

**ANALYZING THE EFFECTIVENESS OF THE PROTOCOL TO THE AFRICAN  
CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF  
WOMEN IN AFRICA (MAPUTO PROTOCOL)**

**BY**

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## DECLARATION

I, **VICTORIA AWIT BONA BUT** declare that the present work is original. It has never been presented at any other University or Institution. Where other people's works have been used, references have been provided, and sometimes, quotations made. It is in this regard that I declare that this work is originally mine. It is hereby presented in partial fulfillment of the requirements of the Bachelor of Laws (LLB) Degree in Kampala international university

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Date:  .....

## APPROVAL

This Research Dissertation titled. Analyzing ‘the effectiveness of the protocol to the African charter on human and people’s rights on the rights of women in Africa’ ( Maputo protocol) has been submitted to Kampala international university with the approval of my Supervisor.

SUPERVISOR

*Diana Putakinywa*

SIGNATURE

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(Supervisor)

## DEDICATION

To dedicate this book to the entire family members of my family mummy Mrs. Ariech Lual and daddy Mr. BonaBut Deng plus my children, Deng , Akol, Awut, Mr. Ajak Akona, Mrs. Awut Ayai Dit for their adequate support and prayers they rendered to me during my studies.

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To my classmates, Mary Tomalu Charles, Victoria Ada, Palma Akot, Emmanuela Pita Peter

At some stages, I thought it was not possible. But we made it. God always cares!

## **LIST OF ABBREVIATION**

ACHPR	African Charter on Human and Peoples' Rights
AHRLR	African Human Rights Law Report
AMISS	African Union Mission in South Sudan
CFC	Ceasefire Commission
CMC	Conflict Management Centre
CSSDCA	Conference on Security, Stability, Development and Cooperation in Africa
ECOSSOC	Economic, Social and Cultural Council
ECOWAS	Economic Community of West African States
ICCPR	International Covenant on Civil and Political Rights
IDPs	Internal Displaced Persons
JEM	Justice and Equality Movement
MAP	Millennium Action Plan
UNMRWS	United Nations Mission for the Referendum in Western Sahara
UNOMDRC Congo	United Nations Organization Mission in the Democratic Republic of the Congo
MOU	Memorandum of Understanding
NEPAD	New Partnership for Africa's Development
NGOs	Non Governmental Organization
ONUB	United Nations Operation in Burundi
PRC	Permanent Representatives Committee

## LIST OF INSTRUMENTS

Convention on the Elimination of All forms of Discrimination against Women, 1981.

The African Charter on ,1986Human. and Peoples“ Rights

The 1993 Vienna Declaration and Program of Action.

The Protocol to the African Charter on Human Africa, and 2003.

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## ABSTRACT

The study analyzed the effectiveness of the protocol to the African charter on human and people's rights on the rights of women in Africa (Maputo protocol) and the general objective of the study was to investigate the legal, structural and institutional frameworks that enhance the enforceability of human rights through the court of justice. The specific objectives of the study were : To Examine the legal frame work of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. (Maputo protocol), To examine the mechanisms used during the effectiveness of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. (Maputo protocol), To Examine the challenges to the effectiveness of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. (Maputo)

The findings of the study revealed that the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) has been provided with the relevant architecture in order to perform its obligations. as demonstrated in previous chapters, the maintenance of national and international peace and security is one of the most important obligations of the protocol to the African charter on human and peoples' rights on the rights of women in Africa.

The Conclusion revealed that The ACHPR protects peoples' right to national and international peace and security. the concern African leaders have about peace and security led to their inclusion as an aim of the new continental organization , the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol). However , national and international peace and security are not always considered and addressed as human rights.

The recommendation said that the future looks bright for Africans especially those who are the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) up in conflict zones needing protection. the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) has already set up its guiding principles and has set up a peace and security architecture which seems to accommodate the implementation of its r2p obligations. However, they need to ensure a greater harmonization and coherence between its institutions and the sub-regional bodies.

## CHAPTER ONE

### INTRODUCTION

#### 1.0 Introduction

This chapter covers introduction and it covers the background to the research, the statement of the problem, objectives and significance of the study, research questions, the literature review, scope of the study and the methodology used.

#### 1.1 Back ground of the study

The Protocol is the only treaty that specifically addresses women's rights in relation to HIV/AIDS and identifies protection as a key component of women's sexual and reproductive rights. It also guarantees rights to affordable and accessible health services, articulates a State's duty to protect girls and women from practices and situations that increase their risk of infection such as child marriage, sexual violence, FGM etc. (Kombo et al, 2013: 20)"

The Protocol also adopts language and concepts from other regional and international treaties by addressing particular aspects that would have remained unclear. A good example is the United Nations Security Council Resolution 1,325<sup>1</sup> (UNSCR 1,325, October 2000) on 'Women, Peace and Security', which not only calls for the protection of women against violence, but goes further to emphasize the key role of women in conflict prevention and resolution, peacekeeping and building sustainable peace.

#### *SCOPE OF WOMEN'S RIGHTS UNDER THE PROTOCOL<sup>2</sup>*

The Protocol provides for the following four clusters of rights of women in Africa: - survival, development, protection and participation rights.

#### *SURVIVAL RIGHTS OF WOMEN<sup>3</sup>*

Survival rights issues in adolescence and for adult women in Africa include the following: - rising HIV prevalence, linked to behavioural factors and inadequate awareness; early pregnancy and

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<sup>1</sup> United Nations Security Council Resolution

<sup>2</sup> Scope of women's rights under the protocol

<sup>3</sup> Survival rights of women.

associated risks; high maternal mortality ratio; poor reproductive health services; unsafe abortion and related legal issues; impact of armed conflict and violence on women.

Africa has the worst indicators of women's quality of life and health, particularly of reproductive health, of any world region. These indicators include the highest number of HIV positive women and the highest infant, maternal, and HIV – related death rates world wide. The ability of a woman to make her own decisions regarding her body and her reproductive life are key to improving these indicators. It is against this background that the Protocol provides for respect for women's rights to life, integrity and security of her person, and requires states Parties to educate, prohibit and punish perpetrators of all forms of exploitation, cruel, inhuman or degrading treatment and punishment. States Parties are also obliged to take all appropriate and effective measures as may be necessary to prevent and eradicate all forms of violence against women<sup>4</sup>. The protocol provides for “the rights to health and access to health care services, including women's sexual and reproductive health rights<sup>5</sup>. States Parties are required to promote and respect women's right to control their fertility; to decide whether to have children, the number of children and the spacing of children; the right to choose any method of contraception; the right to self – protection and to be protected against sexually transmitted infections, including HIV – AIDS; the right to be informed on one's health status and on that of partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognized standards and best practices; and the right to have family planning education.”

The protocol is the first human rights instrument to expressly articulate a woman's right to abortion in specified circumstances. No other human rights treaty explicitly articulates women's rights to abortion. The protocol is the only treaty to specifically address women's rights in relation to HIV- AIDS, and to identify protection from HIV – AIDS, as a key component of women's sexual and reproductive rights. In addition to guaranteeing women's right to protection from sexually transmitted infections<sup>6</sup>, including HIV \_ AIDS, the protocol guarantees women's rights to adequate, affordable, and accessible health services. It also articulates a state's duty to

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<sup>4</sup> States Parties are also obliged to take all appropriate and effective measures as may be necessary to prevent and eradicate all forms of violence against women.

<sup>5</sup> The protocol provides for “the rights to health and access to health care services, including women's sexual and reproductive health rights.

<sup>6</sup> . In addition to guaranteeing women's right to protection from sexually transmitted infections.

protect girls and women from practices and situations that increase their risk of infection, such as child marriage, wartime sexual violence, and FC/FGM. The protocol guarantees women's right to family planning education, 20 thus reaffirming the right to family planning explicitly recognized in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)<sup>7</sup> and the UN Convention on the Rights of the Child (CRC)<sup>8</sup>

### ***PROTECTION RIGHTS OF WOMEN<sup>9</sup>***

Protection rights issues for the girl-child and adult women in Africa include the following: - protection against discriminatory, harmful and exploitative (economic, labour and sexual) practices; protection from physical or moral danger and all forms of violence against women. For example, FC/FGM, Forced/Child marriage, rape, trafficking, forced labour, and inadequate legal protection.

The protocol goes beyond existing global and regional treaties by affording specific legal protection against gender-based violence, in both the public and private sphere, including domestic abuse and marital rape. The protocol significantly advances women's right by relocating everyday abuses in the realm of rights violations for which states must be held accountable.<sup>10</sup> In addition, the protocol is unique in its express guarantee of women's right to be protected from threats of both physical and verbal violence. None of the existing global human rights treaties defines or openly address violence against women. This gap in the protection afforded to women was, in part, due to a historic legal distinction between rights violations that occur in the public sphere and those that occur in the private sphere. Until relatively recently, the so-called "private" violence of domestic abuse, marital rape, and harmful traditional practices escaped specific mention and legal scrutiny under international, regional, and national laws. The protocol affirms and reinforces the language of CEDAW, which also requires states parties to take all appropriate steps to eliminate social and cultural patterns and practices that are discriminatory to women.<sup>11</sup> The protocol's provisions on harmful practices also affirm existing provisions in the CRC and the

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<sup>7</sup> UN Convention on the Rights of the Child (CRC)

<sup>8</sup> the Convention on the Elimination of all forms of Discrimination against Women

<sup>9</sup> PROTECTION RIGHTS OF WOMEN

<sup>10</sup> The protocol significantly advances women's right by relocating everyday abuses in the realm of rights violations for which states must be held accountable

<sup>11</sup> The protocol affirms and reinforces the language of CEDAW, which also requires states parties to take all appropriate steps to eliminate social and cultural patterns and practices that are discriminatory to women.

African Charter on the Rights and Welfare of the Child, which both prohibit practices prejudicial to the well-being of the child. Other global standards guaranteeing the rights to life, liberty, security of the person, and health have also been interpreted to include women's rights to be protected from harmful practices.

The protocol's provisions on harmful practices lay to rest arguments that customary and traditional practices can prevail over the rights of women under the African Charter.<sup>12</sup> Under that instrument, the lack of specificity on discrimination against women has left them vulnerable to arguments that "cultural values" and community norms should prevail, even when physical harm results. Since women are underrepresented in the Judiciary and legal community, these arguments have rarely been rebuffed. The protocol affirms the primacy of women's rights to non-discrimination and reproductive self-determination under regional law.<sup>13</sup> It requires states to eliminate cultural and traditional practices that discriminate against women and, in this respect, the protocol makes clear what the African Charter omitted: - that the legal protection of tradition ends where discrimination against women begins. The protocol further provides that "women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies." The protocol is unique among global human rights treaties in expressly articulating girls' and women's right to be protected from sexual harassment as a key component of their right to equality in education. The protocol also affirms women's right to be free from sexual harassment as a basic social and economic right and as a key component of their right to work.<sup>14</sup>

### ***THE RATIONALE BEHIND THE PROTOCOL***

Although the African Charter is the primary treaty providing a framework for human rights in the region, its provisions in women's rights are largely seen as ineffective and inadequate. The charter recognizes and affirms women's rights in three provisions: - Articles 2, 3 and 18(3);<sup>15</sup> and yet the Protocol notes that "despite the ratification of the African Charter, women in Africa still

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<sup>12</sup> The protocol's provisions on harmful practices lay to rest arguments that customary and traditional practices can prevail over the rights of women under the African Charter.

<sup>13</sup> The protocol affirms the primacy of women's rights to non-discrimination and reproductive self-determination under regional law.

<sup>14</sup> The protocol also affirms women's right to be free from sexual harassment as a basic social and economic right and as a key component of their right to work.

<sup>15</sup> Articles 2, 3 and 18(3)

continue to be victims of discrimination and harmful practices". The Protocol, which resulted from years of activism by women's rights supporters in the region, has attempted to reinvigorated the African Charter's commitment to women's equality by adding rights that were missing from the charter and clarifying governments' obligations with respect to women's rights. Only one out of the more than sixty articles in the African Charter makes specific reference to women.

The Africa Charter has been interpreted to protect customary and religious laws that violate women's rights, such as the rights to equality and non-discrimination; to life, liberty, and security of the person; and to protection from cruel and degrading treatment. In a recent ruling by the Zimbabwean Supreme Court, for example, the court held that domestic laws discriminating against women carry greater weight than international instruments protecting women from discrimination.<sup>16</sup> And in considering whether a woman could inherit her father's estate, the court relied on traditional conceptions of the family and the male patriarch – as stressed under the African Charter – as the sources of women's status, rather than on the rights and standards guaranteed under international legal instruments. Advocates for women's right recognized these weaknesses and sought to address them by adopting an additional protocol that focused solely on women's rights. In April 1997, a draft protocol was created and was finally adopted some six years later.<sup>17</sup> The adoption of the protocol signifies a renewed political commitment to the advancement of women's rights as human rights in Africa. Furthermore, attempts to strengthen the African human rights system through the reinvigorated African Union, which replaced the Organization of African Unity, and through the creation of the African Court on Human and People's Rights (the African Court), should embolden advocates to press for more vigorous enforcement of the Protocol.<sup>12</sup>

### **Maputo protocol<sup>18</sup>**

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted on the 11<sup>th</sup> day of July 2003 by Heads of State and Government of the

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<sup>16</sup> The court held that domestic laws discriminating against women carry greater weight than international instruments protecting women from discrimination.

<sup>17</sup> In April 1997, a draft protocol was created and was finally adopted some six years later.

<sup>18</sup> Maputo protocol, The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted on the 11<sup>th</sup> day of July 2003 by Heads of State and Government of the African Union protocol to the African charter on the human and people's rights on the rights of women during the second ordinary summit of the protocol to the African charter on the human and people's rights on the rights of women convened in Maputo

African Union protocol to the African Charter on the human and people's rights on the rights of women during the second ordinary summit of the protocol to the African Charter on the human and people's rights on the rights of women convened in Maputo, Mozambique-hence the name the Maputo protocol<sup>2</sup>. Fifteen ratifications are required for the protocol to enter into force. the adoption of the protocol was pushed by widespread sentiments that African women continued to suffer human rights violations simply be the protocol to the African charter on the human and people's rights on the rights of women they were women and the existing guarantees for the protection of their rights were felt to be inadequate. The adoption of the Protocol was therefore a landmark step in enhancing the promotion and protection of women's human rights on the continent through providing a comprehensive legal framework for holding African governments accountable for their violation.

The Protocol recognizes and guarantees a wide spectrum of women's civil and political rights as well as economic social and cultural rights. It thus reaffirms the universality, indivisibility and interdependency of all internationally recognized human rights of women<sup>19</sup>.

#### *Summary of Guarantees under the Protocol*

The Protocol has a preamble and 32 articles<sup>20</sup> and is aimed to give greater attention to the human rights of women in Africa.<sup>21</sup> It aspires to promote the principles of equality, peace, freedom, dignity, justice, solidarity and democracy. The Protocol defines what constitutes discrimination and violence against women and proceeds to outline measures which states parties are required to take in both the public and private spheres to put to an end such practices. The Protocol thus requires states to adopt legislative, institutional and other measures to eliminate all forms of discrimination against women.<sup>22</sup> States parties must therefore integrate a gender perspective in their policy decisions, legislation, development plans and activities. States are also called upon to play a proactive role in order to eliminate harmful cultural, traditional and other practices based on the idea of the inferiority or superiority of either of the sexes, or on stereotyped roles for men

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<sup>19</sup> The Protocol recognizes and guarantees a wide spectrum of women's civil and political rights as well as economic social and cultural rights. It thus reaffirms the universality, indivisibility and interdependency of all internationally recognized human rights of women

<sup>20</sup> Articles 32 the Protocol has a preamble aspires to promote the principles of equality, peace, freedom, dignity, justice, solidarity and democracy

<sup>21</sup> The Protocol has a preamble and 32 articles and is aimed to give greater attention to the human rights of women in Africa.

<sup>22</sup> The Protocol thus requires states to adopt legislative, institutional and other measures to eliminate all forms of discrimination against women.

and women.

The Protocol calls for the adoption and implementation of measures to: -Prohibit exploitation or Degradation of Women -Protect women from all forms of violence whether sexual or verbal, and whether in public or private - Generally to prevent, punish and eradicate violence against women -Eradicate elements and stereotypes in traditional and cultural beliefs, which legitimize and exacerbate violence against women - Prevent and condemn trafficking in women while prosecuting the perpetrators of such acts -Prohibit medical or scientific experiments on women without their informed consent. On the subject of Female Genital Mutilation, the Protocol specifically requires States to prohibit and condemn practices such as “female genital mutilation, scarification, medicalisation and Para-medicalisation of female genital mutilation”<sup>23</sup>. These practices are deemed to negatively affect the human rights of women and are contrary to internationally accepted standards.

The Protocol further requires that States take measures to ensure that women and men enjoy equal rights and are regarded as equal partners in marriage<sup>23</sup>. Marriages that take place without the free and full consent of both parties are outlawed while the minimum age of marriage for women is set at 18 years of age. The Protocol therefore encourages monogamy as the preferred form of marriage.

The Protocol also requires states parties to respect and ensure respect for the rules of international humanitarian law applicable in situations of armed conflict which particularly affect women<sup>24</sup>. It lays added emphasis on the protection of women seeking asylum, refugees, returnees and internally persons against all forms of violence. Further, it stipulates that rape and other forms of sexual exploitation are war crimes and crimes against humanity and therefore suspected perpetrators ought to be brought to justice before a competent criminal jurisdiction. The Protocol then urges states parties to ensure that no girls especially children under the age of 18 years take part in hostilities.<sup>25</sup> States parties are also required to: -guarantee equal opportunity and access to women in the sphere of education and training -eliminate all stereotypes in text books, syllabuses and the media -protect women, especially the girl child from all forms of abuse -provide for

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<sup>23</sup> The Protocol further requires that States take measures to ensure that women and men enjoy equal rights and are regarded as equal partners in marriage

<sup>24</sup> The Protocol also requires states parties to respect and ensure respect for the rules of international humanitarian law applicable in situations of armed conflict which particularly affect women

<sup>25</sup> The Protocol then urges states parties to ensure that no girls especially children under the age of 18 years take part in hostilities.

sanctions against suspected perpetrators of such practices-provide access to counseling and rehabilitation services to women who suffer abuses and sexual harassment integrate gender sensitization and human rights education at all levels of the education curricula -promote literacy among women.

The Protocol contains a huge array for protection of economic, social and cultural rights<sup>6</sup> of women the most important of which is the guarantee to women of the freedom to choose their occupation and all their human rights as recognized by international conventions. States are therefore required to create conditions to promote and support the occupations and activities of women and further to punish and prohibit all forms of exploitation of children, especially the girl child. In a nutshell, the Protocol calls on States to take proactive measures to recognize the economic value of the work of women in the home<sup>26</sup>.

One of the most important innovations of the Protocol is the requirement that states extend protection to widows by ensuring they are not subjected to inhuman, humiliating or degrading treatment<sup>8</sup>. This provision further requires that a widow should Protocol to the African charter on the human and people's rights on the rights of women automatically became the guardian and custodian of her children after the death of her husband unless this is contrary to the interest and the welfare of the children. It guarantees the right of a widow to remarry and in such event, to marry a person of her choice. The widow should also have the right to an equitable share in the inheritance of the property of her husband. There is a further requirement that states parties ensure that men and women enjoy the right to inherit in equitable shares, their parents' properties. Lastly, the Protocol makes special provision for the protection of elderly women regarding their physical, economic and social needs and especially to ensure their right to freedom from violence<sup>10</sup>. States must also ensure the protection of women with disabilities and adopt measures to facilitate their access to employment, professional and vocational training<sup>27</sup>

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<sup>26</sup> The Protocol calls on States to take proactive measures to recognize the economic value of the work of women in the home

<sup>27</sup> The Protocol makes special provision for the protection of elderly women regarding their physical, economic and social needs and especially to ensure their right to freedom from violence<sup>10</sup>. States must also ensure the protection of women with disabilities and adopt measures to facilitate their access to employment, professional and vocational training.

### *Implementation Mechanism*

*Article 26*<sup>28</sup> calls on States to ensure the implementation of the Protocol at national level through the submission of periodic reports in accordance with *Article 62*<sup>29</sup> of the African Charter on Human and Peoples' Rights. They must indicate the legislative and other measures undertaken for the full realization of the rights enumerated in the Protocol. The African Court on Human and Peoples' Rights is the judicial body tasked with matters of interpretation arising from the application and implementation of the Protocol. Since the African Court is not yet functional-the requisite ratifications for establishment of the Court having been achieved just a short while ago-the African Commission, established under *Article 30*<sup>30</sup> of the African Charter- is for the time being seized with matters of interpretation.

The integration of the Protocol into the African Charter will ensure that women whose rights have been violated under the Protocol will have a final recourse to the African Commission and the African Court for the vindication of these rights. Furthermore, individuals other than the victims themselves and human rights NGOs may bring a complaint on behalf of victims. This is of crucial importance Protocol to the African charter on the human and people's rights on the rights of women's of the political, economic, social and cultural factors that often restrict access by women to information and to practical opportunities to claim their rights.

Therefore research decided to research about the effect effectiveness of the protocol to the African charter and Maputo protocol on human and people's right

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<sup>28</sup> *Article 26* calls on States to ensure the implementation of the Protocol at national level through the submission of periodic reports

<sup>29</sup> *Article 62* of the African Charter on Human and Peoples' Rights.

<sup>30</sup> *Article 30* of the African Charter- is for the time being seized with matters of interpretation.

## 1.2 Problem statement

The reporting system under the African Charter has since inception been largely characterized by failure to report on the part of many state parties. In this respect low recently noted as follows: The failure of state parties to submit reports or to do so within the time frame specified in the Charter is merely one of the problems hindering the effective functioning of the state reporting system. The African Commission's outline on status of submission of state reports shows that as at May 2003<sup>31</sup>, out of approximately 320 reports that were due from state parties as a whole, only 15 percent had been submitted to the Commission<sup>7</sup>. In addition, at least 19 countries had not submitted any report at all. This trend of infrequent reporting is today still a major issue. For instance, Uganda and Zambia have just recently submitted their first periodic and initial reports, respectively despite the fact they ratified the African Charter on 10 May 1986 and 10 January 1984<sup>32</sup>. Uganda in its report acknowledges the late submission by stating as follows: Given that we have three pending reports, Uganda humbly requests the Commission to grant us the indulgence of presenting this report as an amalgamated one to cover the outstanding reports as indicated in the above mentioned letter. We sincerely apologies for any inconveniences protocol to the African charter on the human and people's rights on the rights of womensed. The subject reports of Uganda and Zambia will be examined by the African Commission at its 40<sup>th</sup> ordinary session scheduled to take place from 15 to 29 November 2006. (The African Commission's report at May 2003)

Another related problem is inadequate reporting. Viljoen outlines this problem in the following manner. When reports were prepared, indications are that in most instances they were not the product of serious introspection, but rather the formalistic fulfillment of what was regarded as a bure Protocol to the African charter on the human and people's rights on the rights of womencratic obligation. Odinkalu sums up the problems of infrequent and inadequate reporting under the African Charter as follows: The African Charter mechanisms are uniquely reliant on the state parties and non-state entities such as NGOs and individual victims and advocates for their deployment and efficacy. Unless the Commission receives periodic reports, the reporting procedure in Article 62 of the Charter is of little use. Even when they do so, states may well choose to prepare and submit scanty or uninformative reports, thereby calling the credibility and

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<sup>31</sup> The African Commission's outline on status of submission of state reports shows that as at May 2003

<sup>32</sup> Uganda and Zambia have just recently submitted their first periodic and initial reports, respectively despite the fact they ratified the African Charter on 10 May 1986 and 10 January 1984

efficacy of the entire procedure into question. (Article 62 of the Charter)<sup>33</sup>

The African Charter mechanisms are uniquely reliant on the state parties and non-state entities such as NGOs and individual victims and advocates for their deployment and efficacy. Unless the Commission receives periodic reports, the reporting procedure in Article 62 of the Charter is of little use. Even when they do so, states may well choose to prepare and submit scanty or uninformative reports, thereby calling the credibility and efficacy of the entire procedure into question.

### **1.3 Purpose of the study**

The purpose of this study is to analyze the effectiveness of the African charter on human and people's rights .

### **1.4.0 General Objectives of the Study.**

The general objectives of the study are to investigate the legal, structural and institutional frameworks that enhance the enforceability of human rights through the court of justice.

#### **1.4.1 Specific Objectives of the Study**

- (i) To Examine the legal frame work of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. (Maputo protocol)
- (ii) To examine the mechanisms used during the effectiveness of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. (Maputo protocol)
- (iii) To Examine the challenges to the effectiveness of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. ( Maputo protocol)

#### **1.4.2 Research questions**

- (i) To Examine the legal frame work of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. (Maputo protocol)

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<sup>33</sup> Article 62 of the Charter

- (ii) To examine the mechanisms used during the effectiveness of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. (Maputo protocol)
- (iii) To Examine the challenges to the effectiveness of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. ( Maputo protocol)

### **1.5. Scope of the Study**

The study focused on analyzing the effectiveness of the African chart on human and people's rights and examines the legal frame work of the African charter on the human and people's rights, examines the objectives, mandate and processes of the African charter on human and people's rights in relation to the structure's potential contribution to addressing the problems of infrequent and inadequate reporting under the charter and the suggest the possible measures and recommendations on how the African charter on human and people's rights and the African commission can coordinate in order to address the problems in issue

### **1.6. Significance of the Study**

The research is considered to have its own significance. Among others:

To find the possible ways of protection and enforcement mechanisms of human rights through Regional economic communities and the African Human Rights institutions;

It is hoped to contribute as a material for further study in the area of Regional economic communities and human rights in Africa, in general and protection of human rights through the Courts and Tribunals of Regional economic communities in particular; to initiate people to make study on the area of Regional economic communities and their roles in the promotion, protection and enforcement of human rights; intended to show the legal differences and gaps of the Regional economic communities, particularly ECOWAS and SADC communities, and the African charter on human and people's rights ; and to suggest or recommend the possible solutions that the judicial bodies of Regional economic communities should follow to enhance their protection and enforcement of human rights in the continent in line with the African charter on human and people's rights .

### 1.7. Limitations of the Study

The researcher of this thesis expects to be faced with a number of limitations and challenges. Although every research has its own limitations, it is hardly to state the entire list of elements, which have been faced with as limitations of this research.

**Material Challenges:** although it is essential to get different sources that serve as secondary qualitative or quantitative data, the Faculty Library does not have enough reading materials, and Internet service that are conducive and easily accessible to the researcher. The Law Library does not have reserved place and proper access to websites.

**Financial Challenge:** Shortage of financial provision to cover the existing cost of inflation was another problem.

**Technical Challenge:** Protocol to the African charter on the human and peoples rights on the rights of women's of the financial shortage and the uneasily accessibility of the judicial bodies of Regional economic communities as well as the African charter on human and people's rights , the researcher was forced to depend on secondary sources.

Access to important primary documents of the Regional economic communities is thus, the major challenge that contributes for the limitations of the study. Though efforts to collect primary documents were made, to some extent, reliance is placed on secondary materials available at the websites of the institutions. There is also difficulty in gaining access to up to date materials and cases since the websites are not updated regularly. Reliance is also placed on scholarly materials written on the Regional economic communities. These and other issues are mentioned as limitations.

### Methodology

The study shall include literature review, based on library research on the subject as well as the internet. International and regional human rights instruments shall also be relied upon together with the African charter on human and people's rights primary documents.

## 1.8 LITERATURE REVIEW

Mugwanya<sup>34</sup> identifies some reasons for infrequent reporting under the African Charter as, general lack of political will on the part of states, the burden of filing reports under other human

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<sup>34</sup> Mugwanya identifies some reasons for infrequent reporting under the African Charter as, general lack of political will on the part of states, the burden of filing reports under other human rights treaties apart from the Charter, and lack of coordinated effort between state departments

rights treaties apart from the Charter, and lack of coordinated effort between state departments. He suggests that the African Commission should 'request state parties with overdue reports to submit reports presented to UN treaty bodies, examine them and seek clarification or supplementary reports where necessary.'<sup>35</sup>

Quashigah<sup>36</sup> also identifies lack of political will on the part of state parties as a major protocol to the African charter on the human and people's rights on the rights of women's of irregular submission of reports. He proposes the development of procedures like those under the UN 'that enable the examination of a country's situation even when no report has been submitted. He also suggests exertion of pressure on governments to submit reports, by national human rights institutions, and also the Pan-African Parliament.<sup>37</sup> Identifies protocol to the African charter on the human and people's rights on the rights of women's of infrequent reporting similar to those advanced by Mugwanya. He emphasizes that commissioners should coax their own countries' inactive governments into compliance. He also suggests that commissioners generally can encourage states to submit reports while on promotional visits

Quashigah<sup>38</sup> identifies lack of training of government officials involved in the country report drafting process as a major protocol to the African charter on the human and people's rights on the rights of women's of inadequate reporting.<sup>24</sup> He suggests the development of a report form by the African Commission that would serve as guidance to reporting officers in the preparation of reports.<sup>25</sup>

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<sup>35</sup> Mugwanya suggests that the African Commission should 'request state parties with overdue reports to submit reports presented to UN treaty bodies, examine them and seek clarification or supplementary reports where necessary

<sup>36</sup> Quashigah proposes the development of procedures like those under the UN 'that enable the examination of a country's situation even when no report has been submitted and suggests exertion of pressure on governments to submit reports, by national human rights institutions, and also the Pan-African

<sup>37</sup> Parliament. Identifies protocol to the African charter on the human and people's rights on the rights of women's of infrequent reporting similar to those advanced by Mugwanya.

<sup>38</sup> Quashigah identifies lack of training of government officials involved in the country report drafting process as a major protocol to the African charter on the human and people's rights on the rights of women's of inadequate reporting.<sup>24</sup> He suggests the development of a report form by the African Commission that would serve as guidance to reporting officers in the preparation of reports

Quashigah's suggestion of involvement of the pan-African parliament). In this regard, this paper as mentioned above, shall discuss the African charter on human and people's rights, as an Protocol to the African charter on the human and people's rights on the rights of women structure that has the potential to effectively coordinate with the African commission to help address the problems in issue.

## **1.9 Chapterisation.**

The dissertation is divided into five chapters.

**Chapter one;** The general introduction and it covers the background to the research, the statement of the problem, objectives and significance of the study, research questions, the literature review, scope of the study and the methodology used.

**Chapter two;** Examines the legal frame work of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. (Maputo protocol)

**Chapter three;** Examines the mechanisms used during the effectiveness of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. (Maputo protocol)

**Chapter four;** Examine the challenges to the effectiveness of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. (Maputo protocol)

**Chapter five;** summary, conclusions and recommendations of the study findings

## CHAPTER TWO

### INTRODUCTION

#### THE LEGAL FRAME WORK OF THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLE (MAPUTO PROTOCOL) S' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA.

##### 2.0 Introduction.

This chapter discusses the legal frame work of the **protocol** to the African charter on human and people (Maputo protocol) s' rights on the rights of women in Africa.

##### 2.1 Current legal framework for the promotion and protection of human rights in Africa

###### *General State Obligations: Respect, protect, promote and fulfill.*

Article 14 (1) (d) and (e), like any other human rights provision, imposes four sets of general obligations on States Parties namely to respect, protect, promote and fulfill.

The obligation to respect in relation to Article 14 (1) (d) & (e) requires States to refrain from interfering directly or indirectly with the rights to self-protection, to be protected, and the right to be informed on one's health status and the health status of one's partner.

The obligation to protect in relation to Article 14 (1) (d) and (e) requires States to take measures that prevent third parties from interfering with these rights. Special attention, in the implementation of this obligation, should be given to action by third parties that may impact on the right to sexual and reproductive health of all women, including those mentioned under paragraph 14 above.

The obligation to promote in relation to Article 14 (1) (d) and (e) requires States to create the legal, social and economic conditions that enable women to exercise their rights in relation to sexual and reproductive health. This involves engaging in sensitization activities, community mobilization, training of healthcare workers, religious, traditional and political leaders on the importance of the right to protection and to be informed on one's status and that of one's partner.

The obligation to fulfill in relation to Article 14 (1) (d) and (e) requires States to adopt all the necessary measures, including allocation of adequate resources for the full realization of the right to self-protection and to be protected and the right to be informed on one's health status and the health status of one's partner.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) is the first international legally binding human rights instrument to recognize the intersection between women's human rights and HIV. In Article 14<sup>39</sup> (1) (d) and (e), the Maputo Protocol lays down women's right to self-protection and to be protected from HIV infection, as well as their right to be informed of their HIV status and the HIV status of their partners in accordance with international standards and practices in force. As such, the Maputo Protocol is therefore, in practice, an important tool towards the alleviation of the disproportionate effect of the HIV pandemic on the lives of women in Africa.

Even though considered as a landmark, the provisions of the Maputo Protocol on HIV are not very explicit on the measures to be taken by States Parties to ensure the full implementation of women's rights to sexual and reproductive health.

However, in order for States Parties to effectively implement the provisions of Article 14<sup>40</sup> (1) (d) and (e), with a view to giving full effect to the rights enshrined, it is important that the nature and scope of their obligations, as well as the normative content of these provisions, are clearly understood.

The Protocol was adopted by the African Union in 2003<sup>41</sup>, and entered into force in 2005. It complements the African Charter by expanding the substantive protection of women's rights in Africa, including by explicitly providing for their health and reproductive rights. Under the Protocol, the term 'women' includes girls.

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<sup>39</sup> In Article 14(1) (d) and (e), the Maputo Protocol lays down women's right to self-protection and to be protected from HIV infection, as well as their right to be informed of their HIV status and the HIV status of their partners in accordance with international standards and practices in force.

<sup>40</sup> Article 14(1) (d) and (e), with a view to giving full effect to the rights enshrined, it is important that the nature and scope of their obligations, as well as the normative content of these provisions, are clearly understood.

<sup>41</sup> The Protocol was adopted by the African Union in 2003

According to available data, women in Sub-Saharan Africa are at a disproportionate risk of HIV infection. Most recent figures indicate that women comprise 59% of people living with HIV in this region. In Sub-Saharan Africa, young women aged 15 to 24 years are as much as eight times more likely than men to be living with HIV. Given the susceptibility of women to HIV and related rights abuses in Africa, the African Commission recognizes that the societal context based on gender inequalities, power imbalances and male dominance has to be addressed and transformed in order for women to meaningfully claim and enjoy freedom from violence, abuse, coercion and discrimination.

According to the African Commission there are multiple forms of discrimination based on various grounds such as: race, sex, sexuality, sexual orientation, age, pregnancy, marital status, HIV status, social and economic status, disability, harmful customary practices and/or religion. In addition, the African Commission recognizes that these forms of discrimination, individually or collectively, prevent women from realizing their right to self-protection and to be protected.

The African Commission recognizes that women in Africa have the right to the highest attainable standard of health which includes sexual and reproductive health and rights. Amidst high prevalence and significant risk of HIV exposure and transmission, women are unable to fully enjoy these rights. Notably, the limitation of women's rights in the context of sexual and reproductive health increases the likelihood to HIV exposure and transmission. This is further compounded for women living with HIV whose access to these rights is severely limited or denied as a result of HIV-related discrimination, stigma, prejudices and harmful customary practices.

Addressing the issue of HIV for the first time in an international legally binding instrument, Article 14<sup>42</sup> (1) (d) and (e) of the Protocol specifically deals with HIV. While the African Commission welcomes the explicit mention of HIV, it notes that the provisions are framed in open-ended language and in broad terms, and that reference is made to international standards without stipulating their content. There is, therefore, a need to adopt these General Comments to guide States action in line with these provisions of the Protocol.

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<sup>42</sup> Article 14(1) (d) and (e) of the Protocol specifically deals with HIV. While the African Commission welcomes the explicit mention of HIV, it notes that the provisions are framed in open-ended language and in broad terms, and that reference is made to international standards without stipulating their content.

While these General Comments focus on Article 14 (1) (d) & (e), this article should not be read and understood in isolation from other provisions of the Protocol dealing with the intersecting aspects of women's human rights, such as gender inequality, gender-based violence, harmful customary practices, and access to socio-economic rights.

The African Commission welcomes the commitments made by African governments recognizing the need for enhanced efforts to promote and protect women's sexual and reproductive health rights such as the 2001 Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases (Abuja Declaration), the 2006 Continental Policy Framework on Sexual and Reproductive Health and Rights, and the Maputo Plan of Action for the Operationalization of the Continental Policy Framework for Sexual and Reproductive Health and Rights (Maputo Plan of Action) adopted in 2006.<sup>43</sup>

While Article 14 (1) (d) and (e) in focus refers to sexually transmitted infections, it must be noted that the focus on HIV in this document is deliberate in light of the disproportionate effect that HIV has on women's health in Africa. The aspects elaborated herein are also applicable to other sexually transmitted diseases.

## 2.2 Normative content

### *Article 14 (1) (d) the right to self-protection and the right to be protected from HIV and sexually transmitted infections*<sup>44</sup>

Although the Women's Rights Protocol distinguishes between the right to self-protection and the right to be protected from HIV in Article 14 (1) (d), this provision is interpreted to refer to States' overall obligation to create an enabling, supportive, legal and social environment that empowers women to be in a position to fully and freely realize their right to self-protection and to be protected.

The right to self-protection and to be protected includes women's rights to access information, education and sexual and reproductive health services. The right to self-protection and the right to

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<sup>43</sup> Continental Policy Framework for Sexual and Reproductive Health and Rights (Maputo Plan of Action) adopted in 2006

<sup>44</sup> Article 14 (1) (d) the right to self-protection and the right to be protected from HIV and sexually transmitted infections

be protected are also intrinsically linked to other women's rights including the right to equality and non-discrimination, life, dignity, health, self-determination, privacy and the right to be free from all forms of violence. The violations of these rights will impact on women's ability to claim and realize her right to self-protection.

*Article 14 (1) (e): The right to be informed on one's health status and the health status of one's partner*<sup>45</sup>

Article 14 (1) (e) defines the right to sexual and reproductive health to include the right to be informed on one's health status and the health status of one's partner. Health status refers to the complete state of a person's physical, mental and social well-being and not merely the absence of disease or infirmity.

The right to be informed on one's health status includes the rights of women to access adequate, reliable, non-discriminatory and comprehensive information about their health. This also involves access to procedures, technologies and services for the determination of their health status. In the context of HIV, this right includes, but is not limited to: access to HIV testing, CD4 count, viral-load, TB and cervical cancer screening.

Moreover, the right to be informed on one's health status must not only encompass knowing one's HIV status, but should also include pre-test counseling which enables women to make a decision based on informed consent before taking the test, as well as post-test counseling services on preventative measures or available treatment depending on the outcome of the HIV test.

The right to be informed on one's health status is applicable to all women irrespective of their marital status, including: young and adolescent women, older women, rural women, women who engage in sex work, women who use drugs, women living with HIV, migrant and refugee women, indigenous women, detained women, and women with physical and mental disabilities.

The right to be informed on the health status of one's partner is vital. It enables women to make informed decisions about their own health, especially where they may be exposed to a substantial risk of harm. Knowledge of a partner's health to help avoiding transmission of HIV and other sexually transmitted infections. Information on a partner's health status must be obtained with

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<sup>45</sup> Article 14 (1) (e): The right to be informed on one's health status and the health status of one's partner

informed consent in line with international standards, without coercion, and should be primarily aimed at preventing harm to one's health.

Protocol to the African charter and Maputo protocol should be exercised in relation to the conditions and environments under which the right to be informed on the health status of one's partner may be exercised<sup>46</sup>, in particular, where the revealing of a partner's health status may result in negative consequences such as harassment, abandonment and violence.

Information about the health status of one's partner may be obtained through notification by a third party (usually a healthcare worker) or disclosure (for instance, by the person themselves). Disclosure of one's health status is not always explicit. It may take various forms, including coded and implicit actions, by the person concerned. Coded or implicit actions may include disclosure that allows for the communication of a person's health status in a manner other than direct verbal dialogue. States must ensure that all forms of disclosure are recognized<sup>47</sup>.

While disclosure should be encouraged, there should be no requirement to reveal one's HIV status or other information related to one's health status. In the context of HIV, healthcare workers should be Protocol to the African charter and Maputo protocol theorized, without being obliged to, decide, depending on the nature of the case and according to ethical considerations, whether to inform a patient's sexual partners of his or her HIV positive status. Such a decision should be made in line with international standards, in accordance with the following principles:

- i. The HIV-positive person in question has been thoroughly counseled;
- ii. Counseling of the HIV-positive person has failed to achieve appropriate behavioral changes;
- iii. The HIV-positive person has refused to notify, or consent to the notification of his/her partner(s);
- iv. A real risk of HIV transmission to the partner(s) exists;

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<sup>46</sup> Protocol to the African charter and Maputo protocol should be exercised in relation to the conditions and environments under which the right to be informed on the health status of one's partner may be exercised

<sup>47</sup> Coded or implicit actions may include disclosure that allows for the communication of a person's health status in a manner other than direct verbal dialogue. States must ensure that all forms of disclosure are recognized

- v. The HIV positive person is given reasonable advance notice;
- vi. The identity of the person is not revealed to the partner (s), if practicable, otherwise identity is revealed;
- vii. Follow-up is provided to ensure support to those involved, as necessary; and
- viii. The person providing HIV treatment, care, or counseling services has ensured that the person living with HIV is not at risk of physical violence resulting from the notification.

The revealing of a person's health status by a third party outside the ambit of the abovementioned guidelines is unlawful and may lead to penal sanctions.

### 2.3 Specific State Obligations

The right to self-protection and to be protected against sexually transmitted infections, including HIV in Article 14<sup>48</sup> (1) (d) of the Protocol entails the following:

#### *Access to information and education*<sup>49</sup>

The African Commission wishes to emphasize the importance of information and education on HIV prevention for women, in particular adolescents and youths. States Parties must guarantee information and education on sex, sexuality, HIV, sexual and reproductive rights. The content must be evidence-based, facts-based, rights-based, non-judgmental and understandable in content and language. This information and education should address all taboos and misconceptions relating to sexual and reproductive health issues, deconstruct men and women's roles in society, and challenge conventional notions of masculinity and femininity which perpetuate stereotypes harmful to women's health and well-being. This should be pursued in line with the Maputo Plan of Action as well as articles 2 and 5 of the Protocol.<sup>50</sup>

States Parties should provide educational programs and access to information concerning HIV, including through sex education and public awareness campaigns, on available health services responsive to all women's realities in all contexts including those mentioned under paragraph 14

<sup>48</sup> Article 14(1) (d) of the Protocol

<sup>49</sup> Access to information and education

<sup>50</sup> Maputo Plan of Action as well as articles 2 and 5 of the Protocol

above. In addition, States Parties should ensure that educational institutions (primary and secondary schools), include HIV and human rights issues in their curricula. These should include HIV risk and transmission, prevention, testing, treatment, care and support and sexual and reproductive health and rights of women. States Parties must also ensure this education reaches women and girls in informal school systems including faith-based schools, as well as those out of school also States Parties are obliged to provide appropriate pre-service and on-going in-service training for health providers and educators, including community based health care providers, on health and human rights.<sup>51</sup>

### *Access to sexual and reproductive health service<sup>52</sup>s*

Ensuring availability, accessibility, acceptability and quality sexual and reproductive health care services for women is crucial. Therefore, States Parties have the obligation to ensure comprehensive, integrated, rights-based, women-centered and youth friendly services that are free of coercion, discrimination and violence.

The African Commission is concerned about the limitations on and insufficient access to women's sexual and reproductive health services including access to prevention choices and methods, STI and HIV prevention skills, and access to treatment. States Parties must guarantee available, accessible, affordable, comprehensive and quality women-centered HIV prevention methods, which include female condoms, microbicides, prevention of mother-to-child transmission, and post-exposure prophylaxis to all women not based on a discriminatory assessment of risk.

States Parties should also ensure that health workers are not allowed, on the basis of religion or conscience, to deny access to sexual and reproductive health services to women as highlighted in this document.

States Parties should integrate women-centered prevention methods with other services, including family planning, reproductive health, primary health care services, HIV and STI testing, antiretroviral treatment programs and antenatal care. More equitable availability and access to

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<sup>51</sup> States Parties are obliged to provide appropriate pre-service and on-going in-service training for health providers and educators, including community based health care providers, on health and human right

<sup>52</sup> Access to sexual and reproductive health service.

prevention methods such as female condoms should be promoted and ensured by having adequate and sustainable planning, funding and distribution, together with the provision of new prevention technologies or methods. To this end, States Parties should ensure on-going funding for research.

### *Enabling legal and policy framework<sup>53</sup>*

The African Commission recognizes that an enabling legal and policy framework is intrinsically linked to women's right to equality, non-discrimination and self-protection. States Parties have an obligation to create an enabling supportive, legal and social environment to allowing to control their sexual and reproductive choices and thus to strengthen control over HIV prevention and protection choices.

States Parties should ensure implementation of laws and policies through establishment of accountability mechanisms, the development of implementing guidelines, a monitoring and evaluation framework, and the provision of timely and effective redress mechanisms where women's sexual and reproductive health rights have been violated.

The African Commission wishes to stress that, as the duty of States Parties includes ensuring that women are in the position to claim and exercise their right to self-protection in a non-discriminatory framework as articulated in Article 2<sup>54</sup> of the Protocol, States Parties should enact laws and policies to ensure women's access to health and legal services. In particular, States Parties should enact anti-discrimination legislation to address HIV- and other sexually transmitted infections, related discrimination, stigma, prejudices and practices that perpetuate and heighten women's risk to HIV and related rights abuses. Where discriminatory laws and policies exist, States must take immediate action to remove these legal and policy barriers that hinder women's access to sexual and reproductive health services.

The right to be informed on one's health status and the health status of one's partner in Article 14 (1) (e) of the Protocol entails the following:

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<sup>53</sup> Enabling legal and policy framework. The African Commission recognizes that an enabling legal and policy framework is intrinsically linked to women's right to equality, non-discrimination and self-protection

<sup>54</sup> Article 2 of the Protocol, States Parties should enact laws and policies to ensure women's access to health and legal services.

### *Access to information and education*

In realizing their specific obligations under Article 14<sup>55</sup> (1) (e), the African Commission reiterates the importance of States Parties' obligations in relation to access to information and education as highlighted in paragraph 26 above.

In view of the serious nature of HIV testing and in order to maximize prevention and care, public health legislation should ensure that pre-and post-test counseling be provided in all cases. With the introduction of home-testing, States Parties should ensure quality control, and establish legal and support services for those who are the victims of misuse of such tests by others.

States Parties should ensure that information on one's health status held by Protocol to the African charter and Maputo protocol throatiest is subject to strict rules of data protection and confidentiality, and must be protected from the Protocol to the African charter and Maputo protocol theorized collection, use or disclosure.<sup>56</sup>

### **2.5 Sexual and reproductive health procedures, technologies and services**

States Parties are obliged to guarantee the availability, accessibility and affordability of comprehensive and quality procedures, evidence based technologies and services for the medical monitoring of one's sexual and reproductive health. These procedures, technologies and services should be evidence-based and should be appropriate to the specific needs and context of women. In the context of HIV, this should include: access to HIV testing, CD4 count, viral-load, TB and cervical cancer screening that may affect women's sexual and reproductive health.

States parties should provide training for healthcare workers on, amongst others, non-discrimination, confidentiality, respect for dignity, Protocol to the African charter and Maputo protocol ton my and informed consent in the context of sexual and reproductive health services for women.

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<sup>55</sup> Article 14(1) (e), the African Commission reiterates the importance of States Parties' obligations in relation to access to information and education as highlighted in paragraph 26 above.

<sup>56</sup> The Protocol to the African charter and Maputo protocol theorized collection, use or disclosure.

States Parties must ensure that testing is not used as a condition for access to other health services, including treatment, contraception, abortion, medical examination, pre- and post-natal services, or any other reproductive health care. Furthermore, positive test results should not be a basis for coercive practices, or, the withholding of services. States Parties should ensure that policies and programs are sensitive to the needs of all women taking heed of the varying specificities of different groups of women highlighted in paragraph 14 above. These methods should include youth friendly services, and be part of a comprehensive package of care in the context of sexual and reproductive health.

The specific approaches mentioned in paragraph 39 above must ensure that these procedures, technologies and services are available in a manner that complies with ethical standards, is confidential, voluntary and obtained with informed consent. States Parties should create safe and enabling conditions through legal, policy, regulatory and programmatic measures that create positive conditions for informed disclosure and lawful notification of one's health status and the health status of one's partner as enumerated in paragraphs 13 and 18 respectively.<sup>57</sup>

## **2.6 Barriers to sexual and reproductive health rights**

States Parties should take all appropriate measures, through policies, programs and awareness-raising towards the elimination of all barriers to women and girls enjoyment of sexual and reproductive health. In particular, specific efforts should be made to address gender disparities, harmful traditional and cultural practices, patriarchal attitudes, discriminatory laws and policies in accordance with articles 2 and 5 of the Protocol<sup>58</sup>. In this regard, States should collaborate with traditional and religious leaders, social movements, civil society, non-governmental organizations including women-centered NGOs, international organizations and development partners.

States should take all appropriate measures to eliminate economic and geographic barriers of women in accessing health services and thus bring such services closer to communities, particularly for women residing in rural communities.

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<sup>57</sup> States Parties should create safe and enabling conditions through legal, policy, regulatory and programmatic measures that create positive conditions for informed disclosure and lawful notification of one's health status and the health status of one's partner as enumerated in paragraphs 13 and 18 respectively

<sup>58</sup> articles 2 and 5 of the Protocol discriminatory laws and policies in accordance with the articles.

### *Provision of financial resources*

States Parties, in line with Article 26 (2)<sup>59</sup> of the Protocol and paragraph 7 of the Maputo Plan of Action, should fund and empower public health Protocol to the African charter and Maputo protocol throatiest to provide a comprehensive range of services for the prevention and treatment of every person's sexual and reproductive health.

### *Redress for sexual and reproductive health violations*

States shall ensure the availability and accessibility of redress and referral mechanisms such as legal and medical services in cases of violations of women sexual and reproductive rights, including non-discrimination, confidentiality, respect of Protocol to the African charter and Maputo protocol ton my and informed consent.

Article 14(1) (d) and (e) as clarified and enumerated in these General Comments will amount to a violation of the provisions of the said article.

The African Commission in deciding a communication and examining State reports relating to obligations under Article 14(1) (d) and (e) of the Protocol will be guided by these General Comments.

States are encouraged to submit timely periodic reports on measures taken to implement the African Women's Rights Protocol in line with Article 26 (1). Reports should include consideration of these General Comments and should respect the guidelines developed by the African Commission for this purpose.

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<sup>59</sup> Article 26 (2) of the Protocol and paragraph 7 of the Maputo Plan of Action, should fund and empower public health Protocol to the African charter and Maputo protocol throatiest to provide a comprehensive range of services for the prevention and treatment of every person's sexual and reproductive health

## CHAPTER THREE

### INTRODUCTION

#### THE MECHANISMS USED DURING THE EFFECTIVENESS OF THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA. (MAPUTO PROTOCOL)

##### 3.0 Introduction.

This chapter discusses the Mechanisms used during the effectiveness of the protocol of the African charter and Maputo protocol on human and people's rights in Africa

##### 3.1 African Union mechanisms for attaining peace

A major step taken by the protocol to the African charter and Maputo protocol in its effort to ensure peace, security and stability in the region was the endorsement of the Peace and Security Protocol<sup>60</sup>. The Peace and Security Council (PSC) in turn has also created specific organs to reinforce its monitoring and information-assessing mandate, and in helping the Union take decisive action. These organs include the Continental Early Warning System (CEWS), the Panel of the Wise (Panel), and the African Standby Force (ASF).

The EU set up an EU civilian-military mission in support of the protocol to the African charter and Maputo protocol's mission, named AMISS II mission, in the South Sudan on the 18th of July 2005. This mission ended on the 31st of December 2007<sup>61</sup>. The goal of this mission was to strengthen the protocol to the African charter and Maputo protocol's presence in order to keep peace, security and stability. In its actions, the EU has actively supported the protocol to the African charter and Maputo protocol's political and military efforts. Particularly, it has protected vulnerable people and prevented escalation of violence in the South Sudan the EU also established another civilian-military action in support of the AMISSOM on the 18th of July 2005. Amisom ended in Protocol to the African charter and Maputo protocol gust 2008. The primary goals of the amisom were to maintain peace and security and to improve the humanitarian situation

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<sup>60</sup> J. Levitt, 'the Peace and Security Council of the African Union: the Known Unknowns', 2003, 13 Transnat'l L. & Contemp. Probs, 109-137 at pg. 111.

<sup>61</sup> In the South Sudan on the 18th of July 2005. This mission ended on the 31st of December 2007.

### 3.1.2 The African Standby Force

The protocol to the African charter and Maputo protocol constitutive Act recognized that in the protection of civilians against mass atrocity crimes there will come a time when the only means of achieving this will be through military intervention. Thus they also included a provision in the Act stipulating that the Union has the right to intervene in a member state on its own accord or by invitation from the country itself pursuant to a decision of the Assembly in respect of grave circumstances.<sup>62</sup>

Significantly, the ASF is established to enable the PSC to perform its responsibilities with respect to the deployment of peace support missions and intervention pursuant to article 4(h) and 4(j) of the protocol to the African charter and Maputo protocol Act.<sup>63</sup> The ASF constitutes standby multidisciplinary contingents, with civilian and military components in their countries of origin which are ready for rapid deployment at appropriate notice.<sup>64</sup>

### 3.1.3 Admissibility

In order for individual communications to be considered admissible, seven 'conjunctive' criteria set out in article 56 of the Charter have to be met.<sup>34</sup> These are that the communications indicate their Protocol to the African charter and Maputo protocol authors even if they request anonymity; are compatible with the Protocol to the African charter and Maputo protocol/protocol to the African charter and Maputo protocols well as African charters; are not written in insulting or disparaging language; are not based solely on information disseminated through the mass media; are sent after the exh Protocol to the African charter and Maputo protocols of domestic remedies, unless these procedures are unduly prolonged; are submitted within a reasonable time after the exh Protocol to the African charter and Maputo protocols ion of such remedies; and have not already been settled in terms of international law. Of these criteria, perhaps unsurprisingly, the issue of the exh Protocol to the African charter and Maputo protocols ion of domestic remedies has proven to be the most contentious. Within the context of communications brought by asylum seekers and refugees, the question arises as to whether persons who no longer find themselves in the country against which they are alleging violations for fear of persecution, are nonetheless

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<sup>62</sup> Article 4(h) and (3) of the protocol to the African charter on the human and people's rights on the rights of women constitutive act.

<sup>63</sup> Article 13(1) of the Peace and Security Protocol

<sup>64</sup> Kuwali (n17 above) at 199-200.

required to exhaust Protocol to the African charter and Maputo protocols domestic remedies in that country before approaching the African Commission<sup>65</sup>. The Commission's jurisprudence in this regard is largely inconsistent. A distinction appears to be drawn between cases where an individual filing an application has been granted refugee status and those where the complainant is merely an asylum seeker, seeking redress against the country from which they had fled. In the latter case, the Commission appears to be reluctant to apply the constructive exhaust Protocol to the African charter and Maputo protocols exhaustion of domestic remedies principle<sup>66</sup>.

*In Rights International v Nigeria*<sup>67</sup>,<sup>36</sup> the complainant who was living in the United States as a refugee at the time of lodging the communication, alleged that he had been illegally arrested and detained in Nigeria and that, whilst in detention, he had been subjected to torture. He additionally attested that after being abducted and threatened by persons whom he believed to be agents of the Nigerian government, he fled the country first to Benin, where he was granted refugee status, and then to the United States. The African Commission in this case, as it had done with regard to contemporaneous Nigerian cases, held the communication to be admissible on grounds that there was a 'lack of available and effective domestic remedies for human rights violations in Nigeria under the military regime'.<sup>37</sup> By coming to this conclusion, the Commission effectively sidestepped the issue of whether someone who had fled the country against which they were alleging violations, for fear of persecution, still had to avail themselves of available domestic remedies. The Commission then went on to find violations of the prohibition against torture, cruel, inhuman and degrading treatment, the right to liberty and security of the person, fair trial and freedom of movement and residence as well as the right to leave and return to Nigeria. In *In Ouko v Kenya*<sup>68</sup>,<sup>40</sup> the African Commission, relying on its decision in the Rights International case, provided the most explicit link between the granting of refugee status and the constructive exhaust Protocol to the African charter and Maputo protocols exhaustion of domestic remedies principle,

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<sup>67</sup> *In Rights International v Nigeria*<sup>36</sup> the complainant who was living in the United States as a refugee at the time of lodging the communication, alleged that he had been illegally arrested and detained in Nigeria and that, whilst in detention,

<sup>68</sup> *In Ouko v Kenya*<sup>40</sup> the African Commission, relying on its decision in the Rights International case, provided the most explicit link between the granting of refugee status and the constructive

holding that<sup>41</sup> the complainant is unable to pursue any domestic remedy following his flight to the Democratic Republic of Congo (DRC) for fear of his life, and his subsequent recognition as a refugee by the Office of the United Nations High Commissioner for Refugees, and therefore declared the communication admissible. It further held the Kenyan government to be in violation of the prohibition against torture, cruel, inhuman and degrading treatment, the right to liberty and security of the person, the right to freedom of opinion, freedom of association and freedom of movement as well as the right to leave any country and return to his own country.

These cases are to be contrasted with two decisions in respect of Zimbabwe decided prior to the Shumba case. In *Chinhamo v Zimbabwe*<sup>69</sup>,<sup>46</sup> the African Commission declared the case, brought by an employee of the Zimbabwean section of Amnesty International, who alleged that agents of the Zimbabwean government had violated his African Charter rights, protocol to the African charter and Maputo protocol sing him to seek asylum in South Africa, to be inadmissible due to the non-exh Protocol to the African charter and Maputo protocols ion of domestic remedies. Seemingly conflating issues of admissibility and the merits of the case as well as overstepping its mandate, which does not extend to establishing whether or not someone has a well-founded fear of persecution, the Commission indicated that the facts suggested 'inhuman and degrading treatment' and that, in its opinion, the complainant had failed to substantiate his allegations with facts.<sup>47</sup> Thus, the Commission noted that<sup>48</sup> even if, for example, the detention of the complainant amounted to psychological torture, it could not have been life-threatening to protocol to the African charter and Maputo protocols the complainant [to] flee for his life. Apart from the alleged inhumane conditions under which he was held, there is no indication of physical abuse ...

The more recent case of JE *Zitha and PJJ Zitha v Mozambique*<sup>70</sup>,<sup>53</sup> brought by Professor Dr Liesbeth Zegveld on behalf of Mr Jose Eugency Zitha (first victim) and Professor Pacelli LJ Zitha (second victim), also declared inadmissible for failure to exhP protocols to the African charter and Maputo protocols domestic remedies and for failure to comply with the reasonable time

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<sup>70</sup> *Zitha and PJJ Zitha v Mozambique*<sup>53</sup> brought by Professor Dr Liesbeth Zegveld on behalf of Mr Jose Eugency Zitha (first victim) and Professor Pacelli LJ Zitha (second victim), also declared inadmissible for failure to exh P protocol to the African charter and Maputo protocols domestic remedies and for failure to comply with the reasonable time requirements found in article 56(6) of the African Charter,

requirements found in article<sup>71</sup> 56(6) of the African Charter, is also worthy of discussion. In this case, the African Commission acknowledged the difficulties encountered by Professor PLJ Zither, who had applied for refugee status in France, in bringing a case in respect of his father (the first victim) who had disappeared from detention in Mozambique some time in 1975. However, it ultimately held that Professor PLJ Zither could have seized the Commission sooner than the 13 years that it took from 1995, when he obtained permanent employment in The Netherlands and returned to Mozambique for the first time, before either approaching the domestic courts in Mozambique or seizing the Commission, and that this therefore constituted an ‘unreasonable’ delay.

In a small number of cases in which violations were alleged against the receiving state, the African Commission has also held communications to be inadmissible for failure to exhaust Protocol to the African Charter and Maputo protocols domestic remedies. Unlike communications brought against the state alleged to have been involved in persecution, no general impediments exist in relation to the exhaustion of available domestic remedies in receiving states; with access to courts theoretically open to all - nationals as well as non-nationals.<sup>55</sup> In *Institute for Human Rights and Development in Africa (on behalf of Simbarakiye) v Democratic Republic of Congo*<sup>72</sup>,<sup>56</sup> a Burundian national who had been granted refugee status in the DRC and had lived there for just over 20 years, found himself in the position of being dismissed without notice or compensation from his job (along with all other Rwandan, Burundian and Ugandan nationals in the country) following the war between the DRC, Rwanda, Burundi and Uganda. Thereafter, he left for Togo from where he lodged the complaint, claiming that he had been subjected to ‘moral and material pressure’ which made the exhaustion of available domestic remedies impossible.<sup>57</sup> The African Commission held that, as neither Mr. Simbarakiye nor his wife (a DRC national), who had remained behind in the DRC, had attempted to exhaust Protocol to the African Charter and Maputo protocols domestic remedies and further, as he had failed to provide evidence to the effect that moral and material constraints prevented him from exhausting Protocol to the African Charter and

<sup>71</sup> Article 56(6) of the African Charter, is also worthy of discussion. In this case, the African Commission acknowledged the difficulties encountered by Professor PLJ Zither

<sup>72</sup> *Simbarakiye) v Democratic Republic of Congo*<sup>56</sup> a Burundian national who had been granted refugee status in the DRC and had lived there for just over 20 years, found himself in the position of being dismissed without notice or compensation from his job (along with all other Rwandan, Burundian and Ugandan nationals in the country) following the war between the DRC, Rwanda

*Maputo protocols* ting domestic remedies, the communication was inadmissible.<sup>58</sup> The case of *Movement des Réfugiés M* Protocol to the African charter on the human and people's rights on the rights of women *Senegal v Senegal*<sup>73</sup> (1),<sup>59</sup> which alleged a series of violations by the Senegalese Protocol to the African a charter and Maputo protocolthorities against Protocol to the African a charter and Maputo protocolritanian refugees, including arrest and humiliating treatment by the security forces as well as threats from the Protocol to the African a charter and Maputo protocolritanian Protocol to the African charter on the human and people's rights on the rights of womenthorities when they attempted to return to their country of origin, was also held inadmissible inter alia for a failure to exh Protocol to the African a charter and Maputo protocols domestic remedies.<sup>60</sup> Similarly, in *Movement des Réfugiés* Protocol to the African charter on the human and people's rights on the rights of women *Senegal v Senegal*<sup>74</sup> (2),<sup>61</sup> in which the complainant alleged violations of the African Charter as a result of the banning of a demonstration by the refugees of Poor in commemoration of International Refugee Day, the African Commission held that the complainant had failed to 'provide proof of attempting to exh Protocol to the African charter on the human and people's rights on the rights of womenst the local remedies that were available to him'.<sup>62</sup>

Where serious and massive violations involving a large number of complainants have been alleged against a receiving state, the African Commission has dispensed with the domestic remedies requirement. Thus, in *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia*<sup>75</sup>,<sup>63</sup> the Commission noted that allegations appeared to 'reveal the existence of a series of serious or massive violations of the provisions of the African Charter', and that it was therefore not necessary to exh Protocol to the African charter on the human and people's rights on the

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<sup>73</sup> *Sénégal v Senegal*<sup>73</sup> (1),<sup>59</sup> which alleged a series of violations by the Senegalese Protocol to the African a charter and Maputo protocolthorities against Protocol to the African a charter and Maputo protocolritanian refugees, including arrest and humiliating treatment by the security forces as well as threats from the Protocol to the African a charter and Maputo protocolritanian Protocol to the African charter on the human and people's rights on the rights of womenthorities when they attempted to return to their country of origin

<sup>74</sup> *Senegal v Senegal* (2),<sup>61</sup> in which the complainant alleged violations of the African Charter as a result of the banning of a demonstration by the refugees of Poor in commemoration of International Refugee Day

<sup>75</sup> *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia* the Commission noted that allegations appeared to 'reveal the existence of a series of serious or massive violations of the provisions of the African Charter'

rights of women's domestic remedies.<sup>64</sup> Similarly, the Commission held on review in the case of *Doebbler v Sudan* <sup>65</sup> that 'where the violations involve many victims, it becomes neither practical nor desirable for the complainants or the victims to pursue such internal remedies in every case of violation of human rights'.<sup>66</sup> Addressing the specific facts of the case in which it was alleged that as a result of a tripartite agreement between the Sudanese and Ethiopian governments and the United Nations High Commissioner for Refugees (UNHCR), approximately 14 000 Ethiopian refugees would lose their refugee status, the African Commission noted that <sup>67</sup>even if certain domestic remedies were available, it was not reasonable to expect refugees to seize the Sudanese courts of their complaints, given their extreme vulnerability and state of deprivation, their fear of being deported and their lack of adequate means to seek legal representation.

Finally, in *African Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea) vs Guinea*<sup>76</sup>, the African Commission noted three reasons why it considered the exh Protocol to the African charter on the human and people's rights on the rights of womenstion of domestic remedies to be futile where large numbers of refugees had been refouled. In the first instance, the Commission held that it would dispense with the exh Protocol to the African charter on the human and people's rights on the rights of womenstion of domestic remedies requirement where the complainant is in a 'life-threatening situation that makes domestic remedies unavailable' It further noted in this regard that the availability of domestic remedies is compromised in circum-stances where 'the Protocol to the African charter on the human and people's rights on the rights of womenthorities tasked with providing protection are the same individuals persecuting victims'. On the impracticability of large numbers of Sierra Leonean refugees in Guinea (put at nearly 300 000 at the time of the alleged violations) approaching the domestic courts as well as the scale of crimes committed against the refugees, the Commission held that 'the domestic courts would be severely overburdened if even a slight majority of victims chose to pursue legal redress in Guinea'. Finally, the Commission held that it would be both 'impractical' and inadvisable for the refugees to return to Guinea, where they had suffered persecution. Citing the case of *Rencontre Africaine pour la Défense des Droits de*

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<sup>76</sup> *Refugees in Guinea) vs Guinea*<sup>76</sup>, the African Commission noted three reasons why it considered the exh Protocol to the African charter on the human and people's rights on the rights of womenstion of domestic remedies to be futile where large numbers of refugees had been refueled.

*l'Homme vs Zambia*<sup>77</sup>, the Commission held that 'victims of persecution are not necessarily required to return to the place where they suffered persecution to exh Protocol to the African charter on the human and people's rights on the rights of women's local remedies'.

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<sup>77</sup> *Rencontre Africaine pour la Défense des Droits de l'Homme vs Zambia*<sup>77</sup>, the Commission held that 'victims of persecution are not necessarily required to return to the place where they suffered persecution to exh Protocol to the African charter on the human and people's rights on the rights of women's local remedies' pg 50

## CHAPTER FOUR

### INTRODUCTION

#### CHALLENGES TO THE EFFECTIVENESS OF THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA. (MAPUTO PROTOCOL)

##### 4.0 Introduction

This chapter discusses the challenges affecting the effectiveness of the protocol to the African charter and Maputo protocol on the human and people's rights in Africa

##### 4.1 Challenges facing the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) in implementing the responsibility to protect.

The above analysis has shown how the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) is implementing its r2p obligation. However, it must be noted that that the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) is still faced with many obstacles hindering them from effectively protecting civilians from mass atrocity crimes. these obstacles can be categorized as follows: human and financial resources, lack of political will, relationship between sub-regional organizations and finally the relationship between the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) and other international organizations especially the UNSC and THE ICC.

##### 4.1.2 Lack of human resource.

With regard to human resources, the situation is very dismal. even though the PSC protocol provided for a secretariat, it took the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) fifteen months to recruit the first staff member, and nearly two years for it to appoint the head of the division;<sup>78</sup> according to the 2010 APSA assessment study, the PSC Secretariat only consisted of 4 professional staff members, one

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<sup>78</sup> Williams (n92 above) at 619.

secretary and an administrative assistant and even the professional staff were appointed through external partner support.<sup>79</sup>

To complicate matters, the PSC Secretariat does not have a legal expert despite the fact that it deals with a lot of issues requiring legal interpretation.<sup>80</sup> There is also a shortage of staff dealing with the CEWS. In order to accomplish its mandate of gathering and analyzing data the Protocol made provision for a Situation Room.<sup>81</sup> The Situation Room is responsible for the monitoring of potential, actual and post-conflict situations in Africa<sup>82</sup>. In order to perform its function there are 10 Situation Room Assistants working on a 24/7 shift basis. This number is substantially inadequate to cover all regions in Africa<sup>83</sup>

#### **4.1.3 Lack of Reliable Financial Resources**

If the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) is to succeed in its goal of promoting peace, security and stability on the continent, an extra-budgetary -resource mobilization is required to meet its goal. Member states should show more commitment in terms of funding and training experts to work in the organization. It is devastating to note that only 10 situation room assistants are gathering and analyzing data for a continent that is approximately 300 million square kilometers in size.

According to a World Bank report published in 2009: estimated averages of 23,000 qualified academics were emigrating from Africa each year leading to an acute shortage of skilled human resources on the continent. The protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) like many other institutions in Africa is implicated in this brain-drain phenomenon. There are few technocrats working in this institution as pointed out above. It is my opinion that the financial status of the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) makes it unattractive for experts to render their services in this organization. Unlike other major organizations like the United Nations and the European Union who have considerable resources available, the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) depends on a few African States and largely on donor

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<sup>79</sup> ASPA (n21 above) at 26.

<sup>80</sup> ASPA (n21 above) at 26.

<sup>81</sup> Article 12(2) of Psc protocol

<sup>82</sup> ASPA (n21 above) at 26.

<sup>83</sup> ASPA (n21 above) at 26.

organizations for funding, as a result the level of benefits, allowances and salaries available to its staff is less attractive compared to these other organizations<sup>84</sup>

The protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) has in a number of situations invoked article 4(h) of its constitutive act, these situations include Burundi (AMIB), south Sudan AMLS) and Somalia a mission). The majority of the peacekeepers came from a handful of African states; in fact the Somalia mission had only two troop contributing countries, Uganda and Burundi.<sup>85</sup> Furthermore, the largest operation conducted by the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol), the south Sudan mission, had only four contributing states, (Nigeria, Rwanda, Senegal and south Africa)<sup>86</sup>. the deployment of peacekeepers in these conflict situations exposed a major gap between the PSC'S willingness to the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) theorize such missions and the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol)'s ability to implement them<sup>87</sup>.

The PSC decided to enhance the mission in south Sudan, which became amiss<sup>88</sup>. The mission's personnel were increased to 3,320 in 2004<sup>89</sup> and later to 7,731 in 2005.<sup>90</sup> With the increase in personnel came greater responsibility. The amiss ii mandate was strengthened to include: monitoring compliance with the ceasefire agreements, it was to contribute to a secure environment for the delivery of humanitarian relief and the return of internally displaced persons and refugees to their home<sup>91</sup>. However, of great importance was the provision that amiss ii could protect civilians whom it encounters under imminent threat and who were in the immediate

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<sup>84</sup> For example see salaries, allowances and benefits of the United Nations, available at [http://www.un.org/depts/OHRM/salaries allowances/allownc.htm](http://www.un.org/depts/OHRM/salaries%20allowances/allownc.htm), last accessed 21/11/2011

<sup>85</sup> Williams (n92 above) at 26

<sup>86</sup> Williams (n92 above) at 26

<sup>87</sup> ASPA(n21 above) at 26

<sup>88</sup> Communiqué (20 October 2004), PSCIPR! Comm (XVII) 7.

<sup>89</sup> The protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) communiqué (28 april 2005), psc!pricomm (xxviii) 9

<sup>90</sup> The protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) communiqué (28 april 2005), psc!pricomm (xxviii) 9

<sup>91</sup> n236 at 4

vicinity of dangers.<sup>92</sup> with the increase in personnel and the mandate for amiss ii the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (MAPUTO protocol) was again faced with resource constraint to enable amiss ii in efficiently carrying out this extended mandate.<sup>93</sup>

In a nutshell the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) has come a long way from the protocol to the African charter on human and peoples' rights on the rights of women in Africa . ( Maputo protocol)'s policy on non-interference to that of non-indifference. They have intervened in several situations which would have escalated on the protocol to the African charter on human and peoples' rights on the rights of women in Africa . ( Maputo protocol)sing major catastrophe. like all institutions they are faced with challenges and the sooner they address the issues preventing them from effectively carrying out their obligations the better for African civilians.

Peacekeeping operations in Africa have still continued in spite of many difficulties. Donnelly (2005:2) stated that the un, the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol), EU and sub-regional organizations such as ECOWAS are currently facing a wide range of challenges of peacekeeping operations.

Peacekeeping operations in Africa differ from the ones in the middle east, Asia and the pacific, Latin America and Europe (Gowan and Johnston, 2007:14) be the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) see the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) sees of conflict differ greatly from one country to another.

#### **4.1.3 outside Influence**

Europe has a deep relationship with Africa including historical and commercial ties. European countries including Britain, France, Germany, Portugal, Spain, Italy and Belgium established colonies in order to exploit Africa for the economic interests of Europe in the nineteenth century. Africa is still a very crucial continent for the EU's economic interests in terms of natals, rich resources, gold, diamond and agriculture. For instance, the EU imp s\$% of agricultural products from Africa

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<sup>92</sup> n2356at 6.

<sup>93</sup> Omorogbe (n229 above) at 16.

Today, the former colonial powers such as France and Britain are strongly involved in a wide range of activities including peace and security, human rights and governance, development assistance, regional integration and trade as a means to keep their interests in Africa.

#### 4.1.2 Security dilemma

Peace and security continue to remain vulnerable in Africa in recent decades. Many countries in sub-Saharan Africa were afflicted by conflict in 2000. Since African countries gained their independence in 1960, they have been involved in conflicts which undermine peace, security and stability and threaten social and political development. In addition, insecurity the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. (Maputo protocol) sees many problems such as terrorism, poverty, diseases, weak states and unemployment (Hickson, 2004:5).

Since 1960, the UN has deployed more than 15 African peacekeeping operations. It has so far spent \$2.3 billion for peacekeeping missions in the world most of which are for Africans. Likewise, the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol), the IGAD and the ECOWAS are also engaged in the maintenance of peace, security and stability on the continent. nevertheless, armed conflicts paralyze deployment of peacekeeping operations rapidly in Africa . for instance, since the conflict began in south Sudan in early 2003, the un peacekeeping operation was not allowed in by the government of south Sudan. Therefore, the crisis in the south Sudan region has resulted in thousands of civilian deaths and displaced millions of vulnerable people. in addition, conflicts have decelerated negotiations between the parties to prevent, manage and resolve conflicts<sup>94</sup>

In 2002, the organization of African protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol)) was transformed into the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) the aims of the union are to promote solidarity of the member states, to strengthen Africa's democracy and human rights in particular tent and resolve conflicts and preserve peace, security and stability on the continent. Since the establishment of the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol), it has taken prominent steps in the fields of peace and security. For instance, the PSC, the Peace and Security Directorate, the Conflict Management Centre, the Panel of the Wise and the ASF were

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<sup>94</sup> United Nations, 2005a: Internet Source

set up by the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) in order to play a more active role in conflict management.

More importantly, it has undertaken some peacekeeping operations on the continent including Burundi, south Sudan, Somalia and Comoros . it can be said that the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) has been playing a critical role in managing and resolving security issues. however, the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) peacekeeping operations are experiencing the challenges of political diversity of the member states', financial problems, lack of infrastructure and human capacity (Schumer, 2004: 13-15).

#### **4.1.3 Political diversities**

The protocol to the African charter on human and peoples' rights on the rights of women in Africa .<sup>95</sup> (Maputo protocol) adopted the "protocol relating to the establishment of the peace and security council of the African union" on the 9th of July 2002 in Durban . According to the protocol, the PSC shall promote peace, security and stability, prevent and resolve conflicts in Africa . The protocol emphasizes that the PSC shall strengthen cooperation and establish a durable and robust partnership between the member states of the protocol to the African charter on human and peoples' rights on the rights of women in Africa .<sup>96</sup>(Maputo protocol) in order to respond to conflicts effectively on the continent

Despite the efforts of the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol)<sup>97</sup> in peace prevention and management, it still needs to overcome many issues. Firstly, African countries do not have things in common economically, historically and politically. for instance, the political experience of African countries from the northern part differs greatly from those of the southern part. Colonial heritage and legacy also differ from one country to another.

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<sup>95</sup> The protocol to the African charter on human and peoples' rights on the rights of women in Africa

<sup>96</sup> The protocol emphasizes that the PSC shall strengthen cooperation and establish a durable and robust partnership between the member states of the protocol to the African charter on human and peoples' rights on the rights of women in Africa

<sup>97</sup> Maputo protocol.

The protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) deployed its first peacekeeping mission in Burundi in 2003 also called the AMIB. Only South Africa, Ethiopia and Mozambique have provided troops to prevent and resolve the conflict (Murithi , 2008: 75). It undertook its second peacekeeping operation named AMISS on the 28th of May 2005 and it was replaced by UNAMID on the 31st of December 2007. Nigeria, Rwanda, South Africa, Gambia, Senegal, Kenya and Mozambique have provided troops for the AMISS. The protocol to the African charter on human and peoples' rights on the rights of women in Africa .<sup>98</sup> (Maputo protocol)<sup>99</sup> PSC the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) theorized a peacekeeping mission in the COMOROS to secure elections in may 2006. the countries that have contributed to peace and security in the COMOROS islands were south Africa , Egypt , the DRC , Mozambique , Nigeria , Rwanda , Madagascar and the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol)ratios.<sup>100</sup>

The protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol)'s current peacekeeping mission in Somalia the so-called amissom has continued to sustain peace, security and defence policy since January 2001. Only Burundi, Nigeria , Uganda , Malawi and Ghana have provided troops for a missom . the political decomposition of African states has affected the efforts of peacekeeping directly and indirectly. Sharamo (2006:53) alleged that the member states of the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) do not have a common security and defence policy. The political diversities of the member states within the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) weaken peace and security on the continent as well as the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol)'s security policy. for instance, as soon as the south Sudan crisis began, the political differences between the member states emerged so that the protocol to the African charter on

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<sup>98</sup> The protocol to the African charter on human and peoples' rights on the rights of women in Africa

<sup>99</sup> Maputo protocol

<sup>100</sup> Republic of South Africa: Ministry of Defence, 2006:Internet Source

human and peoples' rights on the rights of women in Africa <sup>101</sup>. (Maputo protocol) has not effectively focused on the conflict.

Eyal (2000: internet source) asserted that the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) major powers including Nigeria and south Africa play a leading role in peacekeeping operations and contribute to peace and security significantly. However, they to prevent and resolve the conflicts in Africa . a strong political states of the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) is therefore necessary for the success of Africa's

#### **4.1.4 Financial and logistical constraints**

Financial and logistical constraints have been the most important challenge for the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) peacekeeping mechanism. when the protocol to the African charter on human and peoples' rights on the rights of women in Africa <sup>102</sup>. (Maputo protocol) transformed into the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) in 2002, the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) inherited from its successor a us\$ 42 million dept. the budget of the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol)'s commission has grown from us\$ 43 million to us\$ 158 million since December 2004. Out of us\$ 158 million us\$ 75 only is earmarked to the expenditures of the PSC. so far, the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) has undertaken some peacekeeping operations in Burundi, south Sudan , Somalia and the COMOROS but they have been faced serious financial and logistical problems <sup>103</sup>.

In 2004, the protocol to the African charter on human and peoples' rights on the rights of women in Africa . <sup>104</sup> (Maputo protocol) undertook a peacekeeping operation called amiss i in order to preserve peace and security in Sudan. Ten African countries sent at least 465 personnel. this was

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<sup>101</sup> Maputo protocol)'s security policy. for instance, as soon as the south Sudan crisis began, the political differences between the member states emerged so that the protocol to the African charter on human and peoples' rights on the rights of women in Africa

<sup>102</sup> The protocol to the African charter on human and peoples' rights on the rights of women in Africa.

<sup>103</sup> Sharamo, 2006:52-53.

<sup>104</sup> In 2004, the protocol to the African charter on human and peoples' rights on the rights of women in Africa

a limited and small peacekeeping mission. The protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) PSC held a meeting in Ethiopia on the 20th of October 2004 and made a decision to strengthen a mission. the PSC urgently called upon all its member states and the international community to contribute to the mission. it urged that a mission faced financial and logistical problems which are why it could not play a prominent role to prevent and manage the conflict in the south Sudan (African union, 2004c: internet source).

#### **4.1.5 Lack of capacity building**

The protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol)<sup>105</sup> has led peacekeeping operations in Burundi , Somalia and south Sudan. Since its establishment, the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) has endeavored to develop its own capacity building for peacekeeping operations at regional and continental level. It has established the APSA for this purpose. This mechanism consists of the ASF, the CEWS and the Panel of the Wise. On the other hand, the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol)'s capacity-building requires logistics for the importance of conflict management and resolution, personnel, training, leadership, managing funding which the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) does not actually have enough of them (holt and shanahan, 2005 :2). On the 14<sup>th</sup> may 2007, the protocol to the African charter on human and peoples' rights on the rights of women in Africa.<sup>106</sup> (Maputo protocol) held a meeting in Addis Ababa and underlined the importance of capacity-building. Throughout the meeting the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) declared it has a "chronic shortage of capacity" and that insufficient capacity-building hampers the success of the protocol-to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol)'s peacekeeping. Therefore, the protocol to the African charter on human and peoples' rights on the rights of women in Africa.

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<sup>105</sup> Maputo protocol

<sup>106</sup> , On the 14th may 2007 the protocol to the African charter on human and peoples' rights on the rights of women in Africa.

## CHAPTER FIVE

### INTRODUCTION

#### SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

##### 5.1 Summary of findings

The protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) has been provided with the relevant architecture in order to perform its obligations. as demonstrated in previous chapters, the maintenance of national and international peace and security is one of the most important obligations of the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol). Kindiki has criticized the failure of the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) act to assign precise human rights functions to the nine organs that it established. Kindiki's view suggests that, although they are clearly protected as a human right, peace and security are rarely dealt with as such. in fact, there is a peace and security aspect in the tasks given by the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) act to some of its organs.<sup>107</sup> in this regard, the assembly is in charge of directing the executive council in the 'management of conflicts, war and other emergency situation and the restoration of peace'.<sup>108</sup> this task involves *de jure* the executive council in conflict management. The latter is also in charge of humanitarian action.<sup>109</sup> The other organs to which the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) act has given clear tasks have mainly functions that consist of supporting the Assembly and the Executive Council by performing administrative activities.<sup>110</sup>

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<sup>107</sup>Article 5.1 of the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) act has created nine permanent organs. However , it assigns defined functions only to four of them, which are the assembly, the executive council, the permanent representative committee and the specialized technical committees.

<sup>108</sup>Article 9.1(g) the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) act.

<sup>109</sup>Article 13.1(e) the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) act.

<sup>110</sup>The specialized and technical committees are empowered with the missions of preparing projects, following up decisions and other administrative missions. the permanent representatives committee has to prepare the meetings of the executive council and to work on its instructions.

As the African Commission has already done, the upcoming African Court could play a more effective role by addressing peace and security as a human right in a proper legal manner, particularly by making clear remedies in case of violation.

The protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) played a critical political and security role in south Sudan where the UNSC would not act decisively. in deploying amiss and leading the political negotiations, the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) signaled its willingness to promote its peace and security agenda. Amiss helped improve the security situation, albeit with a limited presence and a weak mandate.<sup>111</sup> In 2004, the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) obtained a mandate to monitor the ceasefire and protect civilians in south Sudan this mandate was derived from the Ndjamenana humanitarian ceasefire agreement.<sup>112</sup>this agreement allowed the protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol) to dispatch ceasefire monitors and subsequently a force to provide protection for those monitors and any civilian in the immediate vicinity of its operations.<sup>113</sup> The protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol)'s presence in south Sudan to a limited extent played a vital role in protecting civilians.

## 5.2. Conclusion

The ACHPR protects peoples' right to national and international peace and security. the concern African leaders have about peace and security led to their inclusion as an aim of the new continental organization , the protocol to the African charter on human and peoples' rights on the rights of women in Africa . ( Maputo protocol). However , national and international peace and security are not always considered and addressed as human rights.

The protocol to the African charter on human and peoples' rights on the rights of women in Africa . (Maputo protocol), as an international organization has undertaken to realize the full enjoyment of human rights in line with the ACHPR. It has also committed itself to realize peace and security on the continent. These commitments have resulted in the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) being

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<sup>111</sup> 105 (n62 above) at 50.

<sup>112</sup> A. De Weal, 'Darfur and the Failure of the Responsibility to Protect', (2007) The Royal Institute of International Affairs Vol 8,83.

<sup>113</sup> Kagwanja (n102 above).

bound to act in a manner that can lead to the realization of peoples' human right to national and international peace and security. This means that the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) is obligated to achieve a condition in which there is no war in Africa; this implies more than the mere absence of war, however. The protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) should promote policies that are conducive to the eradication of the possibility of breaches of the right to peace and security. indeed, the obligation of the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) regarding the human right to peace and security comprises both obligations to promote and to protect.

So far, the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) has tried to realize the right to peace and security in Africa. in cote d'ivoire and in south Sudan for example, the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) has been seen as an active participant in the efforts to have the right of people to live in peace respected. however, it has not been able to prevent violations from occurring, as it should have done. it is important to note that its involvement has suffered from a lack of resources.

However, there are hopes for the future, given the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol)'s framework designed for the full realization of the right of people to live in peace. when measuring what the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) can potentially do regarding peace and security in Africa against Boutros-Ghali's methodology for peace building, one realizes that the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) has the relevant organs for preventive diplomacy, peace-making and peace keeping. in this regard, the psc could be an effective organ. however, there is a lack of effectiveness in implementing what the instruments provide.

The protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) has, however, been involved in trying to achieve peace and security by creating programs to advance these ends. These programs have not done much so far, but they have the potential to help build a more peaceful continent.

there are still some problems that need to be addressed to make the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) more likely to meet its objectives. Apart from the lack of resources, the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) has to deal with its framework to make it more economical and effective. when looking at the overall structure of the organization, there is a sense that some organs and programs have the same fields of competence, goals, and powers regarding peace and security, for instance the PSC. There is a risk of overlapping in the activities of a number of organs.

Another problem is the approach that the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) takes when dealing with peace and security. I would call for a human rights-based approach to peace and security. peace and security are often addressed as a political matter rather than a human rights issue. it must be understood that all the breaches of peace constitute a violation of human rights under the ACHPR. the PSC should ensure that peace and security are dealt with as something people are bound to achieve. the upcoming court of justice of the the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) should be used properly to that end.

The protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) could be an effective instrument for ensuring the full enjoyment of the right of peoples to live in peace and security with such improvements as here suggested. one must bear in mind, however, that it is the un security council that has the primary responsibility for the maintenance of international peace and security.

### **5.3 Recommendations**

The future looks bright for Africans especially those who are the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) up in conflict zones needing protection. the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) has already set up its guiding principles and has set up a peace and security architecture which seems to accommodate the implementation of its r2p obligations. However, they need to ensure a greater harmonization and coherence between its institutions and the sub-regional bodies.

Firstly, the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) needs to improve its staffing levels. it needs to revise the Maputo structure,<sup>114</sup> which currently limits the commission's ability to hire staff through its regular budget.<sup>115</sup> The PSC and CEWS need to be provided with additional staff to deal with their additional responsibilities as their current staffs are overwhelmed with their available workload. They also have to ensure that the additional staffs they hire are well- trained and have in-depth knowledge of the dynamics of peace and conflict in the continent. This is where the UN comes in very useful. The UN has recognized that one of the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) commission's major challenges is the lack of sufficient institutional capacity in key management, support and strategic planning functions. this capacity is required to address both its immediate peacekeeping demands and its longer-term goal of operationalizing the African standby force.<sup>116</sup> Therefore, the UN under the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) since the 2006 UN-the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) 10-year capacity-building program is working with the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) providing support in a range of activities from early warning and conflict prevention to peacekeeping and conflict resolution through training, staff exchanges and knowledge sharing. in particular, the departments of political affairs, peacekeeping operations and field support have a number of initiatives under way that include capacity-building in mediation, elections, conflict resolution, early warning, peacekeeping planning and operations, rule of law and security sector reform. Furthermore, under this initiative technical assistance would be provided to the maximum possible extent by the highest caliber personnel with current field experience in African based peacekeeping operations. this might help to alleviate the human resource deficiency facing the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol). However, even the UN has noticed that the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) would ultimately have to develop a capacity that would best suit its own needs; UN systems cannot be simply exported but should be seen as a

<sup>114</sup> Decision- African Union available at [http://www.africaunion.org/official\\_documents/Decisions\\_Declarations/Decisions\\_Declarations.htm](http://www.africaunion.org/official_documents/Decisions_Declarations/Decisions_Declarations.htm) last accessed 2011.

<sup>115</sup> ASPA (n21 above) at 71.

<sup>116</sup> Report of the secretary general: Support to African Union peacekeeping operations the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. (Maputo protocol) authorized by the United Nations General Assembly sixty-fourth session, Security Council, Sixty-fourth year, UN Doc, A/64/359-S/2009/470.

resource that the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) can adapt to meet its own unique requirements.

The protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) need to establish a stronger institutional linkage with the recs/rms. They have taken a step closer in addressing this problem by appointing reirm liaison officers to the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) as this would boost communication between the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) and the racism. This step has been taken but the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) however needs to clarify the level and mandate of the liaison. for instance should they be serving military officers or civilians and which field should they be experts in, (for example do they need public relations experts)? furthermore, the level of progress by the recs/rms is disproportionate therefore the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) needs to step in and act as a bridge. they would have to ensure that recs/rms have equal access to partner support and that they are not lagging behind in the development of their institutions.

Furthermore, partnership between the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol), recs/rms and external multilateral and bilateral actors has emerged as a major challenging feature to the efforts of the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) in the operationalization of the APSA. for instance coherence in the decision-making of the united nations security council and the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) PSC on issues on the agenda of both organizations is critical in ensuring an effective partnership. This is particularly the case on issues where the two organizations undertake joint mediation and peacekeeping efforts. This point was clearly exhibited in the Libyan crisis with the wording of UNSC resolution 1973 stipulating that Libya and the international community should take all necessary measures to protect civilians. Eifel a drastic improvement of strategic communication and a shared understanding of issues of mutual concern will help in making coordinated decisions by the respective bodies. Enhanced dialogue on decision-making will improve the collective ability of both organizations to respond to the many peace and security challenges we face in Africa.

The recent trend of having joint peacekeeping (un-the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) missions are very important and can bridge the financial and human resource gap. the un can fund the missions as it has the necessary finances to undertake these missions, whereas the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) can provide the human resources. The problem solving capacity of this trend is two-fold. firstly, it settles the issue of the legality of article 4(h) as this un-the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) cooperation will need the endorsement of the UNSC. Secondly, it will provide the necessary finances required to sustain an effective peacekeeping mission as can be seen in the improvement of resources from amiss to unnamed and with the logistics support given to amissom by the UN.<sup>117</sup>

The declaration on 'enhancing un-the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) cooperation: framework for the ten-year capacity building program for the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol)<sup>118</sup> is also of great importance. this declaration on cooperation of these organizations focused on six critical areas: peace and security (including crime prevention); assistance in institution building, and political and electoral matters; peacekeeping operations: governance, human rights and the rule of law..”

Another important recommendation involves the ICC'S work in Africa. The ICC'S work in Africa is imperative and deserves continued support. The position taken by African states can be remedied, if African leaders think they are being discriminately targeted by the ICC then they can improve their judiciary so that these cases can be tried by their own domestic courts.

in the case of states that are unable or unwilling to prosecute African leaders should summon up the political will to make sure that the actions of these people do not go unpunished. they have undertaken the obligation in several international treaties never to allow heinous crimes to go unpunished therefore they have to summon up the will to undertake their commitment.

The African commission on human and peoples' rights has also taken a more proactive stance on the implementation of r2p. it has recognized the doctrine of r2p in a resolution it passed,<sup>119</sup> it

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<sup>117</sup> Murithi(n 263 above) at 9-15

<sup>118</sup> Doc.A/61/630.

<sup>119</sup> African Commission on Human and Peoples' Rights, Resolution on Strengthening the Responsibility to Protect in Africa, meeting at its 42M Ordinary Session held in Brazzaville, Republic of Congo. from 15-28

recalled its mandate to promote and ensure human and peoples' rights under the African charter and also recalling the principles enshrined under the constitutive act of the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) and the PSC protocol, which provides that the union shall intervene, to prevent, in situation of genocide, war crimes and crimes against humanity, in a member state of the African union.

A clear step in the right direction was also taken by the African court on human and peoples' right when on 25 marches 2011 it issued a unanimous order for provisional measures in respect of Libya. The African court did this without eliciting the views of the parties to the matter, on the basis of the imminent risk to life and the difficulty in scheduling an appropriate hearing involving Libya. with the African commission and the African court taking timely and bold decisions to stop mass atrocity crimes I think this is a lesson to African leaders that the rest of the continent are willing to fight against these heinous crimes.

Many African states have created NFPS. Some of these entities have been active in promoting and enabling small arms controls such as in Botswana, Kenya, Namibia and Rwanda, while others are meager virtual entities. Many African governments have struggled to have a meaningful impact on illegal transfers as they lack the capacity to police their borders and points of entry effectively; as well s secure state weapons stockpiles.<sup>120</sup> Additionally, there is no body at the continental level that regulates the arms trade in Africa.<sup>121</sup>

Therefore , it is of great important that the protocol to the African charter on human and peoples' rights on the rights of women in Africa. (Maputo protocol) develop a specialized department that would look into the management and transfer of these weapons.

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<sup>120</sup> Schroeder and Lamb n3i4 above) at 75.

<sup>121</sup> Schroeder and Lamb (n314 above) at 75.

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<[http://www.achpr.org/english/ratifications/ratification\\_african%20charter.pdf](http://www.achpr.org/english/ratifications/ratification_african%20charter.pdf)> (accessed on 18 June 2011).

Notes available at <[http://www.equalitynow.org/english/campaigns/african-protocol/african\\_protocol\\_en.html](http://www.equalitynow.org/english/campaigns/african-protocol/african_protocol_en.html)>(accessed on 20 June 2011).

African Commission, 38th ordinary sessions, 2005, available at <[www.achpr.org](http://www.achpr.org)> (accessed on 20 June 2011).

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Briefing to the Parliamentary portfolio committee on Justice and Constitutional Development: available at <<http://www.pmg.org.za/docs/2004/appendices/040805briefing.htm>> (accessed on 20 Protocol to the african charter on the human and people's rights on the rights of womengust 2011).

Inter Session Report by Special Reporter on the Rights of Women in Africa 49<sup>th</sup> Session of the African Commission on Human and Peoples Rights available at <[http://www.achpr.org/english/Commissioner%27s%20Activity/49th%20OS/Commissioner/MAI GA.pdf](http://www.achpr.org/english/Commissioner%27s%20Activity/49th%20OS/Commissioner/MAI%20GA.pdf)> (accessed on Protocol to the african charter on the human and people's rights on the rights of womengust 20 2011)

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E-mail from Roshan Dadoo, regional advocacy officer at Consortium for Refugees and Migrants in South Africa, 19 Protocol to the african charter on the human and people's rights on the rights of womengust 2011.