

## THE PROTECTION OF THE RIGHTS OF WOMEN IN AFRICA: CHALLENGES AND PROSPECTS\*

### Abstract

*For the past three decades there have been renewed calls from civil society activists and the international community to protect women and uphold their rights across the African continent in accordance with myriad international treaties, regional treaties and domestic legislation. It is worthy of note that a large number of African governments have ratified at least one of the international or regional conventions or protocols on women's rights. The doctrinal research method was adopted and the data collected were both primary and secondary comprising of both hard copies and online source materials. This paper examined the mechanisms put in place to protect the rights of women in Africa and discovered that notwithstanding the measures, there exist huge challenges for women engaged in the defence of human rights on the continent as the lofty values enshrined in law are often times ignored in practice. It was recommended that the African Union and member states should ensure the ratification and implementation of the laws and practices that promote the rights of women without reservations and the civil society should introduce initiatives that would raise awareness about women rights.*

**Keywords:** Protection, Gender, Rights, Human Rights, and Women.

### 1. Introduction

There is a growing acceptance and recognition of the important role women play in the development process. Both men and women are entitled on an equal footing to the full protection of their rights and freedoms because they are human beings.<sup>1</sup> 'Women rights' simply refers to claims that women have to something that can be exercised and enforced under a set of grounds or justifications without interference from others. Women are crucial to the success of family planning programs; bear much of the responsibility for food production and account for an increasing share of wage labour in Africa. Irrespective of their significant contributions, women continue to face formidable social, economic and political barriers.<sup>2</sup> Despite the tendency to treat women as a homogenous and unified group, they hardly constitute a monolithic group with identical problems. Women live in countries with diverse historical experience and development levels, and within each country, the issues pertaining to women vary according to race, ethnicity, class, religion, tribe, residence, and educational levels. Despite these differences, the common denominator of women in all societies, including the industrialized ones, is their subordinate status. Women compose the poorest and the least powerful segment of the population throughout the world. The exploitation or oppression of African women is even more intense due largely to the legacy of Western imperialism, which culminated in economic dependency and crises. Also, the economic and political structural changes introduced by colonial powers, and later imposed by international lending and development agencies have further widened the gender gap in these countries. Unrecognized as full partners either in the family or in society, women have been denied equal access to education, job training, employment, health care, ownership, and political power.<sup>3</sup>

The adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa<sup>4</sup> (the Maputo Protocol) marked a new era for African women.<sup>5</sup> The Maputo Protocol set the standards for the protection of women's rights in Africa. For African women, the Protocol has come to symbolize the significant milestone for women's rights since the creation of the Organization

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<sup>1</sup> I Okagbue, *Women's Rights are Human Rights* (Nigerian Institute of Advanced Legal Studies 1996) 1. See also Ikenga Oraegbunam, 'Equity, not equality as sameness', in N. Ezenwa-Ohaeto (Ed), *Power, Gender Relations, Character and Nation Building*, Awka, Fab Anieh Nig. Ltd., 2015, pp. 63-79.

<sup>2</sup> F Anunobi, 'Women and Development in Africa: From Marginalization to Gender Inequality Fredoline Anunobi' [2002] (2) *African Social Science Review*, 41.

<sup>3</sup> Ibid.

<sup>4</sup>African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 11 July 2003.

<sup>5</sup>The Maputo Protocol was adopted by the African Union Heads of States on 11 July 2003 and came into force on 25 November 2005.

of African Union (OAU) now the African Union (AU).<sup>6</sup> It was the culmination of persistent advocacy efforts and demands from women's rights organisations and gender activists who called on the AU to adopt an African human rights instrument that would address the persisting women's rights issues.<sup>7</sup> On January 2016, the Assembly of the Heads of States and Governments of the African Union declared 2016 as the Africa Year of Human Rights with a particular focus on the rights of women.<sup>8</sup> This paper is set to explore the status of African women in terms of protection of their rights, the legal framework for the protection of African women, the barriers impeding the actualisation of the full potential of women in African societies, and some viable recommendations to serve as a panacea to the identified challenges.

## **2. Constitutional, Legal and Institutional Frameworks for the Protection of Rights of Women in Africa**

The Heads of States and Governments of the AU have over the years developed frameworks for the promotion and protection of human rights, particularly women's rights. These frameworks have taken into consideration the challenges women in Africa face and seek to address them comprehensively and systematically. The frameworks complement international human rights standards and frameworks on women's rights such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Declaration on the Elimination of Violence against Women,<sup>9</sup> the Beijing Platform for Action,<sup>10</sup> the International Conference on Population and Development programme of Action.<sup>11</sup> However, this paper would discuss only the regional mechanisms taking into consideration the constitutional, legal and institutional frameworks.

### **Constitutional Framework**

The Constitutive Act of the African Union<sup>12</sup> is the constitutional foundation of the AU which calls on the Member States and the Union to promote human rights and gender equality.<sup>13</sup> In 2002, the AU Heads of States and Governments adopted the 50/50 gender parity principle<sup>14</sup> to ensure equal representation of women and men in all AU decision making structures. The AU gender parity principle has set the regional standard for women's participation in decision making and continues to inform African Union Member States to achieve a 50/50 parity at the national level.

### **Legal Framework**

#### ***African Charter on Human and Peoples' Rights***

The African Charter on Human and Peoples' Rights was the first legal framework on human rights in Africa. It prohibits discrimination based on multiple grounds including sex<sup>15</sup> and further calls on State Parties to eliminate every discrimination against women and also ensure the protection of the rights of women as stipulated in international declarations and conventions.<sup>16</sup> These provisions stipulate the basis for the protection of women's rights and recognize other key international treaties that outline women's rights.

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<sup>6</sup>The Organization of African Unity (OAU) was established on 25 May 1963 and was later replaced by the African Union in 2002.

<sup>7</sup>African Union Commission, *Women's Rights in Africa: Challenges, Opportunities and Proposals for Accelerated Implementation* (African Union 2018).

<sup>8</sup>ND Zuma and ZR Al Hussein, *Women's Rights in Africa* (United Nations Human Rights Commission 2016) 8.

<sup>9</sup>UN General Assembly, *Declaration on the Elimination of Violence against Women*, 20 December 1993, A/RES/48/104.

<sup>10</sup>United Nations, *Beijing Declaration and Platform of Action*, adopted at the Fourth World Conference on Women, 27 October 1995.

<sup>11</sup>UN Population Fund (UNFPA), *Report of the International Conference on Population and Development*, Cairo, 5-13 September 1994, 1995, A/Conference 171/13/Review 1.

<sup>12</sup>Organization of African Unity (OAU), *Constitutive Act of the African Union*, 1 July 2000.

<sup>13</sup>Article 4 (L) of the Constitutive Act.

<sup>14</sup>During the inaugural Summit of Heads of States and Governments of the African Union held in Durban, South Africa in 2002.

<sup>15</sup>Article 2 of the African Charter on Human and Peoples' Rights.

<sup>16</sup>Article 18 (3) of the African Charter on Human and Peoples' Rights.

### ***Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)***

The Maputo Protocol was adopted on 11<sup>th</sup> July, 2003 to complement the African Charter and further expound on women's rights in Africa. The Protocol has almost identical provisions with CEDAW. It requires States to take positive action to address inequalities between women and men and to ensure women are able to exercise and enjoy their rights.<sup>17</sup> The Protocol also lays out States obligations to the right to dignity; the right to life, integrity and security of the person; protection from harmful practices; rights in marriage, which include entitlement to property and the custody and guardianship of children; protection from child, early and forced marriages; the right of access to justice and equal protection of the law; the right to participate in political and decision-making processes; the right to peace; the rights to adequate housing, food security, education, and equality in access to employment; reproductive and health rights, including control of one's fertility; and the right to be protected against HIV infection. The Protocol also includes specific provisions on the protection of rights of women with disabilities.<sup>18</sup>

### ***Protocol on Gender and Development***

The Southern African Development Community (SADC), made up of 15 Southern African and island nations, adopted a Protocol on Gender and Development 2008, which espouses the basic principles of the Maputo Protocol and sets specific goals to be achieved by 2015, such as to enshrine gender equality and equity in all SADC constitutions and to ensure that these rights are not compromised by any provisions, laws or practices. The Protocol also enjoins State parties to put in place affirmative action measures for women, ensure equal access to justice and protection before the law as well as eliminate gender based violence.<sup>19</sup>

### ***African Charter on Democracy, Elections and Governance (ACDEG)***

The ACDEG<sup>20</sup> provides a normative framework for the respect and promotion of good governance and democracy in Africa. It calls for State Parties to promote gender equality and balance in all governance and development initiatives.<sup>21</sup> The ACDEG specifically calls on State Parties to promote gender equality in public and private institutions thus further reinforcing women's rights to political participation and decision making as noted in the Maputo Protocol.

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

In July 2004, the AU adopted the Solemn Declaration on Gender Equality in Africa (SDGEA), in which all AU Member States committed to sign and ratify the Maputo Protocol by the end of 2004 and to harmonize their national laws with the Protocol and international and regional commitments for the promotion of gender equality.<sup>22</sup> The SDGEA calls for the implementation of gender parity within the AU structures and organs as well as at the national level.

## **Institutional Framework**

### ***African Commission on Human and Peoples' Rights***

The African Charter also established the African Commission on Human and Peoples' Rights as the treaty monitoring mechanism which includes special mechanisms such as the Special Rapporteur on Rights of Women in Africa.<sup>23</sup>

<sup>17</sup> Article 2 of the Maputo Protocol.

<sup>18</sup> ND Zuma and ZR Al Hussein (n-8) 13.

<sup>19</sup> Civicus, Report on the Challenges faced by Women in Civil Society in Africa (World Alliance for Citizen Participation 2011) 10.

<sup>20</sup> Adopted during the 8th Ordinary session of the Assembly of Heads of States and Governments of the African Union held in Addis Ababa, Ethiopia on 30th January 2007.

<sup>21</sup> Article 2 of the African Charter on Democracy, Elections and Governance.

<sup>22</sup> In 2004, at the time of adopting the Maputo Protocol and the SDGEA, Morocco's membership to the African Union was not reinstated. South Sudan was also not yet an independent State putting the AU membership at 53 countries in 2004.

<sup>23</sup> To become more abreast with the work and mandate of the Special Rapporteur on Women's Rights in Africa visit <<http://www.achpr.org/mechanisms/rights-of-women/>>.

### ***African Governance Architecture (AGA)***

In 2010, the AU Heads of States and Governments established the AGA as the overall political and institutional framework for the promotion of human and peoples' rights, good governance and democracy in Africa. It seeks to compliment AU Member States in achieving their commitment, under the various AU policy and legislative frameworks such as the AU Gender equality and women's rights frameworks including the Maputo Protocol, SDGEA, AU Gender Policy. In order to give effect to AGA, the African Union Commission (AUC) established the African Governance Architecture Platform to facilitate information sharing, dialogue, synergies and joint actions between the various AU stakeholders.<sup>24</sup>

### ***African Union Specialized Technical Committee on Gender Equality and Women's Empowerment***

The African Union Specialized Technical Committee on Gender Equality and Women's Empowerment was inaugurated in April 2006 as an advisory committee to the Chairperson of the AU Commission and the Commission as a whole, on issues of gender and development. The AUWC is composed of African women proposed by the Directorate of Women, Gender and Development (WGDD) and appointed by the Chairperson of the AU Commission, taking into account the principle of equitable regional representation and rotation and representation of young women and women with disabilities. The AUWC works closely with the WGDD, which is its Secretariat. Some members have represented the Committee on peace missions jointly with the WGDD.<sup>25</sup>

### ***Directorate of Women, Gender and Development (WGDD)***

The Directorate of Women, Gender and Development (WGDD) promotes gender equality on the continent and within the AU. It designs programs and projects based on policies adopted by Member States. The Directorate has two divisions: Gender Policy and Development Division (GPDD) and Gender Coordination and Outreach. It also acts as the Secretariat for the Specialized Technical Committee on Gender Equality and Women's Empowerment.<sup>26</sup>

## **3. Challenges and Discriminatory Practices Affecting the Rights of Women in Africa**

Women face discrimination in all spheres of life due to social norms that are entrenched within cultural, legal, political, social, and economic ideologies. This promotes inequality and encourages normalization of discrimination based on stereotypes and myths that infringe on the rights of women and girls. In Africa, women continue to face discrimination in several areas: marriage, property ownership and inheritance, participation in political and decision making; accessing educational and economic opportunities, accessing social services and protections, and exercising their health and reproductive rights. Women are also mostly victims of insecurity, conflict and gender based violence. In this regard, the section of this paper would discuss the discriminatory practices and challenges affecting African women in maximising their potential in the society.

### ***Poverty***

Women in Africa are making substantial contribution to Africa's development. Women are more economically active in Africa particularly as farmers, workers and entrepreneurs than anywhere else in the world. They perform the majority of agricultural activities, and in some countries, make up some 70 per cent of employees.<sup>27</sup> Women are also central to the household economy and the welfare of their families, and they play a vital leadership role in their communities, yet women often have limited access to credit facilities and market. Women and girls globally are disproportionately affected by poverty due to economic and social exclusion in society that has negative impacts on their quality of life. In Africa, women and girls have challenges in accessing education and training opportunities, generally are paid less than their male counterparts, have limited access to nutritious sources of food, clean water,

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<sup>24</sup>African Union Commission, Women's Rights in Africa: Challenges, Opportunities and Proposals for Accelerated Implementation (African Union 2018) 5.

<sup>25</sup> AU, Organs of the African Union (African Union 2018) <<http://www.au.int/en/organs/commission>> accessed on 19<sup>th</sup> December, 2020.

<sup>26</sup> AU (n-25).

<sup>27</sup> ND Zuma and ZR Al Hussein (n-8) 38.

sanitation adequate shelter, as well as have limited access to resources including property, land and access to credit denying them economic opportunities to improve their lives.<sup>28</sup>

### ***Discriminatory Laws***

It is now widely recognized that gaps in legislations and polices as well as lack of implementation and enforcement of legislation perpetuates and reinforces *de jure* and *de facto* discrimination against women. Plural legal systems with various customary laws on personal status and family continue to provide the basis for discrimination against women in law. While plural legal systems are often adopted as a way of acknowledging cultural diversity, its application can be prejudicial to women. For example, in some countries such as Nigeria where adultery is penalized, laws expressly discriminate against women: either solely penalizing women for committing adultery or penalizing women more severely than men. Even where the law is gender-neutral, criminal adultery provisions have discriminatory effects on women in practice, for instance women are charged and found guilty more frequently than their male counterparts.<sup>29</sup> Discriminatory legislation particularly in family, civil, penal, labour and commercial laws or codes, or administrative rules and regulations still persist. Even where legal reforms have taken place, they are often not enforced and institutional mechanisms to promote the human rights of women are often underfunded.

### ***Indiscriminate Marital Norms and Practices***

Marriage can reinforce discriminatory social, religious, and cultural norms that deny women the ability to exercise their rights and freedoms. The role of women in the family has generally been under patriarchal control in cultures and religions that subject women and girls to forced and/or early marriage and discrimination in a number of areas of family life, such as consent to enter into marriage, dowry obligations, the right to possess and manage property, sexual relations, requirements regarding modesty and freedom of movement, guardianship and custody of children, divorce and division of matrimonial assets, the punishment of adultery, the right to remarry following dissolution of the marriage or death of the husband, the status of widows and inheritance. In addition, women and girls are generally not treated equally in families with regard to the division of rights and responsibilities. Discrimination against women and girls in the family and in marriage affects all aspects of their lives.<sup>30</sup> Countries like Burundi, Guinea, DRC, Kenya, Mali, Sudan and Tanzania all have family and personal codes that discriminate against women in issues of marriage.<sup>31</sup> Whereas the Maputo Protocol is clear on women's rights in marriage,<sup>32</sup> women continue to suffer various forms of discrimination in marriage. For example, the marital laws in Algeria<sup>33</sup> restrict women's rights in marriage by permitting polygamy, requiring authority from a male guardian, barring Muslim women from marrying non-Muslim men, and restricting grounds for divorce for women. In the Democratic Republic of Congo (DRC)<sup>34</sup> and Guinea,<sup>35</sup> the family law gives authority to the husband over his wife and he can restrict the wife's professional and social engagement and makes decisions on their matrimonial home as well as authorize all contractual matters. In countries where polygamy is practiced and is sanctioned by law, women's rights in marriage continue to be undermined. These restrictions placed on women and enforced by the law prevent women from participating fully in family life and in decision making rendering them vulnerable to exploitation and abuse.

### ***Denial of Access to Education***

Another inhibiting factor is that women in Africa continue to be denied access to education. Disparities between girls and boys start in primary school and the differences widen up through the entire educational system. Numerous hurdles continue to hamper the expansion of education in Africa.

<sup>28</sup> African Union Commission, *Women's Rights in Africa: Challenges, Opportunities and Proposals for Accelerated Implementation* (African Union 2018) 22.

<sup>29</sup> Human Rights Council, *Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention*, A/HRC/13/39/ Add 5 (2010), paragraph 219; Secretary General *Pathways to conditions and consequences of incarceration for women* A/68/340 (2013), paragraph 16.

<sup>30</sup> The United Nations Working Group on Discrimination against Women in Law and Practice.

<sup>31</sup> ND Zuma and ZR Al Hussein (n-8) 40.

<sup>32</sup> Article 6 (f)-(j) and 9 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

<sup>33</sup> The Family Code of 1984 modified by Ordinance No 05-02 of 27th February, 2005.

<sup>34</sup> Articles 444, 448, 450, 454 and 497 of the Democratic Republic of Congo's Family Code of 1987.

<sup>35</sup> Articles 328 and 331 of Guinea's Civil Code.

Austerity programmes introduced in many countries during the 1980s constrained educational spending. Governments had little money to maintain existing schools or build new ones. At the family level, households that became poorer often faced the stark choice of deciding whom to send to school – and often it was the girl who stayed at home. Costs of tuition, the requirement to wear uniforms, long distances between home and school, inadequate water and sanitation, all help to restrict girls' access to education.<sup>36</sup>

### ***Denial of Inheritance and Property Rights***

Women's claims to land bring into question their capacity to enjoy equal rights in every sphere civil, political, economic, social and cultural. Women's rights to equal inheritance, to equal shares of matrimonial property, to recognition as legitimate and legal owner of land and property, who can buy, sell, lease and raise loans on the basis of that property, are denied all over the world, in a wide range of cultures and communities.<sup>37</sup> The obstacles which prevent women's access to, control and use of land and other productive resources often include inadequate legal standards and/or ineffective implementation at national and local levels, as well as discriminatory cultural attitudes and practices at the institutional and community level. Women and girls in Africa have often been left out of inheritance regimes and many traditional, customary and religious laws often prevent them from inheriting their parents' or spouses' properties, relegating them to a life of insecurity and poverty. Secure land rights confer direct economic benefits because land is a key input into agricultural production and enterprise development; it can be used as a source of income from rental or sale; and it can provide collateral for credit where strong, well-regulated land markets and credit infrastructures exist.<sup>38</sup>

### ***Gender Based Violence and Victims of Insecurity and Conflicts***

Sexual and Gender Based Violence (SGBV) seriously inhibits the ability of women to contribute to, and benefit from development and to enjoy their rights, in private or public life, in times of peace or during situations of armed conflict. SGBV is more common where patriarchal gender norms are entrenched and where social and cultural norms contribute to the acceptance of violence against women and girls or where there are formal or discriminatory provisions in domestic legislation relating to sex and gender and no specific measures to address or prevent violence against women.<sup>39</sup> Women participate in various capacities during conflict and post-conflict, including as care-takers, combatants as well as peace makers. Despite women's contributions in resolving conflict in their communities and fostering peace, during times of conflicts, transition and post conflict, women and girls continue to face an increase in SGBV as well as other human rights violations. For example, women fall victims to violence before and during the conflict, in the process of fleeing, and after the conflict as refugees/internally displaced persons and asylum seekers. Further, there is still a striking absence of women from formal peace negotiations.<sup>40</sup> For example, women in Somalia were not represented in negotiation teams during the Declaration on Cessation of Hostilities and the Structures in 2002 and in Sierra Leone no women were represented in the negotiating team during the Lomé Peace Agreement and only made up 20% of witnesses.<sup>41</sup>

### ***Lack of Economic Opportunities and Access to Finance***

In order to enable women to escape poverty, development policies ought to be put in place to emphasize their contributions to the economy. Irrespective of the fact that women make up a significant proportion of the economically active proportion, their contribution is not fully recorded because they are mainly engaged in family farming or in the informal sector. In other cases, what they do as, such as household

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<sup>36</sup> G Mutume, African Women Battle for Equality (African Renewal 2005) 4 <<https://www.un.org/africarenewal/magazine/july-2005/african-women-battle-equality>> accessed on 13<sup>th</sup> December, 2020.

<sup>37</sup> Hrlibrary, Economic, Social and Cultural Rights of Women (Hrlibrary 2014) 4 <<http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module4.htm>> accessed on 13<sup>th</sup> December, 2020.

<sup>38</sup> USAID Land Tenure, Property Rights, And Gender Briefing Paper No 7 <[http://www.climateinvestmentfunds.org/sites/default/files/knowledge-documents/usaid\\_land\\_tenure\\_gender\\_brief\\_0.pdf](http://www.climateinvestmentfunds.org/sites/default/files/knowledge-documents/usaid_land_tenure_gender_brief_0.pdf)> accessed on 19<sup>th</sup> December, 2020.

<sup>39</sup> UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, 19 April 2016, A/ HRC/32/42.

<sup>40</sup> UN Women, Women's Participation in Peace Negotiations: Connections between Presence and Influence 2012, 3 <<http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2012/10/wpssourcebook-03a-womenpeacenegotiations-en>> accessed on 19<sup>th</sup> December, 2020.

<sup>41</sup> Ibid.

work, is not considered an economic activity. In agriculture, Sub-Saharan Africa's most vital economic sector, women contribute 60-80 percent of labour in food production, both for household consumption and for sale. But while they do most of the work, they lack access to markets and credit. In Uganda, women make up 53 percent of the labour force, but only sell 11 percent of the cash crops.<sup>42</sup> Providing women with greater access to credit and other sources of financing can help reduce economic disparities. Despite their active contribution to the economy, women tend to engage in 'low value-added occupations' that do not generate substantive economic return and that do not offer them social protections. Despite the fact, society assigns them as the primary care givers that on average spend twice as much time as men do on domestic work (child and elderly care, cooking, cleaning, and fetching water and wood)<sup>43</sup> reducing their time to invest in their chosen career or field and to increase their earnings including saving for retirement.

### ***Genital Mutilation/Sexual and Reproductive Rights***

FGM is widely understood as a violation of women and girls' rights which is embedded in discriminatory cultural beliefs and practices. It violates the right to security and physical integrity, right to health, the right to be free from torture, and cruel and degrading treatment. According to the World Health Organization (WHO), more than 200 million girls and women alive today have undergone Female Genital Mutilation (FGM) in 30 countries in Africa.<sup>44</sup> For many women in Africa especially those in rural areas, access to adequate and affordable reproductive health services is difficult due to limited health providers or where they exist, they are often under resourced and understocked. High rates of maternal mortality and morbidity on the continent can be attributed to proximal determinants such as haemorrhage, sepsis and unsafe abortion, as well as more distal determinants related to gender inequality. This includes a lack of autonomy of women to make informed decisions about whether to become pregnant in the first place or to seek medical care, a lack of access to contraception, as well as a lack of education including access to comprehensive sexuality education.<sup>45</sup>

### ***Problem with Nationality and Citizenship***

In a number of countries, nationality laws still do not grant women equal rights with men to acquire change and retain their nationality and some laws contain discriminatory provisions that do not allow women to transfer nationality to their spouses on the same basis as men. For instance, several countries including Burundi, Liberia, Sudan and Togo have enshrined gender equality in their Constitutions but have yet to reform their nationality laws. In Lesotho, Nigeria, Malawi, Ethiopia, Central Africa Republic, Cameroon, Benin and Guinea, women are not allowed to transmit nationality to their spouses on the same basis as men. In Madagascar, Swaziland, Mauritania, Sierra Leone and Somalia women cannot confer nationality onto their spouses.<sup>46</sup> Burundi, Guinea, Democratic Republic of Congo (DRC), Kenya, Mali, Sudan and Tanzania all have family and personal codes that discriminate against women in issues of marriage.

### ***Exclusion in Political Participation/Influencing Policy***

Since political independence, women have been excluded from most of the important political positions in African countries. For example, there have been no women heads of state, and as of the mid-1980s, women held only 6 percent of the legislative positions in Africa. At cabinet-level or equivalent positions, only 2 percent were held by women. In half of Africa's countries, there was no woman at all in cabinet-level positions. Women were better represented at local levels of government.<sup>47</sup> As of 2017, women in Africa made up only 23.6% of Parliamentarians<sup>48</sup> across Sub-Saharan African countries, a far cry from the AU gender parity of 50/50 representation which was adopted by the Heads of States

<sup>42</sup>G Mutume (n-36) 5.

<sup>43</sup>UNDP, Accelerating Gender Equality and Women's Empowerment in Africa: Africa Human Development Report 2016, 6.

<sup>44</sup> WHO, Media Centre Factsheets (World Health Organisation) <<http://www.who.int/mediacentre/factsheets/fs241/en/>> accessed on 19<sup>th</sup> December, 2020.

<sup>45</sup>ND Zuma and ZR Al Hussein (n-8) 22.

<sup>46</sup>Duru Achibe, National Rights of Women in Sub-Saharan Africa (Equanationalityrights.org) <<http://equalnationalityrights.org/countries/sub-saharan-africa>> accessed on 19<sup>th</sup> December, 2020.

<sup>47</sup>F Anunobi, 'Women and Development in Africa: From Marginalization to Gender Inequality' [2002] (2) (2) *African Social Science Review*, 54.

<sup>48</sup>Inter-Parliamentary Union & UN Women (2017), 'Women in Politics 2017 Infographics' <<https://beta.ipu.org/resources/publications/infographics/2017-03/women-in-politics-2017>> accessed on 19<sup>th</sup> December, 2020.

and Governments of the African Union.<sup>49</sup> Women in Africa experience challenges in participating in decision making due to social norms and religious and cultural factors that reinforce gender discrimination and exclusion from political life. Additionally, women face harassment, intimidation, and violence including sexual violence from voters, political candidates, political party officials, rival politicians, and the general public dissuading many from engaging in politics.<sup>50</sup>

#### **4. Prospects on the Promotion and Protection of Rights of Women in Africa**

Despite the challenges facing African women as discussed above, there are nevertheless significant improvements made towards protecting and promoting the rights of women in the continent. Firstly, several countries have amended their laws or abolished laws that discriminate against women on the basis of sex. Sierra Leone has recently removed discriminatory clauses against women in its Constitution. A number of countries are also using temporary special measures as one of the ways to accelerate women's participation in public bodies especially the legislature, a requirement under Article 2 of the Maputo Protocol.<sup>51</sup> This has been particularly successful; the continent has the highest participation of women within their legislatures globally.<sup>52</sup> Secondly, to a reasonable extent there has been educational parity in some African countries. Namibia, whose government has been working to improve the status of women for nearly 30 years, has achieved gender parity on education.<sup>53</sup> Zimbabwe's GPS on education is 0.94, not far from parity; the country has the highest availability of textbooks in Africa, achieved through sustained investment. Burundi, Chad, Côte d'Ivoire, Mozambique, Niger, and Togo have narrowed the gender gap in education since 2015 albeit marginally by 1 percent to 3 percent a year. Pushing hard for equal education for boys and girls is of vital importance because this enables progress on other aspects of gender inequality. There is a moderate to strong correlation with three out of five work equality indicators and several indicators of gender equality in society. Girls who receive the same education as boys are more likely to share unpaid work with men more equitably, work in professional and technical occupations, and reach the top of companies. Narrower gender gaps in educational attainment are strongly correlated with the status of girls.<sup>54</sup>

Further, in 2009, the AU adopted a Gender Policy which seeks to provide a clear vision for the implementation of women's rights in Africa as guaranteed within the Maputo Protocol and SDGEA. The policy guides AU Member States in the process of gender mainstreaming and women's empowerment and aims to influence policies, procedures, and practices, to further accelerate the achievement of gender equality, gender justice, non-discrimination and fundamental human rights in Africa.<sup>55</sup> Within the same year, the AU Heads of States and Governments<sup>56</sup> declared 2010 – 2020 as the African Women's Decade (AWD) following the adoption of the AU Gender policy. The AWD was launched in Nairobi, Kenya on 15 October 2010 with the aim of renewing AU Member States efforts to accelerate the implementation of gender equality and women's empowerment provided in the various legal and policy commitments on women's rights. The AWD identifies several themes such as fighting poverty and promoting economic empowerment of women and entrepreneurship, agriculture and food, security, women's health, maternal mortality and HIV/AIDS amongst others.

In addition to the above, the Fund for African Women was created in 2011 as the financing mechanism following the declaration of the African Women's Decade as a single mechanism to ensure the full

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<sup>49</sup> Arson-oran, The African Union Commitments to Gender Parity and Women Empowerment in Africa Highlighted (Arson-oran.org) <<http://www.arson-oran.org/as-the-african-union-commitments-to-gender-parity-and-women-empowerment-in-africa-highlighted/>> accessed on 15<sup>th</sup> December, 2020.

<sup>50</sup> See Ikenga K.E. Oraegbunam, 'Women Empowerment and Participation in Politics' An Important Index of Nigerian Democracy' In *KOINONIA*, Vol. 1, No. 3, June 2002, pp. 37 – 54.

<sup>51</sup> See however Ikenga K.E. Oraegbunam, 'A Jurisprudence of Affirmative Action as a Platform for Women Empowerment in Nigeria Today', '*Legislative Practice Review: Nigerian Journal of Law, Practice and Procedure of Legislature*, Vol. 2 No. 2, 2010, pp.76-109.

<sup>52</sup> ND Zuma and ZR Al Hussein (n-8) 40.

<sup>53</sup> The Southern and Eastern Africa Consortium for Monitoring Educational Quality, Assessment GEMS Series No 8, The Centre for Global Education Monitoring, January 2015.

<sup>54</sup> L Moodley, et al, The Power of Parity: Advancing Women's Equality in Africa (McKinsey Global Institute 2019) 27.

<sup>55</sup> Osaa, African Gender Policy (United Nations 2009)<[http://www.un.org/en/africa/osaa/pdf/au/gender\\_policy\\_2009.pdf](http://www.un.org/en/africa/osaa/pdf/au/gender_policy_2009.pdf)> accessed on 17<sup>th</sup> December, 2020.

<sup>56</sup> During the 12th Ordinary Session of the Africa Union Summit held in Addis Ababa.



implementation of policies as well as the effective mainstreaming of gender at regional, sub-regional and national levels in Africa. Member States committed to contribute 1 per cent (1%) of their annual national budgets to the Fund. In January 2015, the AU Heads and States of Government adopted the African Union Agenda 2063,<sup>57</sup> as a 50-year blue print for the socio-economic, political and structural transformation and development for Africa. Agenda 2063 seeks to build on and accelerate the implementation of past and existing continental initiatives for growth and sustainable development.

## **5. Conclusion and Recommendations**

Although many African countries have adopted the international and regional instruments that protect human rights such as The African Charter on Human and Peoples' Rights, Maputo Protocol and the others, a lot still needs to be done in terms of practically implementing these instruments to protect human rights defenders, especially for women who are more vulnerable in this aspect. Despite strides that have been made in terms of acknowledging the role and the rights of women, the research found that the deeply rooted cultural, religious and patriarchal perceptions continue to have a major influence on the lives of women. Women lack access to education, finance, economic empowerment, landed properties, and health care. Women are also victims of sexual and gender based violence. These factors are the major challenges to women rights in Africa.

In line with the identified challenges, the following actions are recommended. The AU should accordingly ensure that women especially young women are actively engaged in Africa's wide dialogues on all aspects of democracy, governance, and human rights in Africa and undertake effective monitoring and evaluation of their initiatives. Member States of the African Union should adopt gender responsive planning and budgeting to accelerate the implementation of the Maputo Protocol and all AU decisions on women's rights in Africa and also amend or abolish laws discriminatory to women. Member states should strengthen support for institutions in relation to gender equality and the empowerment of women including the systematic integration of a gender perspective in all Ministries as well as National Human Rights Institutions. The Civil Society should exploit new and traditional forms of media to raise awareness and engage citizens, especially women, to be at the forefront of advocating for the acceleration of the implementation of women's rights.

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<sup>57</sup>African Union Commission, 'Agenda 2063'.