

THE MAPUTO PROTOCOL: INTERNATIONAL AGREEMENTS AND WOMEN'S RIGHTS AS AN ENABLER OF DEVELOPMENT

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**The Maputo Protocol:
International agreements and
women's rights as an enabler
of development**

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Abstract

International agreements on human rights are development enablers. One such vehicle is the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (also known as the Maputo Protocol), a pan-African protocol which aims to further the rights of women and girls – the majority of the population of the continent. The Maputo Protocol was adopted at the 2nd Ordinary Session of the African Union (AU) in 2003. The Maputo Protocol provides venues for the recognition and the realisation of women's and girls' human rights, with an intersectional lens that is cognizant of the needs and particularities of the continent. The achievement of any development agenda such as Agenda 2063 and the Sustainable Development Goals (SDGs) depends on the recognition of human rights for all. Thus, the affirmation of women's and girls' human rights by the Maputo Protocol becomes a critical instrument for enabling gender equality, central to the goals of Agenda 2063 and the SDGs. Yet, despite its relevance for enabling the progression of women's rights, the translation of this protocol into local legislations remains incomplete.

One important bottleneck for enabling the rights of women and girls remains the delays in translating such protocols into national legislation. We argue that the implementation of legal mandates such as the Maputo Protocol can provide pathways for the recognition of human rights on the continent, and that this legal recognition can facilitate the achievement of development goals. Given this, it is central to take stock of the degree of implementation of the Maputo Protocol into national laws. Accounting for the degree of implementation of the Maputo Protocol can provide a "contextual" assessment of the legal conditions in which the rights of women and girls are to be realised, and can inform development efforts and interventions for the rights of women and children of the continent.

Keywords

Maputo Protocol, gender rights, Africa, law and development, sustainable development.

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1. Introduction

July 11th 2025 marked the twenty-second anniversary of the coming into force of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, otherwise known as the Maputo Protocol. This Protocol is a legally binding supplement to the African Charter on Human and People's Rights (ACHPR).⁷ The Maputo protocol is an African initiative for the consolidation of the rights of women and girls on the continent. It has been described as a radical legal document that contains provisions for the protection of women's human rights that goes beyond the provisions available in the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW).⁸

Yet, by 2022, while Sub-Saharan Africa's gender inequality index as measured by the UNDP had slightly improved to 0.559; the region still performed worse than other regions in the globe.⁹ This high inequality does not take place in isolation, and relates to the general absence of protection of women's rights in Africa.¹⁰ Such outcome is the result of structural destitution, and the lack of the full enjoyment of human rights for women and girls in the continent. This, is a grim reality for the development of the continent, considering that women and girls constitute the majority of the population.¹¹

Africa's lacklustre performance with regards to gender equality exposes the gaps between the promises of gender rights and the current state of affairs. Life expectancy for Sub-Saharan African women remains also lower than global averages. While on average women live 72 years in the world, in Sub-Saharan Africa, women's life expectancy at birth is only 61 years.¹² In addition to this, while in the world 45% of people living with HIV globally are women and girls, in Sub Saharian Africa the number of women aged 15 and above living with HIV in 2024 accounted for 63% of all new HIV infections.¹³

The discrepancy between women's and men's enjoyment of rights is not endemic to Africa and remains similar to the rest of the world. It is important to highlight that gender discrimination is not geographically isolated to a continent. As the case of the Appenzell Inner Rhodes canton in Switzerland

⁷ The African Commission on Human and Peoples' Rights (ACHPR) is tasked with promoting and protecting human rights and collective (peoples') rights throughout Africa as well as interpreting the African Charter on Human and Peoples' Rights (also known as the Banjul Charter or the African Charter).

⁸ Banda, 2006. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

The Convention defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

⁹ Its index was significantly worse than the world average of 0.455. See <https://hdr.undp.org/data-center/thematic-composite-indices/gender-inequality-index#/indicies/GII>

¹⁰ AU/UNECA/AfDB/UNDP, 2022.

¹¹ In 2021, the female population represented in 2021 50,14% of the population of the continent, according to the WHO.

¹² <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=ZG-1W>

¹³ https://www.unaids.org/sites/default/files/media_asset/UNAIDS_FactSheet_en.pdf

-where women were deprived from the right to vote until 1990 illustrates,¹⁴ the basic rights of women have lagged behind men's and continue lagging across the world. This reality is not endemic to any particular country.

The pervasiveness of gender disparities across the globe illustrate how the rents and benefits from the exploitation of women remain cherished by those who benefit directly or indirectly from them- men. Gender inequality persists because privileged and influential groups in society continue benefiting from these disparities.¹⁵ These privileges are coded and normalised as part of social norms, cultural practices and legal frameworks - that legitimise means of exploitation. Thus, the possibility of undertaking legal recognition of rights of women as equal rights holders acquires importance as they can help in enabling transformations in societies.¹⁶

Unsurprisingly, demands for the recognition of the human rights of women, are sometimes dismissed by some actors in the continent as being part of a "western agenda" or a colonial "conspiracy".¹⁷ This either ignores the existence of African agendas and initiatives such as the Maputo Protocol, or is a disingenuous way of gaslighting exploitation and discrimination.

The value of African initiatives such as the Maputo Protocol lies in its capacity to envision the recognition of the human rights of women in the continent, being cognizant of the particular challenges they face, and appropriating the recognition of women's and children's human rights as an African agenda. While there are several other international initiatives, the comprehensiveness of the Maputo Protocol provides a more "fit for purpose" approach about the legal needs and the context that, we argue, is more likely to understand and respond to the needs of women and girls in the continent.

Legal frameworks informed by international agreements such as the Maputo Protocol can enable the alignment of the promises of development agendas. For example, child marriage is an indicator used in Agenda 2063¹⁸. The evidence points to how these indicators about child marriage are worse in contexts where such practices are not banned by law. Laws are not a sufficient condition for the enjoyment of human rights, but laws and their institutionalization with local mandates, institutions, and policy programs create avenues for actors interested in defending the human rights and the right to development,¹⁹ for example, the legal recognition of rights and the legal condemnation of harmful practices can influence the social norms that enable practices such as the right to land ownership.²⁰

Both Agenda 2063 and the SDG's seek to "Realize the human rights of all" and are explicitly grounded in human rights agendas such as the African Charter on Human and Peoples' Rights (ACHPR), and the

¹⁴ Appenzell Inner Rhodes: the last Swiss canton to give women the vote.

<https://www.swissinfo.ch/eng/politics/a-visit-to-appenzell-inner-rhodes-the-last-canton-to-grant-women-the-right-to-vote-in-switzerland/46328984>

¹⁵ Morrison, A., Raju, D., & Sinha, N., 2007.

¹⁶ United Nations, 1986; Heymann et al., 2023.

¹⁷ Bawa, 2019.

¹⁸ Goal 18 measures as one of its indicators the percentage of children engaged in child marriage, and the SDGs indicator 5.3.1 of the SDGs is the percentage of women aged 20 to 24 who were married or in a union before age 18.

¹⁹ Heymann et al., 2015.

²⁰ Abbot et al., 2018.

Universal Declaration of Human Rights. Thus the aspirations and goals of both agendas relate to human rights standards and the legal frameworks that enable such rights to be exercised.²¹

Whereas legal mandates can define the obligations with regards to human rights and their recognition creating a string complementarity with development agendas, such as Agenda 2063 and the SDGs, and bring approaches that help in the operationalisation of the mandates related to particular human rights. As development agendas are concerned with indicators, policies and changes, they can help into thinking about how to achieve particular development goals in different contexts and complement legal mandates.

Given the importance of recognizing the rights of women and girls, it is no surprise that the need for legislation that promotes gender equality was recognised as essential by those involved in the drafting of both the Maputo Protocol, and Agenda 2063.²²

The Maputo Protocol is an international treaty that contains provisions that aim to address and eliminate harmful gender discriminatory practices that disproportionately affect the human rights of women and girls across Africa. Some of these harmful practices are:

- Female Genital Mutilation (FGM)
- Child Marriage
- Gender-Based Violence
- Discriminatory Inheritance Practices (right to inherit property)
- Unequal Access to Education
- Political and Economic Marginalization
- Harmful Widowhood Practices (such as property dispossession, forced remarriage)
- Trafficking and Exploitation
- Discrimination in Marriage and Family Life
- Denial of Reproductive Health Rights

By challenging these practices and highlighting the importance of legal provisions that protect these human rights, the Maputo Protocol seeks to promote gender equality, and empower women and girls in the continent.²³

Human rights²⁴ promoted by documents such as the Maputo Protocol align with development agendas such as Agenda 2063 and the SDGs. However, the implementation of such agendas take place within different social and legal contexts. Thus, we need for greater information about the legal contexts in which women's empowerment is to take place, and to account for the extent of implementation of continental provisions such as the Maputo Protocol in each country is pertinent. By accounting for the legal frameworks and contexts that define mandates, legal provisions and institutional obligations in which human rights and development initiatives are to take place, we are more cognizant of the

²¹ See footnote 12.

²² Kamau, M., Chasek, P., & O'Connor, D., 2018; Hingston, C. A., 2016.

²³ Heymann et al., 2015.

²⁴ We understand development agendas as strategic frameworks which are designed to guide and help in coordinating policies, interventions and support towards efforts aiming at achieving developmental outcomes.

contexts in which they operate and are thus more likely to have development initiatives that will achieve the goals of empowerment of women and girls proposed by these agendas.

In this paper Corresponding author. Email: hafte.gebrihet@uct.ac.za. , we highlight the importance of taking stock of the degree of implementation of the Maputo Protocol into national laws. We argue such type of analysis serves as a vehicle to describe the extent to which current legal frameworks enable/hinder the protection to women and girls rights in the continent. Despite the importance and the ambition of the Maputo Protocol as a continental initiative for women's and girls' rights, the knowledge about the Protocol's degree of implementation remains limited.^{25,26} Accounting for the degree of implementation of such agreements can provide a "contextual" assessment of the legal contexts in which the human rights of women and girls in the continent are to take place, and can inform development efforts and interventions to facilitate the fulfilment of women's and girls' rights.

To do this, the paper starts by describing the aspirations of the Maputo Protocol, reflecting on the value of the Maputo Protocol for accounting and comparing the legal contexts in which the aspirations of Agenda 2063 and the goals of the SDGs aim to take place. Then the document discusses how both AA2063 and the SDGs aim to further the human rights and status of women and girls in Africa. We do this by taking a brief stock of the current state of human rights for women in the continent. This leads us to reflect on how accounting for the degree of localization of the mandates from the Maputo Protocol could allow us to take stock of the human rights and legal contexts in which development initiatives for women's rights can take place. Finally, we reflect on possible avenues for research and policy proposals.

We find that one important bottleneck for enabling the rights of women and girls remains the delays of translating such protocols into national legislation, and the process of operationalising laws for their effective implementation. We conclude that while legal mandates are not sufficient per se to achieve development outcomes such as gender equality, they are one important avenue that can enable initiatives by governments, civil society organizations and individuals in the mobilisation for the human rights and the gender equality of women and girls in the continent.

2. The Maputo Protocol

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa was adopted in 2003 in Maputo (Mozambique) by the African Union and became effective in 2005. As at June 2023, 44 out of 55 African Union Member States had ratified the Maputo Protocol.

²⁵ For example, several researchers have looked at countries or subgroups of African countries. Ayeni (2016) presents 17 country studies that examine the extent to which the African Charter and the Maputo Protocol have been domesticated in each country. Hefez et al. (2024) describe the processes that were undertaken in the Democratic Republic of Congo to harmonize its national laws with Article 14 of the Maputo Protocol that has provisions for safe medical abortion, yet cross country analyses across all the counties in the continent are as of now inexistent.

²⁶ The report from Solidarity for African Women's Coalition (SOAWR), Equality Now and make Every Woman Count (MEWC, 2023) assessed the progress made under eight thematic rights areas covering 15 Articles of the Maputo Protocol by using both case studies and a count of the number of countries that have enacted the relevant laws and policies.

The Maputo Protocol is the product of a working group established by the African Commission on Human and People's Rights. This working group comprised representatives of women's groups and the African Union's Special Rapporteur on the Rights of African Women. The process began in 1995 when women NGOs met with the African Commission to express their dissatisfaction with the lack of progress for African women despite most of African countries having ratified the CEDAW by 1995 (42 out of 55 countries)²⁷ and ACHPR (51 out of 55 countries).²⁸

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the United Nations in 1979, aimed to promote gender equality and eliminating discrimination against women. On the other hand, the African Charter on Human and Peoples' Rights (ACHPR), adopted in 1981, was a landmark document for promoting human rights in Africa for all citizens in the continent.

There was concern for those involved in drafting the Maputo Protocol that the provisions of CEDAW and the ACHPR were not being enforced.²⁹ In addition, there was dissatisfaction with the adequacy of CEDAW and the ACHPR to protect the human rights of African women and girls, given its limitations in addressing the specific needs of women and girls of the continent. This assessment informed the need for a more focused and legal instrument dedicated to providing for the human rights of African women.³⁰

This is why the Maputo Protocol explicitly stated that despite the ratification by African countries of the African Charter on Human and People's Rights and other international human rights instruments, '...women in Africa still continue to be victims of discrimination and harmful practices'.³¹

The Protocol, and its provisions are a victory by women NGO's on the continent, as the differential focus and the extension of protections enshrined in the Protocol are an effort to improve women's rights in the continent. In the same way that CEDAW has been described as the international bill of rights for women, the Maputo Protocol can be described as the African bill of rights for women. There are several overlaps between CEDAW and the Maputo Protocol. Both treaties begin with articles that contain provisions on the need for introducing legislation that promotes the rights of women and the removal of laws that discriminate against women, provisions on civil rights and political participation, education, right to work and employment, health and reproductive rights and marriage rights.

The Maputo Protocol can be seen as a vehicle aiming to operationalise women's and childrens human rights that can help in filling the gap between the enjoyment of human rights of African women and children and the pledges made by different treaties, development initiatives and international agreements. The Maputo Protocol aims to bridge these gaps by addressing some of these specific needs of African women and girls, making an emphasis on the human rights and the needs of women and girls in the continent. The Protocol also notes that the rights of women are to be promoted and protected

²⁷ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en

²⁸ <https://achpr.au.int/en/states>

²⁹ Banda, 2006.

³⁰ See Banda (2006), (Viljoen, 2009) and (d'Orsi, 2021) for a discussion on the origins of the Maputo Protocol.

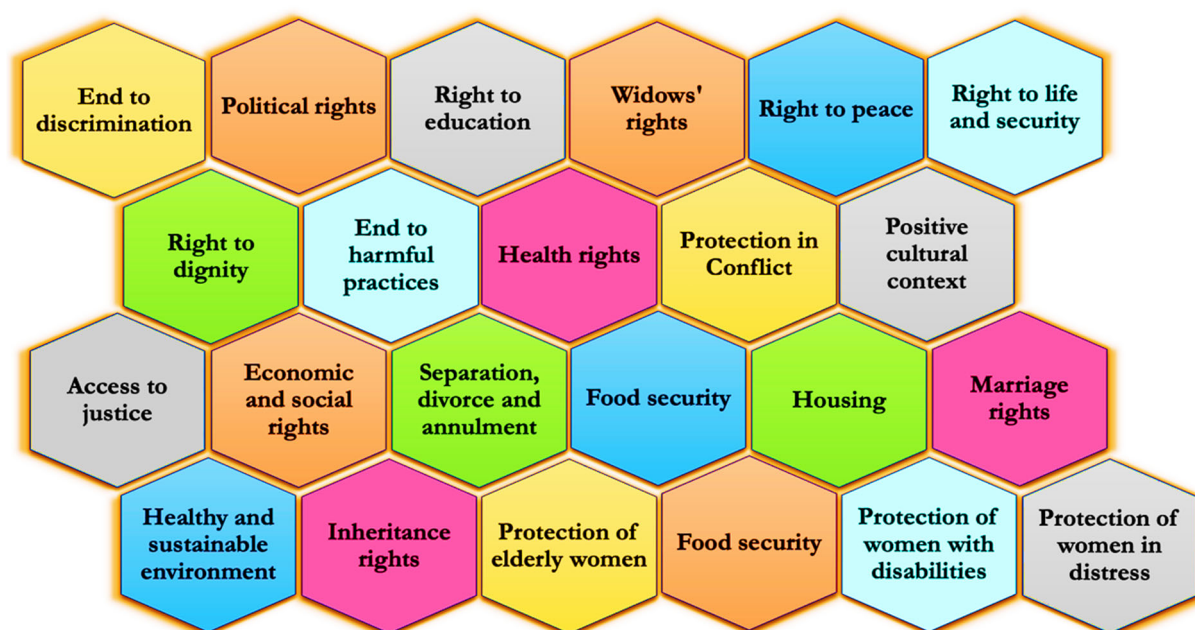
³¹ African Union, 2003.

in order for them to enjoy fully all their human rights, presenting an approach that is more centred in the humanity of women.

Despite these similarities, the Maputo Protocol contains more explicit provisions under each of these headings and contains several provisions that were not considered in CEDAW. For example, it provides provisions for medical abortion, the right to be protected against HIV, legislation against domestic violence and the criminalisation of rape within marriage. The Maputo Protocol also contains provisions for different categories of women, i.e. widows, women with disability, elderly women and women in conflict areas, not present in the provisions from CEDAW (See Figure 4).³²

The Maputo Protocol contains 23 provisions that cover a broad range of rights including economic (for example, Article XIII on Economic and Social Welfare Rights), social (for example, Article XVI on the Right to Adequate Housing), political (for example, Article IX on the Right to Participate in Political and Decision-Making Process), access to justice (Article VIII on access to justice and equal protection before the law) and cultural rights (Article V on the Elimination of Harmful Practices). The Maputo Protocol contains provisions that address the protection of women in armed conflict (Article XI), women with disabilities (Article XXIII), widows' rights (Article XX), elderly women (Article XXII), women in distress (this includes poor women and women heads of households) (Article XXIV) and children (see Figure 4).

Figure 4. Articles and provisions in the Maputo Protocol



Source: Own elaboration

In addition to this, the Protocol brings an intersectional lens for understanding the marginalization of women and uses the term gender as opposed to sex, in contrast to CEDAW and the ACHPR. This enables the understanding of discrimination of women and girls as the result of systemic discrimination based

³² CEDAW only singles out rural women.

not only on gender, but also in relation with other categorical markers such as religion, class, sexual orientation and gender identity.

The Protocol proceeds to present the prohibition of harmful traditional practices like genital mutilation and child marriage,³³ and the role of overlapping and interconnected manifestations of discrimination by specifying articles related with inheritance rights (as some women in Africa reside in patrilineal settings and are deprived of land tenure, or asset ownership). This approach is the specific response to the realities of women in the continent and an understanding of how deprivation is intersectional, bringing an explicit response to the specific intersectional needs of African women and children.

This approach surfaces the importance of legislation that deals with the nuances of privilege, and their impacts on the lives of women around the continent. This also makes of the Protocol a critical tool for pursuing comprehensive remedies for human rights violations, as it can account for “differentiated experiences of discrimination among women based on other identity categories”.³⁴

The Protocol also states that a gender perspective must be integrated into policy decisions, development plans, programmes, activities and corrective measures in those areas where there are laws that discriminate against women. Public education, information and communication strategies should be developed to bring about behaviour change with the objective of eliminating harmful cultural and traditional practices that promote gender inequality and maintain stereotyped roles of women and men, becoming a vehicle that can enable development initiatives and a context in which women and children can realise their fundamental human rights. However, and despite their importance, we currently know little about the implementation of the provisions of the Protocol in the continent.

3. Development agendas as a way of challenging the subaltern status of women's rights in Africa

Given the historical disadvantages to which women have been subjected across the world, it is no surprise that agendas and visions aiming to bring a greater development to all considered the importance of making explicit a series of goals with regards to the empowerment of women in past development agendas like the MDGs (MDG 3), as well as in current development agendas such as the AA2063 (Aspiration 6) and the SDGs (SDG5).

Both AA2063 and the SDGs illustrate the importance of gender and women's human rights to development. Agenda 2063 calls for “An Africa, whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children.”³⁵ This aspiration is made explicit via specific goals that aim to address comprehensively the development of women and children (see Table 1-right column). On the other hand, the SDGs aim to “achieve gender equality and empower all women and girls” (See Table 1- left column). Aspiration 6 (in AA2063) and Goal 5 of the SDGs have each defined a set of targets and indicators to track progress towards achieving them.

³³ World Health Organization, 2024.

³⁴ Bond, 2021, p 49.

³⁵ AU Strategy for Gender Equality & Women's Empowerment 2018-2028.

Table 1. Targets associated with SDG (Goal 5) and indicators indicators of AA2063 (asporation 6)

Sustainable Development Goals (SDGs)	Africa Agenda Aspirations and indicators (AA2063)
Achieving gender equality and empowering all women and girls.	An Africa, whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children.
End all forms of discrimination against all women and girls everywhere.	Eliminate all barriers to quality education, health and social services for Women and Girls by 2020.
Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.	Reduce 2013 levels of violence against women and Girls by at least 20%.
Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.	Reduce by 50% all harmful social norms and customary practices against women and girls and those that promote violence and discrimination against women and girls.
Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.	At least 25% of annual public procurement at national and sub-national levels are awarded to Women.
Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.	At least 30% of all elected officials at local, regional and national levels are Women as well as in judicial institutions.
Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences.	Proportion of women of reproductive age (aged 15-49 years) who have their need for family planning satisfied with modern methods.
Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.	Equal economic rights for women, including the rights to own and inherit property, sign a contract, save, register and manage a business and own and operate a bank account by 2026.
Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women.	At least 20% of women in rural areas have access to and control productive assets, including land and grants, credit, inputs, financial service and information.
Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.	End all forms of political, legal or administrative discrimination against Women and Girls by 2023.

Source: Own elaboration, based on data UNDESA for the SDGs and from UNECA for the AA2063

It is important to note, that both the AA2063 and the SDG's, make explicit the rights of children, such as the right not to be forcibly married or be subjected to genital mutilation. Both agendas also recognize that gender rights and the rights for women and children are central to sustainable development, leading to strategies to address these goals of improving the enjoyment of human rights for children and women.

Such concerns have informed particular initiatives, such as, Africa's Gender Equality and Women's Empowerment (GEWE) strategy,³⁶ developed by the African Union (AU) to ensure the inclusion of women in Africa's development. It is an example of how continental strategies have been framed in relation to development agendas such as AA2063 and the SDG's, to support the full ratification, domestication and implementation of the Maputo Protocol across AU members. Strategies such as GEWE are focused on particular interventions that aim to link development and human rights initiatives to empower women.

As the Protocol lays out the rights, duties, and responsibilities of members of the African Union, it serves as a document to account for the progress in the establishment of legal provisions which mandate the protection of the human rights of women and girls. Yet, despite the promises of this document, women's and children's rights, remain at odds with the promises of the Protocol.³⁷

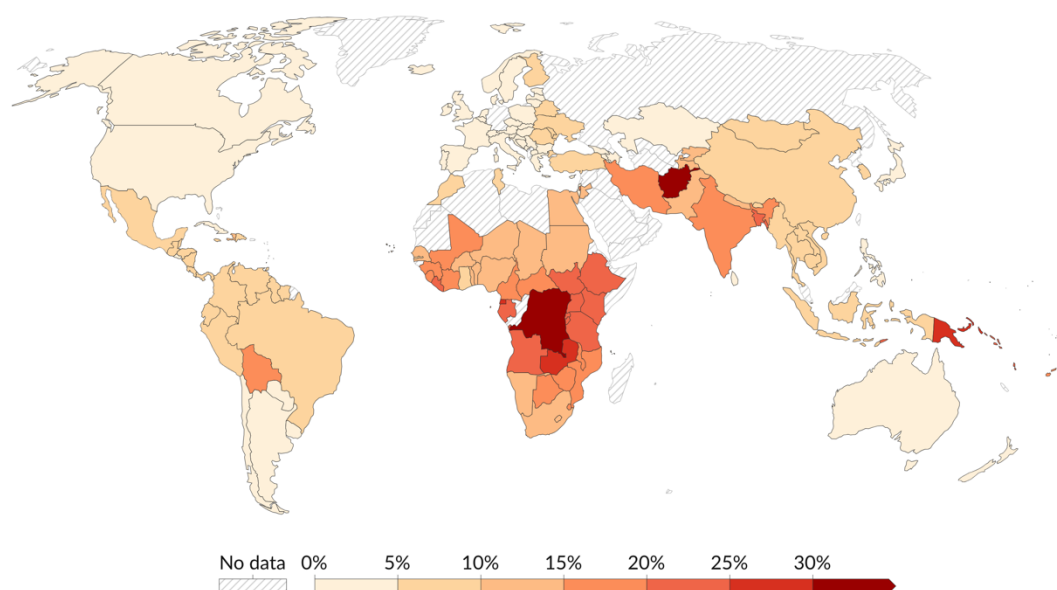
The lived experiences for women and children in the continent remain marked by marginalization along different forms and shapes. Take for example, the degree of violence that women are subjected to at home (See Figure 2). Whereas intimate partner and household violence is not endemic to Africa, the reality is that their prevalence is among the highest in the world (another continent with marked levels of gender violence is Asia).

³⁶ <https://au.int/en/articles/au-strategy-gender-equality-and-womens-empowerment#:~:text=The%20GEWE%20Strategy%20is%20a,financing%20of%20gender%20equality%20work>.

³⁷ African Union, 2024.

Figure 2. Share of women who experienced violence from an intimate partner in the World in 2018

Ever-partnered women aged over 15 years who have been subject to physical or sexual violence by a current or former intimate partner in the last 12 months. An ever-partnered woman is a woman who has had an intimate partner at any time in their life.



Source: UN Women – processed by Our World in Data

Efforts have been made to change these realities, marking some improvements. Take for example the progress in achieving an important share of seats held by women in national parliaments, regional and local bodies (Agenda 2063 aims for 50% female representation in elected offices at all levels and in managerial positions within the public and private sectors). Currently in Africa, and as reported by the AU, 25.4% of the seats in parliaments, regional and local bodies in the continent are held by women (see Figure 3).³⁸ This is disappointingly low.

Also, while symbolically important and promising, the election of women to positions of power does not mean the lived experiences of women at the receiving end of violence, intersectional inequalities such as marginalization and absence of ownership rights has changed. As Figure 3 illustrates, 28% of women were married before the age of 18 years, 8% of women were married before the age of 15 years, and 29% of women underwent female genital mutilation. While there has been progress in the advancements of legal frameworks, the absence of reproductive, sexual and the right to not to be forcibly married remains lagging. More needs to happen.

³⁸ <https://ecastats.uneca.org/unsdgsafrica/Agenda-2063>

Figure 3. Assessment of the progress of Africa with regards to some indicators from AA2063 with regards to women's and children's rights.



Source: Adapted from UNECA, 2024.

Improvements and efforts have taken place, but the inertia of the legacies of practices and the current rights of women does not warrant the optimism of some reports about the achievement of gender empowerment. For example AUDA-NEPAD reporting on Aspiration 6 of Agenda 2063 states that “remarkable progress was made in reducing the levels of sexual and physical violence against women and girls – the continental score stood at 67% of the 2019 target.”³⁹ Such statements fail to acknowledge that the goal was to reduce the levels of sexual and physical violence that departed from high levels of violence. More realistic assessments, state how the progress towards reducing female genital mutilation was relatively weak, recording a decline but still having that the proportion of girls and women aged 15-49 years who have undergone female genital mutilation was standing as being above 29.3 % of females in the continent.⁴⁰

As Figure 4 illustrates, least progress has been made in reducing the incidence of intimate partner violence and in eliminating female genital mutilation. Much more progress has been made in increasing the proportion of women in managerial positions. Overall, though, African countries are still very far from attaining the targets set for 2030, the progress with regards to SDG 5, this progress still lags significantly from the expected progress sought (if we are to achieve the 2030 targets), and in the case on the rights of reproductive health there is no data to date (yet in 2022 we observed a regression in comparison to the expected progress to have been achieved by 2022).

³⁹ AUDA-NEPAD, 2020.

⁴⁰ <https://ecastats.uneca.org/unsdgsafrica/Agenda-2063>

Figure 4. Assessment of the progress of Africa with regards to SDG 5 goals in 2023.



Source UNECA, 2024.

The continent has recorded a promising signature of different legal provisions that can enable the enjoyment of rights, making explicit the importance of accounting for the implementation of such legal provisions. This, we argue, can serve as a way to understand the extent of the progress (or their lack of progress) with regards to the human rights of women and children and their right to development in the continent.

4. The value of tracking the implementation of the Maputo protocol

Laws can facilitate the empowerment of groups and sectors within society, as they create a particular set of formal mechanisms (via law) that can enable the mobilisation of societal actors in the demand for their rights.⁴¹ International treaties such as the Maputo Protocol can provide guarantees and create institutional avenues for the realisation of human rights, and accountability with regards to the mandates countries commit to,⁴² creating venues for the implementation of development agendas. Law and the recognition of human rights, create both the jurisdiction and the jurisprudence that can enable the work of development agendas.

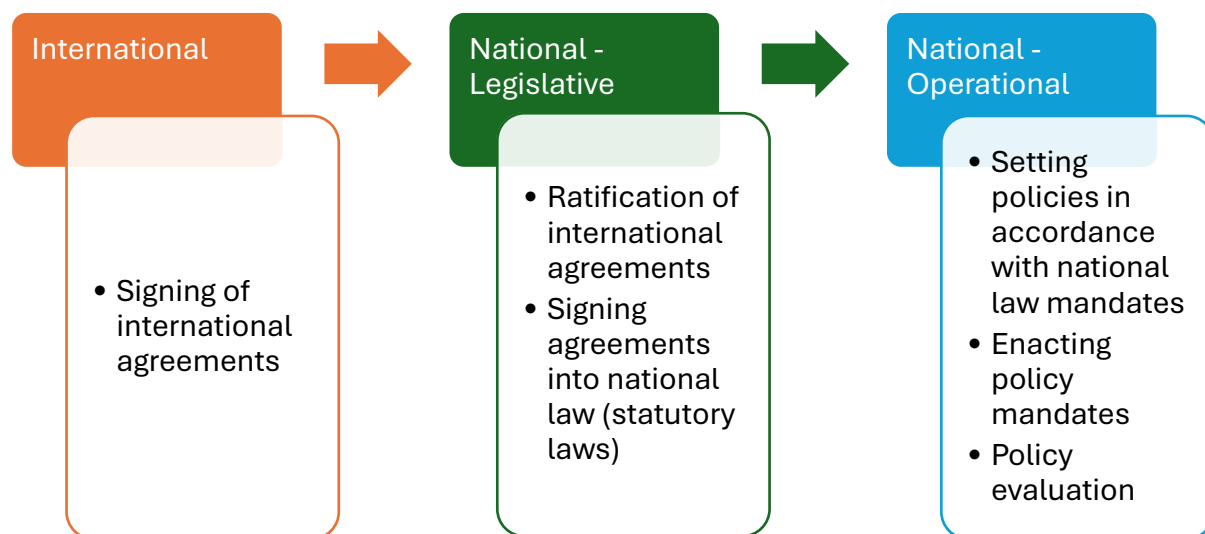
However, and as Figure 5 illustrates, the signature of international agreements does not necessarily mean local mandates are immediately changed, or that development takes place. For achieving these mandates, first it is necessary that international agreements are ratified by governments, and that these agreements are signed into national laws (statutory laws).⁴³ Yet for this legislative framework to become effective, it requires that the statutory laws, are adjusted in relation to existing legal mandates (coordinated), so policy mandates related to the work of development agendas such as AA2063 and the SDGs can take place.

⁴¹ Heymann et al., 2014.

⁴² Raub, et. al, 2016; Heymann, et al., 2015.

⁴³ Statutory laws are laws that are written or adapted by legislative bodies. For example: parliaments or congresses.

Figure 5. Representation of the sequence of localization of international agreements into local mandates

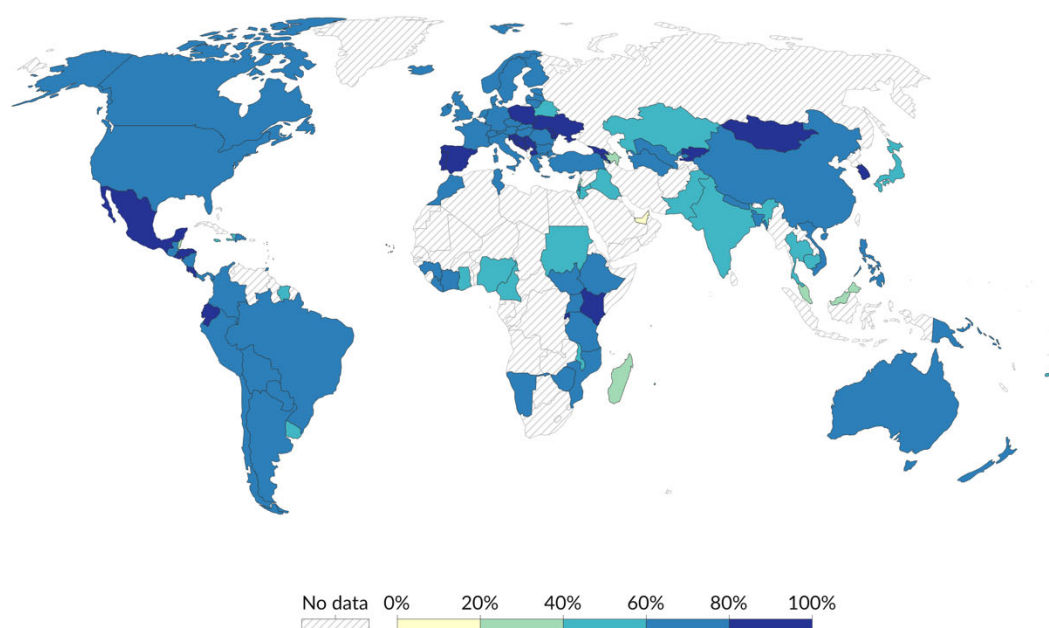


Source: Own elaboration

The comprehensiveness of the Maputo Protocol and the series of provisions it contains, constitute an important opportunity to take stock of the degree to which legal provisions protecting the rights of women and children have been established in African countries. Such assessment can enable and support different strategies and interventions that can further the development of women's and children's rights and point to possible intervention points or help us to reflect on how to operationalize existing legal mandates, as illustrated by the case of sexual and reproductive rights initiatives implemented in Congo (Hefez, et. al., 2024).

Despite this, regional and global organizations lack accurate information about the extent of legal protection of the rights of women and children in the continent. For example, according to UN Women, there is an apparent dearth of laws with regards to the implementation of legal provisions associated with gender equality in Africa as opposed to the world (see Figure 6). Such an assessment could lead us to describe the legal space of Africa as either non-existent or not conducive to the development of rights of women and children.

Figure 6. Legal frameworks addressing gender equality overall in the World in 2022



Source: Our world in DATA

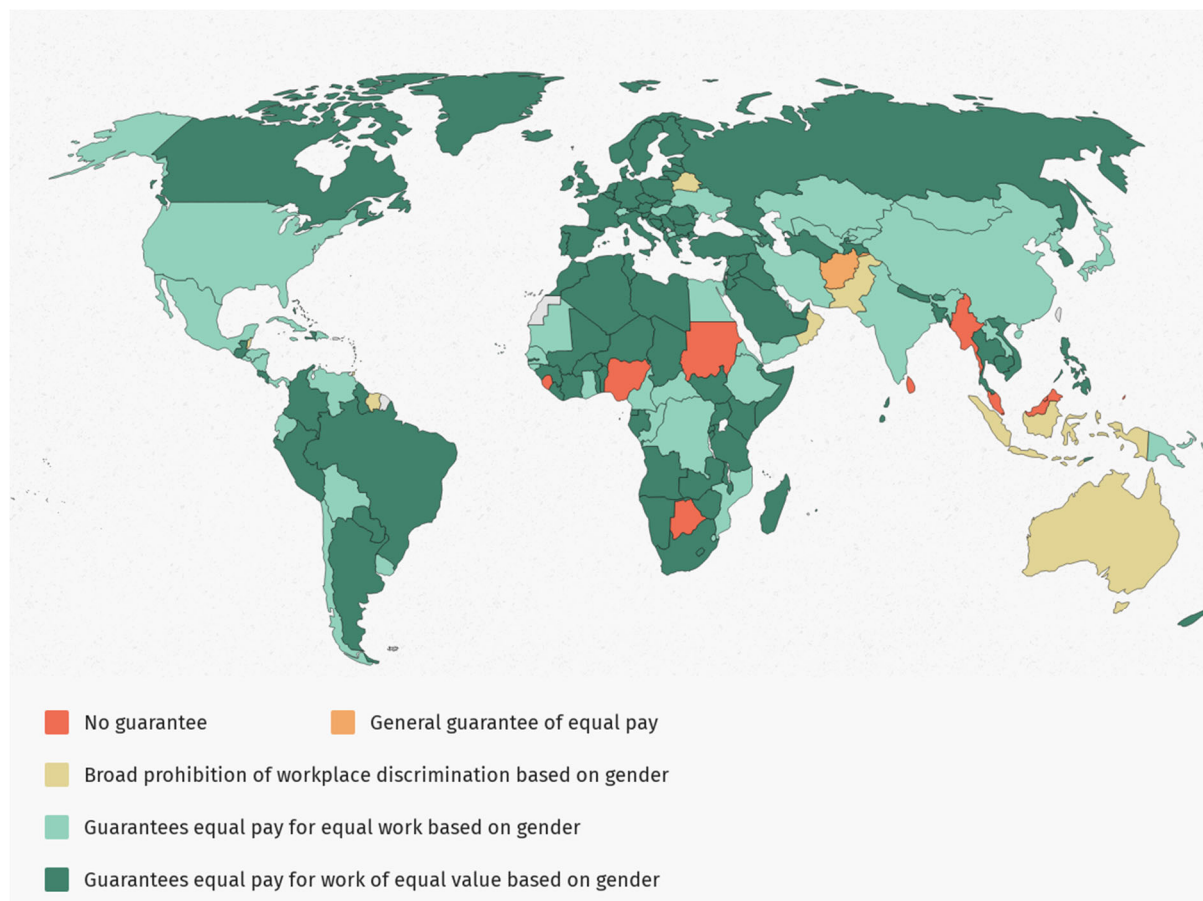
Such assessments can be inaccurate and can be counterproductive, as they could erroneously suggest that in fact there are not legal frameworks at all addressing gender inequities. Thus, in the apparent absence of such information, interventions and strategies designed to promote gender and children's rights could depart from the ill-informed assumption that there are no legal avenues or vehicles promoting women's rights in the continent, a fatalistic narrative that ignores what Africa has done (and what still must do) with regards to the empowerment of women and children, and that overlooks existing avenues that would benefit from external support as opposed as "reinventing the wheel". Should we take these assessments without validating the realities of African countries, the design and implementation of initiatives associated to both AA2063, or the SDGs will not be fit for neither context or purpose.

Thus, it is important to have more accurate information to account for the progress (or the lack of progress) with regards to the mandates and the provisions that aim to centre the human rights of women and children in Africa such as the Maputo Protocol. Accounting for legal frameworks in the continent can provide a better contextual assessment of what are the legal frameworks and the realities with regards to the recognition of human rights that could inform initiatives tailored to achieve the goals of AA2063 and the SDGs.

Take for example an assessment of whether legislation guarantees equal pay on the basis of gender, related to article XIII of the Protocol. According to Figure 6, we could get the erroneous picture that there is a dearth of protection in law with regards to the laws that can protect this right, and that legislation is lacking in the continent, misinforming thus the idea that support should be given to promote legislation to change this. However, when taking more accurate assessments, the panorama changes. As Figure 7 illustrates, the problem might not be one of legislation, or even the recognition of

rights, but rather one of implementation, operationalization and of making legal mandates a reality in a continent with high levels of informality.

Figure 7. Assessment to the degree to which legislation guarantees equal pay on the basis of gender worldwide in 2021



Source: World Policy Center⁴⁴

Assessing more carefully the constitutional rights, laws, and public policies in all African states in a range of critical areas, including education, labour conditions, adult labor and working conditions, child labour, inequality, and gender,⁴⁵ thus can help into taking a better contextual assessment of the needs and the contexts in which the aspirations and goals from the AA2063 and the SDGs are to take place with regards to the rights of children and women. Such information then becomes an important vehicle to evaluate the progress of the localization of the Maputo Protocol provisions in the continent,⁴⁶ and a tool for evaluate the degree to which the legislative framework is one that enables the rights of women and children or not.

⁴⁴ <https://www.worldpolicycenter.org/policies/does-legislation-explicitly-guarantee-equal-pay-on-the-basis-of-gender>

⁴⁵ WORLD Policy Center, 2024a

⁴⁶ WORLD Policy Center, 2024b.

By analysing existing laws in the continent, we can account for the degree to which national legislation has domesticated some of the guarantees of the Maputo Protocol. For example, we could account for how legislation has localised the mandate to not to be forcibly married, right to education and training, economic and social welfare rights, special protection of elderly women, and the special protection of women with disabilities. These would enable the evaluation of the degree of localisation of legislation of women's rights provisions with regards to different policy areas, which could relate to particular indicators and interventions related to both the AA2063 and the SDGs. Such an analysis would be invaluable for actors interested in supporting or mobilising initiatives to further particular rights for women and children in the continent, that by definition would enable the development of the continent.

Accounting for the degree of legislative localisation of the mandates, would enable a better assessment of what provisions are there, and inform what activities should be undertaken for the promotion of such laws (when it has not been coded into local law), the defence of these rights (once such rights are coded into laws), the loopholes that hinder the promulgation of such rights (for example the case of customary law), or some of the practical features that challenge the enforcement of such laws enabling the limitation of the rights of women and children.

Another option would be to have an aggregate assessment of the implementation of the Maputo Protocol across countries. This could be used to identify which policy areas have been translated into national legislation by the majority of countries, and which policy areas have not received much attention in the continent, promoting a virtuous competition across countries in the continent, or enabling coordinated advocacy from organizations across different countries. Such information can be used to illustrate how countries have performed in translating the provisions in the policy areas into national legislation, presenting a tool for advocacy and mobilisation that can place pressure on countries that are lagging on both the AA2063 and the SDGs .

5. Conclusion and work ahead

In this paper we have argued for the value of the Maputo Protocol- an African led initiative to promote the rights of women and children in the continent. We have argued for the importance of tracking the implementation of Protocol's provisions into national law as necessary for the implementation of development agendas such as AA063 and the SDGs.

The comprehensiveness of the Maputo Protocol, not only makes of it an important tool for legal mobilisation and advocacy for organizations and institutions interested in furthering the rights of women in the continent, but also a tool for monitoring the state of legal protections for women and children in Africa. This we argue is a starting point to inform initiatives aimed to support the enjoyment of human rights for these populations.

Whilst there are some signs of progress with regards to both the AA2063 and the SDGs, the reality is that the rights of women in Africa continue to lag significantly in comparison with the rest of the world. These outcomes are the result of contexts that fail to enable, limit or constrict the rights of women and children. By accounting for the degree of localisation of gender rights provisions into law across different countries, we will have a better grasp of the contexts and better information about where to

mobilise resources, actions campaigns and initiatives for enabling the right to the full access to human rights, and facilitate the achievement of different development agendas.

Law is and remains an instrument that is part of the contexts and social constructions that create and re-create repertoires of marginalisation and gendered destitution. As such, changes in these frameworks can enable the freedom and the enjoyment of development for women and children. While not sufficient by itself, legal frameworks can unlock pathways for the development of women and children.

Law thus becomes itself a means to understand and diagnose the contexts that create and recreate gender inequalities, and a way to understand the form in which we can achieve the goals sought by the SDGs and the AA2063.

Both development agendas are invaluable ways of accounting for the progress of the rights of women in the continent. However, development agendas do not take place in isolation, does not happen by decree neither by having a nicely crafted developing plan. Development, like human rights, become real in practice. This means that there is a duty for researchers, activists, governments and international organizations of being cognizant of the context in which we seek for these goals, and the forms in which through our diagnoses we can inform grounded policy actions that facilitate the attainment of these goals and the enjoyment of human rights.

Looking at the degree of localisation of the mandates of the Maputo protocol is a promising research and mobilisation agenda, which could allow us to understand: 1. What are the mechanisms that drive countries to implement new legal frameworks that enable women's rights?. 2. How do legal mandates affect the development and the rights of women and children in the continent? 3. What are the most impactful legal mandates in furthering women's and children's rights in the continent.? 4. What countries are lagging in the implementation of different provisions of the Maputo Protocol? And 5. Under what conditions are the mandates from the Protocol more effective in furthering the development of women and children?.

Such type of research can inform different actors and different initiatives and articulate the goal of enabling the rights of those who are currently marginalised.

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