadline to show your commitment to protecting and promoting the rights of women and girls in your country.

For me, as [a women's rights advocate/citizen/survivor], the Maputo Protocol is a groundbreaking piece of legislation, particularly in its efforts to [*end violence against women and girls / end harmful practices like child "marriage" and female genital mutilation / secure women's role in political processes / promote sexual and reproductive health and rights*].

Women and girls deserve to live in a world that is free from all forms of violence and discrimination and if all African nations fully abide by their obligations under the Maputo Protocol, this will become a reality.

Please ratify, domesticate and implement the Protocol without delay to realise the rights of women and girls in your country.

## 5.2 Advocacy on withdrawal of reservations

At the time of ratifying the Maputo Protocol, six AU member states placed reservations on or made declarations on specific provisions. These are: Cameroon, Kenya, Mauritius, Namibia, South Africa and Uganda (see table below). The reservations placed by these member states undermine the full application and enjoyment of the rights enshrined in the Protocol at the domestic level. CSOs working on women's rights in these six member states should advocate and run national campaigns urging the concerned governments to withdraw the reservations to the Maputo Protocol.

	Member State	Reservation or Declaration
1	Cameroon	Declaration that its accession to the Protocol should in no way be interpreted as an endorsement of promotion of homosexuality, abortion (except therapeutic abortion), genital mutilation, prostitution, or any other practice which is not consistent with universal or African ethical and moral values.
2	Kenya	Reservation on Article 10(3) which requires member states to reduce military expenditure in favour of social development and the promotion of women's rights.  Reservation on Article 14(2)(c) which provides for access to health and reproductive rights including medical abortion in cases of sexual assault, rape, incest and where pregnancy endangers the mental and physical health of the mother or the life of the mother or fetus.

	<b>Member State</b>	<b>Reservation or Declaration</b>
3	<b>Mauritius</b>	<p>Reservation on Article 6(b) on the minimum age of marriage</p> <p>Reservation on Article 6(c) on monogamy as the preferred form of marriage.</p> <p>Reservation on Article 9 on equal participation of women in political life.</p> <p>Reservation on Articles 4(2)(k), 10(2)(d) and 11(3) which makes reference to women seeking refuge and asylum and the establishment of structures of protecting women in armed conflicts.</p> <p>Reservation to Article 14(2) on access to medical abortion.</p>
4	<b>Namibia</b>	<p>Reservation on Article 6(d) which requires every marriage to be recorded in writing and registered in accordance with national laws in order to be legally recognized.</p>
5	<b>South Africa</b>	<p>Reservation on Article 6(d) on recording and registration of marriages.</p> <p>Reservation on Article 6(h) which guarantees equal rights between men and women with respect to nationality of their children except where it is contrary to national legislation or national security.</p>
6	<b>Uganda</b>	<p>Reservation on Articles 14(1)(a) and 14(2)(c) which requires member states to ensure that women’s right to sexual and reproductive health is respected and promoted.</p>

### 5.3 Domestication of the Maputo Protocol

Ratification or accession to the Maputo Protocol in and of itself is not sufficient to guarantee the enjoyment in practice of the rights enshrined therein by women and girls. Relevant domestic policies, legislation and institutions must be put in place. Indeed, Article 2 of the Maputo Protocol recognizes the role of domestic policies, legislation and institutions in combating all forms of discrimination against women. It requires states parties to not only adopt appropriate policies and laws, but to also include in their national constitutions and other legislative instruments the principle of gender equality between men and women, if this has not been done already.

#### **Advocating for domestication of Maputo Protocol**

In AU member states where comprehensive laws protecting women’s rights are not yet in place, CSOs should advocate for the same to be enacted. Advocacy should also focus on ensuring that provisions in existing domestic laws are harmonized with the relevant provisions of the Maputo Protocol. Such advocacy could be based on studies highlighting discrepancies between domestic laws and the Maputo Protocol and the implications of these discrepancies for the full enjoyment of women’s rights.

## 5.4 Preparation of shadow reports

During consideration of state reports, the African Commission is required to explore all relevant information relating to the human rights situation of the country under consideration, including shadow reports from national human rights institutions (NHRIs) and non-governmental organisations (NGOs).<sup>113</sup> Additionally, human rights-based NGOs with observer status at the Commission may submit shadow reports to the Commission.<sup>114</sup>

Shadow reports are reports submitted by NHRIs and NGOs in response to the issues raised in the state reports. Shadow reports reconcile the facts and lived realities of the constituents in the state report and also include omitted issues. Shadow reporting is important even where organisations were involved in the state reporting processes as the state report may not have included all their concerns.

### Alternative reporting

In addition to shadow reporting an **alternative report** may also be prepared and submitted. An alternative report may be submitted in an instance where a state fails to submit a state report for consideration or where a government's report is unavailable in time for NGOs to critique and consequently shadow it. The preparation and advocacy process supporting both shadow and alternative reports is ideally the same with the difference being the absence of the state report for the latter.

### The shadow reporting process



Generally, a shadow report is structured as follows:

- Introduction
- General implementation of the African Charter and Maputo Protocol: this entails commentary on the major obstacles in the law and/or practice in the country of concern as well as its domestication and reservations.
- Implementation of the general principles and substantive provisions: this section ought to clearly indicate a state's omissions and any measures taken.

<sup>113</sup> Rule 75(5), African Commission on Human and Peoples' Rights Rules of Procedure.

<sup>114</sup> Rule 68, African Commission on Human and Peoples' Rights Rules of Procedure.

- Recommendations: these could be addressed to the specific duty bearers.
- Conclusion: this section can contain remarks on the implementation of previous concluding observations.

**Tips: Collaborate with other stakeholders** to produce one report as this serves as good use of everyone's time, especially the ACHPR's, and such collaboration also provides an avenue for the inclusion of grassroots NGOs with important information, but which lack observer status.

**Send the report in advance.** This should be at least 30 days before the ACHPR's session at which the state party report will be considered.

**"Sell" the shadow report.** Attend the ACHPR's sessions and engage the Commissioners informally before the state reporting session.

## 5.5 Follow-up on concluding observations

After consideration of state reports, the ACHPR is obliged to formulate concluding observations.<sup>115</sup> The concluding observations of the ACHPR usually specify the issues that require attention of the state concerned as well as the date of presentation of the next periodic report.<sup>116</sup>

In order to follow-up on the implementation of concluding observations, CSOs ought to first access the concluding observations which are published on the ACHPR's website after transmission to the relevant state party.<sup>117</sup> Thereafter, an involved CSO must conduct an audit, which entails reconciling the state report with the situation in the country of the country of concern and the observations made by the ACHPR. It then becomes the duty of a CSO to engage the government and other specific duty bearers on the recommendations by the ACHPR and to monitor their implementation. The CSO then reports on the implementation of the concluding observations in the next cycle.

## 5.6 Monitoring implementation and compliance

The ratification of the Maputo Protocol and its domestication must always be followed with implementation and compliance for the Protocol to have tangible benefits in the lived realities of women and girls. In other words, the state must turn its commitment as expressed in the act of ratifying the Maputo Protocol into concrete actions and measures aimed at implementing and complying with the provisions of the Protocol. State compliance is also required after regional human rights treaty bodies have issued decisions recommending or ordering specific actions required to remedy named violations and abuses.

<sup>115</sup> Rule 82(1), African Commission on Human and Peoples' Rights Rules of Procedure.

<sup>116</sup> Rule 83(2), African Commission on Human and Peoples' Rights Rules of Procedure.

<sup>117</sup> Rule 82(3), African Commission on Human and Peoples' Rights Rules of Procedure.

In practice, states usually fall short of the standards enshrined in the Maputo Protocol. All too often, states engage in actions that violate the rights of women or fail to take actions that would promote and protect those rights. This situation demands continuous CSO vigilance, monitoring and advocacy to ensure that states parties to the Maputo Protocol are implementing it in practice. Activities that could be undertaken as part of engaging the state at the domestic level include the following:

- Directly engaging in advocacy meetings and forums with relevant state agencies responsible for the implementation of the Maputo Protocol and decisions of regional treaty bodies (e.g., Ministry of Women Affairs, Gender Commission, law enforcement agencies, public health bodies, ministry of education, etc).
- Wide dissemination and raising public awareness about the Maputo Protocol to garner public support and raise public consciousness about the duty of the state to implement the Protocol domestically.
- Developing a CSO plan of action or strategy aimed at pushing for the implementation of decisions of the regional human rights treaty bodies.
- Developing and implementing a media strategy to popularise decisions of regional human rights treaty bodies and putting pressure on the state to implement the decisions. Specific actions in this regard may include issuing press releases, publishing commentaries and op-eds, and reaching out to the masses through radio and TV programmes.
- Seizing the opportunities presented by anniversaries to ramp up advocacy on particular issues relating to women's rights. Such anniversaries may include International Women's Day, 16 Days of activism against gender-based violence, and the anniversary of the adoption of the Maputo Protocol (See below box for further details on these anniversaries). CSOs may also take advantage of important national dates (e.g., Independence Day) to raise and draw attention to issues relating to women's rights.
- Partnering or working with the NHRI (or the Gender Commission where it exists) in implementing advocacy activities.
- Building a coalition of CSOs to work together to monitor state implementation and compliance.

## **Key advocacy moments for women's rights at the national level**

### **(a) International Women's Day**

International Women's Day, celebrated every 8<sup>th</sup> March, is a global day set aside to celebrate the 'social, economic, cultural and political achievements of women'.<sup>118</sup> The day also serves as a call to action for achieving women's equality. The day is centred around a different theme each year and as it is not country or organisation specific, CSOs around the world have *carte blanche* to organise events in the lead up to, and on the actual day.

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118 See <https://www.internationalwomensday.com>

### **(b) 16 days of activism against gender-based violence**

16 Days of Activism against Gender-Based Violence is an annual global campaign that kicks off on 25<sup>th</sup> November, the International Day for the Elimination of Violence against Women, and ends on 10<sup>th</sup> December, Human Rights Day. The end of the campaign coincides with the day the Universal Declaration of Human Rights was adopted by the United Nations General Assembly.

16 Days of activism was initiated by activists at the inaugural Women's Global Leadership Institute in 1991 and is coordinated each year by the Center for Women's Global Leadership. The 16 days serve as a call for the prevention and elimination of violence against women and girls around the world. During the 16 days, governments, individuals and CSOs alike raise awareness, mobilize constituents, demand accountability and showcase progress on eliminating gender-based violence.

### **(c) Maputo Protocol anniversary**

The Maputo Protocol anniversaries fall on **11<sup>th</sup> July** annually. While notable progress has been made over the years in respect of realising and protecting the rights of women and girls, implementation of the Protocol is far from satisfactory. CSOs thus have the opportunity to popularise the Protocol through various events on the anniversary of the Protocol. This is important as, to begin with, 13 states are yet to ratify the Protocol while many others have made reservations which impede full application of the Protocol. Additionally, there are continued violations of the rights of women and girls across the continent despite the same being guaranteed in the Protocol and obligations lying to states for the protection of all such guaranteed rights.

## **5.7 Domestic litigation**

As part of broader advocacy and campaign initiatives, domestic legal action or litigation could be a crucial strategy for pushing for changes in laws, policies and state behaviour regarding women's rights and gender equality. Initiating domestic litigation could also be part of laying the foundation for litigation at the regional level. It is advisable that CSOs engaging in litigation at the domestic level should strive to use and cite the Maputo Protocol as the one of the key yardsticks for judicial determination of issues concerning women rights and gender equality. The specific use of the Maputo Protocol in domestic courts would depend on whether the AU member states in question has ratified the Protocol and whether the Protocol has been domesticated by way of a legislation.

# Annex 1

## Links to Relevant Treaties and Soft Law Instruments on Women's Rights and Gender Equality in Africa

<b>Treaties</b>	
African Charter on Human and People's Rights	<a href="https://au.int/en/treaties/african-charter-human-and-peoples-rights">https://au.int/en/treaties/african-charter-human-and-peoples-rights</a>
African Charter on the Rights and Welfare of the Child	<a href="https://au.int/en/treaties/african-charter-rights-and-welfare-child">https://au.int/en/treaties/african-charter-rights-and-welfare-child</a>
African Union Convention for the Protection and Assistance of Internally Displaced Persons	<a href="https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa">https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa</a>
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	<a href="https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa">https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa</a>
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa	<a href="https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-persons-disabilities-africa">https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-persons-disabilities-africa</a>
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons	<a href="https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-older-persons">https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-older-persons</a>
<b>Soft Law</b>	
African Union Agenda 2063: The Africa we want	<a href="https://au.int/Agenda2063/popular_version">https://au.int/Agenda2063/popular_version</a>
Solemn Declaration on Gender Equality in Africa	<a href="https://au.int/sites/default/files/documents/38956-doc-assembly_au_decl_12_iii_e.pdf">https://au.int/sites/default/files/documents/38956-doc-assembly_au_decl_12_iii_e.pdf</a>
General Comments 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 (General Comment No. 1 on Women and HIV)	<a href="https://www.achpr.org/public/Document/file/English/achpr_instr_general_comments_art_14_rights_women_2012_eng.pdf">https://www.achpr.org/public/Document/file/English/achpr_instr_general_comments_art_14_rights_women_2012_eng.pdf</a>



<p>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 (General Comment No. 2 on Sexual and Reproductive Health Rights)</p>	<p><a href="https://www.achpr.org/public/Document/file/English/achpr_instr_general_comment2_rights_of_women_in_africa_eng.pdf.pdf">https://www.achpr.org/public/Document/file/English/achpr_instr_general_comment2_rights_of_women_in_africa_eng.pdf.pdf</a></p>
<p>Guidelines on Combating Sexual Violence and its Consequences in Africa</p>	<p><a href="https://www.achpr.org/public/Document/file/English/achpr_eng_guidelines_on_combating_sexual_violence_and_its_consequences.pdf">https://www.achpr.org/public/Document/file/English/achpr_eng_guidelines_on_combating_sexual_violence_and_its_consequences.pdf</a></p>
<p>Joint General Comment of the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child on Ending Child Marriage</p>	<p><a href="https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/ACERWC_ACHPR_joint_GC_ending_child_marriage_2017_En.pdf">https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/ACERWC_ACHPR_joint_GC_ending_child_marriage_2017_En.pdf</a></p>
<p>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 (General Comment on Equitable Sharing of Matrimonial Property)</p>	<p><a href="https://wildaf-ao.org/index.php/en/resources/legal-instruments/432-final-copy-of-gen-comment-in-art-7-d-of-maputo-protocol/file">https://wildaf-ao.org/index.php/en/resources/legal-instruments/432-final-copy-of-gen-comment-in-art-7-d-of-maputo-protocol/file</a></p>

# Annex 2

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## Core Working Documents of African Union Human Rights Treaty Bodies

### African Commission on Human and Peoples' Rights

- Rules of Procedure of the African Commission on Human and Peoples' Rights, 2020 (Link: [African Commission on Human and Peoples' Rights Legal Instruments \(achpr.org\)](https://www.achpr.org/legal-instruments))
- Standard Operating Procedures of the Special Mechanisms of the African Commission on Human and Peoples' Rights (Link: [African Commission on Human and Peoples' Rights Legal Instruments \(achpr.org\)](https://www.achpr.org/legal-instruments))
- Resolution on the Criteria for Granting and Maintaining Observer Status to Non-Governmental Organizations Working on Human and Peoples' Rights in Africa (Link: [African Commission on Human and Peoples' Rights Sessions \(achpr.org\)](https://www.achpr.org/sessions))

### African Committee of Experts on the Rights and Welfare of the Child

- Revised Rules of Procedure of the African Committee of Experts on the Rights and Welfare of the Child ([Draft Revised Rules of Procedure of the African Committee of Experts on the Rights and Welfare of the Child \(acerwc.africa\)](https://www.acerwc.africa/draft-revised-rules-of-procedure))
- Revised Guidelines for the Consideration of Communications (Link: [Revised Communications Guidelines Final-1.pdf \(acerwc.africa\)](https://www.acerwc.africa/revised-communications-guidelines-final-1.pdf))
- Guidelines for Implementation of Decisions on Communications (Link: [Implementation Hearing Guidelines English.pdf \(acerwc.africa\)](https://www.acerwc.africa/implementation-hearing-guidelines-english.pdf))
- Guidelines on the Conduct of Investigations by the African Committee of Experts on the Rights and Welfare of the Child (Link: [ACERWC Guidelines on Investigation.pdf](https://www.acerwc.africa/acerwc-guidelines-on-investigation.pdf))
- Criteria for Granting Observer Status to Non-Governmental Organizations (NGOs) and Associations (Link: [AFRICAN UNION \(acerwc.africa\)](https://www.acerwc.africa/african-union))
- Guidelines for Reporting by Non-Governmental Organizations (NGOs) and Associations with Observer Status (Link: [AFRICAN UNION \(acerwc.africa\)](https://www.acerwc.africa/african-union))

### African Court on Human and Peoples' Rights

- Rules of Court, 1 September 2020 (Link: [Rules-Final-Revised-adopted-Rules-eng-April-2021.pdf \(african-court.org\)](https://www.african-court.org/rules-final-revised-adopted-rules-eng-april-2021.pdf))
- Practice Directions (Link: [Microsoft Word - Practice Directions to Guide Potential Litigants En \(african-court.org\)](https://www.african-court.org/microsoft-word-practice-directions-to-guide-potential-litigants-en))
- Practice Directions for Virtual Sessions in the African Court on Human and Peoples' Rights (Link: [Practice Directions for Virtual Sessions EN.pdf \(african-court.org\)](https://www.african-court.org/practice-directions-for-virtual-sessions-en.pdf))

# Annex 3

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## **Additional Resources on CSO Engagement with AU member states and relevant regional and sub-regional institutions**

- Equality Now *Maputo Protocol Case Digest* (2021) (Link: [https://www.equalitynow.org/maputo\\_protocol\\_case\\_digest](https://www.equalitynow.org/maputo_protocol_case_digest))
- Oxfam International & Open Society Initiative for Southern Africa *Strengthening popular participation in the African Union: A guide to AU structures and processes* (2009) (Link: [Strengthening Popular Participation in the African Union: A Guide to AU Structures and Processes - Open Society Foundations](#))
- Centre for Human Rights *A guide to the African human rights system: Celebrating 40 years since the adoption of the African Charter on Human and Peoples' Rights 1981-2021* (2021) (Link: [A Guide to the African human rights system: Celebrating 40 years since the adoption of the African Charter on Human and Peoples' Rights 1981 - 2021 - Pretoria University Law Press \(PULP\) \(up.ac.za\)](#))
- International Justice Resource Centre *Advocacy before the African human rights system: A manual for attorneys and advocates* (2016) (Link: [Advocacy-before-the-African-Human-Rights-System.pdf \(ijrcenter.org\)](#))
- Sofia Rajab-Leteipan & Mariam Kamunyu *Litigating before the African Commission on Human and Peoples' Rights: A practice manual* (2017) (Link: [Litigating Before the African Commission on Human and Peoples' Rights: A Practice Manual - Equality Now](#))
- REDRESS *et al Filing a communication before the African Commission on Human and Peoples' Right: A complainants' manual* (Link: [Filing a Communication before the African Commission on Human and Peoples' Rights \(redress.org\)](#))
- International Service for Human Rights *Road map for civil society engagement: State reporting procedure of the African Commission on Human and Peoples' Rights* (2011) (Link: [Road map to the African Commission on Human and Peoples' Rights | ISHR](#))
- Plan International and Save the Children *Advancing children's rights: A guide for civil society organizations on how to engage with the African Committee of Experts on the Rights and Welfare of the Child 2009* (2009) (Link: [Save\\_The\\_Children\\_Advancing\\_Children's\\_Rights\\_ACRWC\\_Guide\\_for\\_NGOs\\_2009\\_en.pdf \(right-to-education.org\)](#))
- FIDH *Practical guide: The African Court on Human and Peoples Rights* (2010) (Link: [FIDH Practical Guide on the African Court on Human and Peoples' Rights](#))
- Coalition for an Effective African Court on Human and Peoples' Rights *Booklet on the implementation of decisions of the African Court on Human and Peoples' Rights* (2021) (Link: [ACC 2ND Edition Booklet On The Implementation Of The African Court Decisions | African Court Coalition](#))

- Centre for Human Rights *Toolkit for civil society advocacy in the Pan African Parliament* (2020) (Link: [Centre for Human Rights develops Toolkit on civil society advocacy in the Pan-African Parliament - Centre for Human Rights \(up.ac.za\)](#))
- Open Society Foundations *The civil society guide to regional economic communities in Africa* (2016) (Link: [The Civil Society Guide to Regional Economic Communities in Africa - Open Society Foundations](#))
- Equality Now *A guide to using the Protocol on the Rights of Women in Africa for legal action* (2011) (Link: [A Guide to Using the Protocol on the Rights of Women in Africa for Legal Action - Equality Now](#))

