

THE IMPACT OF THE MAPUTO PROTOCOL IN BURKINA FASO



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1 Introduction

The year 2020 marked the end of Burkina Faso's first democratic regime after a transitional period that lasted one year. This followed the popular uprising of October 2014,¹ during which the power of the street was on a winning path against a 27-year regime of oppression, violation of human rights and the rule of law. It has now been about seven years since the Burkinabè² began to hope for a real democracy and the implementation of a system of accountability that would bring justice to the victims of the many violations that took place during the former regime. The questions that arise are what is then the human rights record after the first term of what was supposed to be a new era in the country? Have people seen their hopes come true?

It should be noted that some efforts have been made in accessing justice and establishing a system of trust between the State and the people about the realisation of the rights of the latter. Complex cases such as that of the assassination of former President Thomas Sankara and Norbert Zongo in which the younger brother of the President of the former regime, Blaise Compaoré, is allegedly involved have seen significant progress. The case of the murder of former investigative journalist Norbert Zongo had become cold as a result of the political connections of the prime suspect, François Compaoré, the brother of the then President.³ Eventually, the case reopened in 2015 and the procedure is underway to prosecute those involved. Similarly, the case of the attempted putsch of 15 and 16 September 2015⁴ has been adjudicated by the

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1 L Chouli 'L'insurrection populaire et la Transition au Burkina Faso' (2015) https://www.researchgate.net/publication/273517690_L'insurrection_populaire_et_la_Transition_au_Burkina_Faso (accessed 31 October 2020).

2 Official name of the inhabitants or natives of Burkina Faso. It should be noted that this name as well as the name of the country is taken from the national tongues and was instituted by President Thomas Sankara in his desire to break with imperialism on 4 August 1984.

3 B Jaffret 'Les affaires Sankara et François Compaoré suivies de près avant le voyage de Macron' *Mediapart* November 2017 <https://blogs.mediapart.fr/bruno-jaffre/blog/081117/les-affaires-sankara-et-francois-compaore-suivies-de-pres-avant-le-voyage-de-macron> (accessed 12 November 2020).

4 B Roger 'Procès du putsch manqué au Burkina Faso: Gilbert Diendéré et Djibrill Bassolé condamnés à 20 ans et 10 ans de prison' *Jeune Afrique* 2019 <https://www.jeuneafrique.com/823052/politique/procès-du-putsch-manqué-au-burkina-faso-gilbert-diendéré-et-djibrill-bassolé-condamnés-respectivement-a-20-ans-et-10-ans-de-prison/> (accessed 1 November 2020).

national courts and the guilty parties were sentenced to substantial sentences in September 2019.⁵

Some institutional reforms have also taken place, such as the reform of the justice system that took place during the transition, which was aimed at giving the judicial system more freedom, and generally to build a system of accountability for the violations of the rule of law, and human rights. Some of these efforts, initiated by the transitional regime and continued by the current regime, augured promising achievements for the future of human rights in the country. However, this was without counting on the occurrence of an unpredictable element, which is the security crisis that started unfolding in the country. The country started experiencing a serious security crisis due to increased terrorist attacks, which commenced in 2015 in Ouagadougou, the capital city of the country, when a restaurant and a hotel were attacked few days after the inauguration of the President of the current regime.⁶ From then, the country became disrupted by attacks in many other forms but with the same consequences of the loss of human lives. The crisis led to a major humanitarian crisis, as more than a million people were displaced in the country.⁷

Besides this, it should be noted that some issues that deserved to be settled could not be. One case in point is the popular uprising which, according to the *Mouvement Burkinabè des Droits de l'Homme et des Peuples* (MBDHP), result-

ed in about 34 deaths across the country, and about 400 injured in October 2014.⁸ Those allegedly involved in that case could not be tried, thus violating the victims' right to have access to justice and to remedies. The trial did not take place because of procedural legal issues. Other problems persisted such as strikes and social discontent, sometimes due to frustrations resulting from the actions of the old regime.

However, despite all these challenges, the state has always committed to the ratification of international human rights instruments although the implementation leaves much to be desired. For example, the country was among the first countries in July 1998, to make the declaration under article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights of June 1998, giving direct access to individuals and non-governmental organisations (NGOs) to the African Court. Moreover, Burkina Faso ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) in June 2006.

With regard to the status of women in the country, Burkina Faso is a state party to both the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Maputo Protocol. The two instruments provide obligations for the state to take necessary steps towards the full enjoyment of the rights of women. However, this is not the case due to the state's unwillingness to adhere totally to

5 As above.

6 'Le Burkina Faso face au djihadiste' *L'express* 2017 https://www.lexpress.fr/actualite/mon-de/afrique/le-burkina-faso-face-au-djihadisme_1754263.html (accessed 9 November 2021).

7 Conseil National de Secours d'Urgence et de Rehabilitation 'Statistics on the registration of IDPs in Burkina Faso' 8 August 2020.

8 Report of the Burkinabè Movement on Human and Peoples' Rights (MBDHP) on the Population Uprising of 30 and 31 October 2014.

its treaty obligations. Although the state has made remarkable progress in terms of policy and legislative reforms⁹ to align with its obligations under the Maputo Protocol, many other efforts are expected from the state. Women across the country continue to experience many violations of their rights. Women continue to encounter gender-based violations and discrimination. They are still victims of harmful traditional practices. Some of those harmful traditional practices include accusations of witchcraft and punishment in the form of banishment from home and families.¹⁰ The girl child equally continues to face harmful traditional practices such as female genital mutilation (FGM), as well as early and forced marriages.¹¹ Women are still victims of maternal mortality and face challenges with regards to the realisation of their sexual and reproductive rights.¹² Similarly, the level of participation of women in politics is not satisfactory. Despite the continuing improvement on the status of women in Burkina Faso, these are among other challenges that show that the implementation of the Maputo Protocol is still limited.

2 Ratification of the Maputo Protocol

As mentioned above, Burkina Faso ratified the Maputo Protocol on 9 June 2006 after signing it on 26 February 2004. The instruments of ratification were deposited on 9 August 2006.¹³ The

country was therefore among the first to ratify the Maputo Protocol. It ratified the Protocol without entering any reservation.

With regards to the ratification process in Burkina Faso, it has to be noted that article 148 of the Constitution of Burkina Faso¹⁴ gives power to the President to negotiate, sign and ratify international treaties.¹⁵ However, the Constitution specifies that the authorisation of ratification of peace agreement, trade treaties, treaties that involve the finance of the State, those modifying legislative provisions and treaties that have to do with the status of persons have to be approved by an Act of Parliament.¹⁶ The procedure is as follows: the relevant ministry or department has to present a draft request for ratification to the concerned ministry cabinet. When the cabinet approves the draft request, it is forwarded to the parliament which must adopt a law giving the authorisation to ratify the treaty.

The ratification of the Maputo Protocol followed the above-mentioned Constitutional procedure. The Ministry for the Promotion of Human Rights submitted the draft request for ratification to the Cabinet of the Ministry. The draft was approved and sent to the parliament. The parliament then adopted the law authorising the ratification¹⁷ and the government proceeded to the

9 See the sections on policy and legislative reform below.

10 Japan International Cooperation Agency, Mitsubishi UFJ Research and Consulting Co., Ltd. *Country Gender Profile: Burkina Faso* (2013) at 6 https://www.jica.go.jp/english/our_work/thematic_issues/gender/background/c8h0vm0000anj6-att/burkina_faso_2013.pdf (accessed 9 November 2021).

11 As above, 14.

12 As above.

13 See the ratification status: <https://www.achpr.org/states> (accessed 1 November 2020).

14 The Constitution of Burkina Faso of 2 June 1991 up to date of the 2012 amendments.

15 As above, article 148.

16 As above, article 149.

17 *Loi no 021-2005/AN du 19 mai 2005 portant autorisation de ratification du protocole à la Charte africaine des droits de l'homme et des peuples relatif aux droits de la femme en Afrique adopté par la Conférence des Chefs d'Etat et de Gouvernement de l'Union africaine, le 11 juillet 2003 à Maputo.*

ratification. After the law was adopted on 19 May 2005, it was promulgated through presidential decree and published in the Official Journal for its entry into force. The instruments of ratification were then sent to the Secretariat of the African Commission on Human and Peoples' Rights, through the Ministry of Foreign Affairs.

Before the parliament approves the draft request, it is debated in a parliamentary debate. At the debate on the ratification of the Maputo Protocol, the Ministry for the Promotion of Women in defending the draft had to give arguments for the ratification. During the debate, it was argued that the relevance of the issues addressed in the Maputo Protocol made the instrument a pertinent one for the situation of African women. It was also argued that in the context of Burkina Faso, the ratification of the Maputo Protocol will ensure the state's commitment to the promotion and protection of human rights and also enhance its commitment towards women's rights protection.¹⁸ Some specificities of the Maputo Protocol were presented and it was argued that it will help fill the gaps in the national framework, and also in the already existing global framework of women's rights protection.¹⁹

3 Identification of the government focal point

The focal point of the government on its response and responsibilities under the African Charter on Human and Peoples' Rights (African Charter) and its supplementary instruments, such as the Maputo Protocol, is the *Ministère des*

Droits Humains et de la Promotion Civique (MDHPC) (Ministry of Human Rights and Civic Promotion). This Ministry is supplied with information by the *Ministère de la Femme, de la Solidarité Nationale, de la Famille et de l'Action humanitaire* (Ministry of Women, National Solidarity, the Family and Humanitarian Action) when it comes to the response and responsibilities of the state regarding the Maputo Protocol. The MDHPC is equipped with a structure in charge of monitoring the implementation of international treaties, which is the *Direction de Suivi des Accords Internationaux* (Directorate in charge of following up international agreements).

The MDHPC also has the *Comité Interministériel de Droits Humains et du Droit International Humanitaire* (CIMDIH) (Inter-Ministerial Committee for Human Rights and International Humanitarian Law).²⁰ The CIMDIH is tasked with supporting and advising the government, to devise policies and strategies, and to host activities directed towards the full realisation of human rights and international humanitarian law principles. It also supports the government in drafting its different reports to both the United Nations (UN) and the African Union (AU) treaty monitoring bodies.

With regard to the Ministry in Charge of Women, it is equipped with the *Direction de la Promotion du Genre* (Directorate for the Promotion of Women and Gender). This department provides support and assistance to the government in terms of making policies

18 *Exposé des motifs* presented before parliament by the Minister for the Promotion of Women.

19 As above.

20 See the *décret 2005-100/PRES/PM/MPDH du 23 février 2005 portant création, attributions, composition et fonctionnement du Comité interministériel des droits humains et du droit international humanitaire* amended by the *décret 2008-740/PRES/PM/MPDH du 17 novembre 2008*.

for the promotion of the rights of women. It also contributes to the state reporting process on the Maputo Protocol.

To sum up, the focal points of the government concerning its response and responsibilities on the Maputo Protocol are the MDHPC through the Directorate in charge of following up international agreements, the CIMDIH, the Ministry in Charge of Women, National Solidarity and the Family through the Directorate for the Promotion of Women and Gender.

With regards to communications with the African Commission, it is done through diplomatic channel. In that sense, the Ministry of Foreign Affairs is the key channel through which every other focus point communicates with the African Commission. Embassies are sometimes involved in the process. Generally, the institutionalisation of the state's responsibilities lacks focus on the Maputo protocol. The focus is often on the African Charter. This also translates into the availability of information about the contents and usefulness of the Maputo Protocol in the sense that most of the interviewees did not have very advanced levels of information on aspects of the Maputo Protocol. Some of them that had very brief information on the Maputo Protocol, the African Charter and the African system in general, argued that the African system generally lacks an institutional framework that is sufficiently organised and equipped with a mechanism that specifically focuses on accountability. They stated that human rights instruments need capacity in terms of budgetary and operational support and involvement with donors for their effectiveness. This is what sometimes makes States to feel more bound by UN instruments.

4 Domestication or incorporation

The Preamble of the Constitution of Burkina Faso, which is an integral part of the document and which has the same value as its provisions, solemnly reaffirms the commitment of Burkina Faso to respect the African Charter in its entirety.²¹ The bill of rights contained in Burkina Faso's Constitution is also in accordance with the rights recognised under the African Charter in general, and the Maputo Protocol since it was drafted and adopted after the ratification of the African Charter, thereby, drawing inspiration from the latter. This bill of rights provides for civil and political rights, as well as economic, social and cultural rights. While civil and political rights are all justiciable, some economic, social, and cultural rights are not justiciable.

Even if the Constitution does not specifically mention the Maputo Protocol, since the latter was adopted under article 66 of the African Charter, the Constitution also includes women's rights as protected by the Maputo Protocol. The principle of supremacy of international treaties and agreements is also clearly stated in the Constitution which states that ratified and approved treaties have superior authority over domestic laws.²² International agreements therefore have a higher value than the Constitution, which is the supreme norm and by ricochet, they have a higher value than all the norms of the legal system. The Maputo Protocol has thus prevailed upon the Constitution and all the other norms and in case of conflict between them, the Maputo Protocol is considered superior.

21 Preamble of the Constitution of Burkina Faso, para 8.

22 As above, art 151; own translation.

Burkina Faso is a monist state. There is therefore no special process of domestication of treaties. As soon as they enter into force and they have been ratified by the country, they automatically form part of the national legal system and their provisions can be directly invoked before national courts. Hence, the rights in the Maputo Protocol are directly invocable before the national courts.

5 Legislative reform or adoption

The Constitution of Burkina Faso provides that before the promulgation and the implementation of an organic law, it should first be submitted before the Constitutional Council.²³ This is also required for the ratification of international agreements since they will form part of the national legal system. In that sense, the Maputo Protocol was submitted to the Constitutional Council to find out whether it was compatible with the Constitution. The Constitutional Council found that the Maputo Protocol's provisions were compatible with the Constitution.²⁴ After this advisory decision, the government then proceeded with the ratification process.

There have been several legislative reforms in the form of the enactment of laws to give effect to the Maputo Protocol. First, the Constitution of 2 June 1991 was amended in 2012 by the Law 033-2012/AN of 11 June 2012. The Constitution already laid down the principle of equality of birth for all Burkina-bè, but introduced through this

amendment, the issue of gender promotion as a factor in the achievement of gender equality of rights between men and women in Burkina Faso.²⁵

Similarly, a law on Agrarian and Land Reorganisation²⁶ was adopted on 2 July 2012. According to this law, the planning and sustainable development of the territory, the management of land and other natural resources as well as the regulation of real property rights are governed, among other things, by the principles of gender, respect for human rights and equity.²⁷ In the same vein, the law 0034-2009/AN of 24 July 2009 on rural land tenure²⁸ was adopted, and gives men and women the same rights of access to and enjoyment of land.

Also, the law 010-2009/AN of 16 April 2009 establishing quotas for legislative and municipal elections²⁹ was adopted. The adoption of this law is a normative step forward, given the social environment which is not conducive to the acceptance of women in politics.

Other general legislative reforms were also adopted, with particular provisions to protect women. Among those is the law 029-2008/AN of 15 May 2008 on the fight against trafficking in persons and similar practices.³⁰ This law provides for particularly severe penalties when the victim is a vulnerable person (pregnant woman, child) or when this has resulted in mutilation or

23 As above, art 155.

24 *Avis juridique no 2006-001/CC du 24 février 2006 sur la conformité à la Constitution du 2 juin 1991, au Protocole à la Charte africaine des droits de l'homme et des peuples relative aux droits de la femme en Afrique, adopté par la Conférence des Chefs d'Etat et de Gouvernement de l'Union Africaine le 11 juillet 2003 à Maputo.*

25 Preamble of the Constitution of Burkina Faso (n 14) para 5.

26 *Loi no 034-2012/AN du 2 juillet 2012 portant Réorganisation agricole et foncière.*

27 The Constitution of Burkina Faso, art 3.

28 *Loi no 0034-2009/AN du 24 juillet 2009 portant régime foncier rural.*

29 *Loi no 010-2009/AN du 16 avril 2009 portant fixation de quotas aux élections législatives et aux élections municipales.*

30 *Loi no 029-2008/AN du 15 mai 2008 portant lutte contre la traite des personnes et les pratiques assimilées.*

permanent disability. Similarly, the country also adopted law 030-2008/AN on the fight against HIV/acquired immunodeficiency syndrome (AIDS) and the protection of the rights of persons living with HIV/AIDS.³¹

Furthermore, law 028-2008/AN of 13 May 2008 on Labour Code in Burkina Faso grants equal opportunities to men and women in terms of access to employment. It gives special protection to pregnant women who are given a necessary period of maternity leave for their well-being.

There were also many legislative reforms under the transitional government. The most relevant one for women is law 061-2015/CNT of 2015 on the prevention, repression of and reparation for violence against women and girls and care for victims of such violence.³² This law deals extensively with cases of violations of the rights of women and girls, especially violence against them. It also addresses the issue of the punishment of these violations.

In 2018, Burkina Faso adopted a new Penal Code,³³ replacing the Penal Code of 13 November 1996 which contained a number of deficiencies. For instance, many instances of violence and abuse such as sexual harassment, marital rape and accusations of witchcraft were not considered in the previous Penal Code. The new Penal Code increased the penalties for offences such as rape and FGM,³⁴ and went further to provide for sanctions for those who encourage FGM through public speech-

es, words or writings.³⁵ It also introduced offences such as abduction,³⁶ sexual slavery³⁷ and sexual abuse or torture³⁸ and accusation of witchcraft.³⁹ On the issue of abortion, the Penal Code brings a breakthrough although the practice is still prohibited upon choice. Voluntary termination of pregnancy can be carried out at any time if a doctor (the previous Penal Code required the authorisation of at least two doctors) certifies that maintaining the pregnancy endangers the woman's health or that there is a strong probability that the unborn child will suffer from a particularly serious illness or infirmity.⁴⁰ In cases of rape or incest, if the materiality of the distress is established by the public prosecutor, voluntary interruption of pregnancy can be carried out in the first 14 weeks of the pregnancy⁴¹ (the previous Penal Code was limited to the first 10 weeks of the pregnancy).

The new Penal Code punishes moral violence such as the violation of the sexual and reproductive health rights of women and girls, the restriction of the enjoyment of these rights by means of coercion, extortion, corruption or manipulation, including the prohibition of the use of contraceptive methods.⁴² It also punishes the repudiation or mistreatment of a woman who gives birth to a child whose gender was not expected by the husband, and also infer-

31 *Loi no 030-2008/AN du 20 mai 2008 portant lutte contre le VIH/sida et protection des droits des personnes vivant avec le VIH/sida.*

32 *Loi no 061-2015/CNT portant prévention, répression et réparation des violences à l'égard des femmes et des filles et prise en charge des victimes.*

33 *Loi no 025-2018/AN Portant Code Pénal.*

34 As above, art 517-7.

35 *Loi no 025-2018/AN Portant Code Pénal* (n 33) arts 513-9.

36 *Loi no 025-2018/AN Portant Code Pénal* (n 33) arts 513-2.

37 *Loi no 025-2018/AN Portant Code Pénal* (n 33) arts 513-4.

38 *Loi no 025-2018/AN Portant Code Pénal* (n 33) arts 513-3.

39 *Loi no 025-2018/AN Portant Code Pénal* (n 33) arts 513-6.

40 *Loi no 025-2018/AN Portant Code Pénal* (n 33) arts 513-13.

41 *Loi no 025-2018/AN Portant Code Pénal* (n 33) arts 513-14 and arts 514-3.

42 *Loi no 025-2018/AN Portant Code Pénal* (n 33) art 513-5.

tile women.⁴³ The same applies to the prohibition of women from income-generating activities, associative and political activity and the differential treatment of wives in the context of polygamous marriage.⁴⁴ Similarly, the definition of marriage has evolved. It now considers religious and customary marriage.⁴⁵ This helps in the repression of forced marriages since the Personal and Family Code only gave legal effect to civil marriage, which made it difficult to repress a forced marriage as long as it was not civil. With this new document, anyone who imposes a marriage on anyone, whether civil, customary or religious, falls under the offence of forced marriage. Also, moral, material or emotional abandonment in violation of conjugal obligations and the duties of rescue and assistance is now punished.⁴⁶ This implies that if a husband or cohabitee abandons a woman who is pregnant, postmenopausal, or vulnerable due to her age, illness, infirmity, physical or mental deficiency apparent or known, he is punishable.

From all the reforms mentioned, the reform of the Penal Code is the one that most takes into account the issues addressed in the Maputo Protocol. The new Penal Code contains many innovations that are in line with the spirit of the Maputo Protocol and brings forward the protection of women's rights in general. It made up for many of the shortcomings that existed in the system, although some issues still need to be addressed.

With regard to the existence of specific budget for the implementation

of the Maputo Protocol, an interviewee affirmed that the budget allocated for the African Charter is aimed at implementing the Charter as a whole. They stated that there is no different budget for the Maputo Protocol specifically.

6 Policy reform or formulation

In general, policies and strategies do not mention that they are adopted to give effect to the Maputo Protocol. However, they can be considered to give effect to the Maputo Protocol. Some of them are worthy of mention such as the National Human Rights and Civic Promotion Policy.⁴⁷ This policy was adopted in 2013 and covers the period 2013-2022. The policy explains the foundations of the government's intervention in the area of human rights and civic promotion, and presents the related missions. It aims to contribute to the respect for human rights and rule of law for the construction of a society of peace, civic-mindedness and sustainable development by 2020.

The second one is the National Gender Policy⁴⁸ which was adopted in July 2009. This document is a frame of reference and guidance for all actors involved in promoting gender equity and equality. It aims to contribute to a harmonious, balanced and integral development of all Burkinabè, by eliminating inequalities and disparities between men and women in all areas, and by promoting their fundamental rights.⁴⁹

47 *Politique Nationale des Droits humains et de la Promotion civique, Journal officiel, 2013-06-06, no 23.*

48 *Document de la Politique Nationale Genre du Burkina Faso (2009) http://www.africanchildforum.org/cfr/policy%20per%20country/burkina%20faso/bfaso_gender_2009_fr.pdf (accessed 3 November 2020).*

49 The Constitution of Burkina Faso preface, para 3.

43 As above.

44 As above.

45 *Loi no 025-2018/AN Portant Code Pénal (n 57) art 531-1.*

46 As above, art 531-2.

Third, the National Health Policy,⁵⁰ adopted in 2000 and implemented through the National Health Development Plan (PNDS) 2001-2010, was revised in 2011 with the aim of improving the well-being and health of the population by 2020. The implementation of the PNDS 2001-2010 has produced results in terms of improving health coverage, the quality and use of services, the supply of health services in terms of assisted childbirth, the management of obstetric emergencies, the fight against epidemics, immunisation with the introduction of new vaccines and the management of endemic-epidemic diseases. The PNDS 2011-2020, is based on primary health care principles and values of equity, social justice, solidarity, accountability, ethics, probity, respect for the cultural identity of communities and patients' rights, as well as a gender approach and good governance. The PNDS pays particular attention to the health of vulnerable groups such as women, children, the elderly, affected by communicable and non-communicable diseases and characterised by high morbidity and mortality.⁵¹

Fourth, the National Employment Policy,⁵² adopted on 15 May 2008, is in line with the Government's efforts to combat poverty and promote economic

development and social progress. The policy provides for actions through projects supported by technical and financial partners. The State has gradually set up an operational mechanism to combat poverty and unemployment, including the fund to support women's income-generating activities, the Youth Initiatives Support Fund, the Informal Sector Support Fund and the Special Job Creation Programme 2012-2014.

Fifth, the National Plan for Accelerating Family Planning (PNAPF),⁵³ adopted for the period 2016-2020, is the second strategic axis of the National Economic and Social Development Plan (PNDES) which aims to act rapidly on the quantity and quality of human capital, as well as the opportunities and conditions of the full valorisation of the said capital. It aims at maintaining the health and well-being of women and their families through family planning, given that women face challenges due to risks to the health of the mother and the child in close-in-range pregnancies, early pregnancies, unsafe abortions, late care seeking, difficulties of access and lack of adequate obstetrical and neonatal care.

Finally, the policy of free health care for children under five and pregnant women was launched on 2 April 2016 and includes free childbirth and caesarean deliveries, free care for pregnant women and after childbirth for up to 42 days, free care for obstetric fistulas and free screening for cervical and

50 Ministère de la santé *Politique nationale de santé* (2011) <https://www.prb.org/wp-content/uploads/2018/05/Politique-Nationale-de-Sante%CC%81-2011.-Burkina-Faso.pdf> (accessed 4 November 2020).

51 Ministère de la Santé et de l'Hygiène Publique 'Plan national de développement sanitaire (PNDS) 2011-2020' 4 December 2020 https://www.sante.gov.bf/detail?tx_news_pi1%5Baction%5D=detail&tx_news_pi1%5Bcontrol%5D=News&tx_news_pi1%5Bnews%5D=347&cHash=3c72178a7d4bfe1d0dd371ea2d933389 (accessed 4 November 2020).

52 Ministère de la Jeunesse et de l'emploi *Politique nationale de l'Emploi* (2008) <http://www.onef.gov.bf/download/politique-nationale-emploi.pdf> (accessed 4 November 2020).

53 Plan National d'Accélération de Planification Familiale http://www.healthpolicyplus.com/ns/pubs/8212-8375_PNA_PF.pdf (accessed 4 November 2020).

breast cancer in women.⁵⁴ It is fully in line with Sustainable Development Goals.

7 Impact on the judiciary

In monist states, the mere ratification of an international treaty means that the provisions of that treaty become directly part of the judicial system. Therefore, individuals can invoke them in support of their claims before national courts, and judges can also invoke them in support of their arguments. However, the general tendency in civil law countries is to be attached to national instruments. It is in this sense that the Burkinabè judge is very attached to national laws and rarely refers to the instruments of the AU or the UN. For this reason, till now, no Burkinabè court has mentioned the provisions of the Maputo Protocol in its decision. The only time the Maputo Protocol was mentioned by a court in Burkina Faso is the legal opinion of the Constitutional Court in 2006, the *Avis juridique no 2006-001/CC du 24/02/2006 sur la conformité à la Constitution du 2 juin 1991, du Protocole à la Charte africaine des droits de l'homme et des peuples relative aux droits de la femme en Afrique, adopté par la Conférence des Chefs d'Etat et de Gouvernement de l'Union Africaine le 11 juillet 2003 à Maputo* where it was declared the Maputo Protocol is in conformity with Burkina Faso's Constitution.

Interviewed stakeholders explain that the system is such that when an international agreement is ratified, there are legislative reforms to incorporate

54 Réseau de Prévention des Crises Alimentaires 'Gratuité des soins au profit des femmes enceintes et des enfants de 5 ans' <https://www.food-security.net/bestpractice/gratuite-des-soins-au-profit-des-femmes-enceintes-et-des-enfants-de-5-ans/> (accessed 9 November 2021).

these international instruments into the national system. As a result, direct use of the provisions of the treaty is no longer very necessary as national laws reflect it. With regard to the Maputo Protocol, it was explained that the new Penal Code takes into account all the issues dealt with therein and therefore the Burkinabè judge no longer needs to refer directly to its provisions. It was also explained that the Burkinabè judges are rarely trained on the use of international legal instruments. Hence, they are more oriented towards national instruments.

It was therefore suggested that judges and lawyers be trained on the use of international instruments that offer greater guarantees for the exercise of certain rights. It was also suggested that human rights organisations and other human rights associations should play their part in drawing the attention of judicial actors to the issue.

8 Awareness and use by civil society

The African Commission held an awareness-raising/promotion mission in Burkina Faso in 2001 and during this mission, it recalled the importance of civil society organisations (CSOs) and NGOs in the implementation process of the African Charter. The delegation of the African Commission called on CSOs and NGOs, in particular, to focus on advocacy and awareness-raising activities, in order to promote the African Charter and other African instruments.⁵⁵ Unfortunately, till date, very few CSOs in Burkina Faso, working in the field of human rights use the African

55 *Commission africaine des droits de l'homme et des peuples 'Burkina Faso : Mission de promotion, 2001'* https://www.achpr.org/fr_states/misionreport?id=43 (accessed 31 March 2022).

Charter and the Maputo Protocol in their work.

Among them is the *Association des femmes juristes du Burkina Faso* (Association of Women Lawyers of Burkina Faso). The organisation's missions include raising awareness of and promoting all women's and family rights through information and sensitisation, studying national and international legislation on women and the family and suggesting various actions in favour of women to the political authorities. The association makes extensive use of the Maputo Protocol and other instruments in its advocacy work and training activities.

Similarly, the Information and Documentation Centre (CIDOC) which, among other things works to promote human rights, has trained CSOs on the rights contained in the Maputo Protocol and how to use it for advocacy and monitoring activities. Till now, no NGO with observer status has submitted a shadow report on the Maputo Protocol.

9 Awareness and use by lawyers and judicial officers (law societies and other practicing lawyers)

The lack of awareness about international instruments also affects lawyers and judicial officers, with the result that lawyers have rarely invoked these instruments in their submissions to national courts. Some interviewed stakeholders confessed that there was a low tendency to use the Maputo Protocol in their submissions because there is very little awareness about the rights contained in the instrument, and about international instruments in general.

They state that there is a need to train actors in the use of these instruments.

Others explained that they do not really need to directly invoke the Maputo Protocol in support of their arguments because national laws take sufficiently into account international instruments. In the case of the Maputo Protocol, they believe that the new Penal Code is quite extensive in terms of protecting women's rights and therefore they do not necessarily need to directly invoke its provisions.

10 Higher education and academic writing

Burkina Faso has public and private universities where basic law training is available. Although the contents of the programmes differ slightly from one university to another, the structure of the programme is such that it takes three years to obtain the first degree and two more years to obtain the master's degree. Public international law is taught from second year and human rights law forms part of the course. In the third year, human rights law is taught, and the different human rights protection systems, including the African system are discussed. When elaborating on the African system of human rights protection, mention is made of the African Charter and its different supplementary instruments. This is where the Maputo Protocol is introduced to the students. It is just mentioned that there is a specific instrument on the rights of women at the African level. However, there is no particular focus on the Maputo Protocol and its rights.

Besides the basic law training, there are specific trainings in the different legal professions. For example, the *Ecole*

Nationale d'Administration et de Magistrature (ENAM) (National School of Administration and Magistracy), the bar school, and the school of Diplomacy offer international public law courses in their programmes. Questions around human rights protection are discussed but just briefly. At this level too, the Maputo Protocol is not at the centre of discussions.

With regard to academics, to date, they have not shown interest in the Maputo Protocol in their writings. Few dissertations and thesis have sometimes mentioned it but without any particular focus. It is to be noted that academics do not generally show interest in human rights. Rather, they are tempted to lose interest because of the system. According to some interviewed stakeholders, the *Conseil Africain et Malgache pour l'Enseignement Supérieur* (CAMES) which is in charge of examining academicians for their promotional exams has the culture to disregard human rights papers. They strongly advice academics to rather write on public international law topics.

11 Impact on independent state institutions

There is a national human rights commission (CNDH) in Burkina Faso and the *Médiateur du Faso* (Ombudsman). The mandate of the latter is more general, and not only oriented towards human rights issues. In dealing with issues of citizens' rights, the *Médiateur du Faso* refers more to national instruments, particularly those provided for in administrative law. As a result, the institution does not have the African human rights protection system as a focus or interest and has not really used the Maputo Protocol in its activities.

The mandate of the CNDH is to promote, protect and defend human rights in general. Although this mission includes the issue of the protection of women's rights, the CNDH does not focus on the African human rights protection system. As a result, there has not been any activity of the CNDH that specifically relies on the Maputo Protocol.

These institutions are also not involved in any follow up of the implementation of the concluding observations of the African Commission, because the legislative acts establishing them and their mandate do not provide for this, which constitutes a limit in this respect. However, they participate in the national validation workshops before state reports are submitted.

12 State reporting

The MDHPC is the ministry that is responsible for state reporting under international human rights treaties. Its department in charge of following up international agreements is the body responsible for implementing this obligation. Depending on the area of concern of the treaty, other government departments are involved. In the case of the Maputo Protocol, the Ministry of Women, National Solidarity, the Family and Humanitarian Action is in charge of accompanying the MDHPC in the process. The CIMDIH also plays a key role in the process.

The state reporting process before the different human rights monitoring bodies can be described as follows. The MDHPC and the other concerned government ministries develop the first draft. This draft is generated by the technical departments of the ministries and they can seek for outsider expertise

when it is needed. This draft is presented during a workshop. The draft is discussed and amended where necessary before adoption. The workshop involves different stakeholders including government structures, independent institutions such as the Ombudsman, the CNDH as well as CSOs. The draft is transferred to the CIMDIH for review and after that, adopted in a cabinet meeting. Finally, the report is sent to the relevant human rights treaty monitoring body through the Ministry of Foreign Affairs and Regional Integration.

The most recent report on the African Charter, the report submitted in 2015 spanning the period 2011-2015 addressed issues related to the implementation of the Maputo Protocol.⁵⁶ The government delegations for the presentation constituted officials from the MDHPC and those in charge of women and gender promotion.⁵⁷ The delegation was quite considerate of gender representation and reflected an adequate representation of women (four women including the head of delegation).⁵⁸

The African Commission made pertinent concluding observations following the presentation of the report such as recalling Burkina Faso to respect its reporting obligation under article 26 of the Maputo Protocol. Other recommendations have been made based on the issues that were found by the African Commission from the

report. The African Commission recommended the state to do the following:

- to guarantee the protection of women's reproductive health and ensure their access to adequate and affordable health services;
- to guarantee conditions of detention that take into account the specific needs of women, particularly pregnant women and those detained with their children;
- to eliminate the practice of excision clandestinely, including the establishment of severe penalties for all those involved, including parents and family members.⁵⁹

The African Commission further recommended to the State to put in place:

- a unit to receive victims of sexual violence in police stations and hospitals authorised to collect evidence of the attack in order to enable the prosecution and effective conviction of the perpetrators of the violence;
- a compensation fund for victims;
- a psychological support department;
- include a budget line for the operationalization of the right to reparation for victims.⁶⁰

The government does not have any official platform for dissemination of concluding observations. Although there is no national mechanism for the implementation and follow-up of concluding observations, the government has taken steps to implement these concluding observations. Most of the issues pointed out by the African Commission were settled with the adoption of the new Penal Code. In addition, some of the strategies and policies that were previously discussed are the result

56 African Commission 'Burkina Faso: Third and Fourth Periodic Report (2011-2013)' submitted on 7 August 2015 <https://www.achpr.org/states/statereport?id=101> (accessed 31 March 2022).

57 African Commission 'Concluding Observations and Recommendations on the Combined Periodic Report of Burkina Faso, 2011-2013' <https://www.achpr.org/sessions/concludingobservation?id=120> (accessed 31 March 2022).

58 African Commission (n 56) para 3.

59 African Commission (n 56) paras 62-69.

60 African Commission (n 56) para 70.

of the implementations of these recommendations.

From the obligation that arises from the article 26 and 62 of the Maputo Protocol and the African Charter respectively, Burkina Faso is supposed to submit a report every two years. The country is yet to submit the 2017 and the 2019 Periodic Reports, if the 2015 report is considered to be the initial report.

13 Communications

Since the adoption of the African Charter, the African Commission has dealt with only two cases against Burkina Faso. The first communication was the communication *International PEN v Burkina Faso* of 1994. The file was closed during the procedure.⁶¹ There was therefore no decision from the African Commission to be implemented. In the second communication, *Mouvement Burkinabè des Droits de l'Homme et des Peuple v Burkina Faso*, the African Commission in 2001 decided on merits that articles 3, 4, 5, 6, 7, 9(2), 10, 11, 12, 13(2) of the African Charter have been violated by Burkina Faso. The recommendations that were made by the Commission, were not properly implemented. However, these communications were considered before Burkina Faso ratified the Maputo Protocol. So far, no communication alleging that Burkina Faso has violated the provisions of the Maputo Protocol has been brought before the African Commission.

61 Communication matrix, African Commission.

14 Special mechanisms and promotional visits of the African Commission

Burkina Faso has so far not hosted any fact-finding visits of the African Commission. Moreover, no special mechanism of the African Commission has visited the country to date. However, one promotional mission took place in the country in 2001. The mission was led by Commissioner Isaac Nguema with the objectives of:⁶²

... strengthening the dissemination and implementation of the African Charter and bringing the African Commission's support and encouragement to Burkina Faso in its search for solutions to the deepening of the democratisation process.

The African Commission made some recommendations to the government. These are as follows:⁶³

- To implement the reforms, especially in the area of Justice and ensure effective implementation of commitments made within the framework of the search for solution to problems of human rights violations;
- To make all the necessary arrangements to combat illiteracy and poverty, which hinders the enjoyment of human rights;
- To take necessary measures for the transformation of the Secretariat of State for the Promotion of Human Rights in Ministry and the creation of a National Commission for Human Rights in Burkina Faso;
- To accelerate the transmission of the next periodic report of Burkina to the Secretariat of the African Commission with a view to

62 African Commission 'Burkina Faso: Promotion Mission, 2001' <https://www.achpr.org/states/missionreport?id=43> (accessed 12 November 2020).

63 As above.

scheduling it for submission to the Commission;

- To play fully its role as the key player in the promotion and protection of human rights in the country, especially through the diffusion of the African Charter, collaboration with the African Commission, NGOs and by creating the enabling environment for exercising fundamental rights and freedoms.

After this mission, the country created a separate ministry in charge of human rights. The ministry was merged with the ministry of justice at some point again, but currently, human rights fall under a separate ministry. Some aspects of the recommendations have been barely implemented. From the date of the ratification of the Maputo Protocol till now, no special mechanism of the African Commission has visited the country concerning women's rights.

15 Factors that may impede or enhance the impact of the Maputo Protocol

From the findings of this study, there appears to be very little awareness of the Maputo Protocol and the African system in general in Burkina Faso. This is the first factor that may impede the impact of the Maputo Protocol. Law practitioners, academics and even the beneficiaries of the rights contained in the Maputo Protocol are not aware enough of the instrument, or do not use it. In addition, there is a lack of political will when it comes to the implementation of the rights therein. Another factor that may impede the impact of the Protocol is the mindset of the society. Subject to exceptions, mentalities are sometimes outdated to admit the exercise of certain rights contained in the Maputo Protocol. Questions relating to the decriminalisation or legalisation of

abortion, for example, are difficult to raise in Burkinabè society. The same applies to questions around polygamy. Factors like poverty and ignorance may also be an obstacle for the implementation of the Maputo Protocol. The persistence of FGM and other harmful traditional practices against women and girls is largely due to ignorance. Similarly, forced and early marriages are often due to ignorance and poverty.

However, with the glimmer of hope that the insurgency has given the population, human rights are becoming a matter of interest again. New CSOs that could take the African Commission's activities into account in their programme are emerging. That may help enhance the impact of the Maputo Protocol and the Commission.

The African Commission's missions in the country could also be a factor that will enhance the impact of the Maputo Protocol and the activities of the African Commission in Burkina Faso. For example, hosting the African Commission's sessions and promotional visits and mission will help raise awareness about the African Commission in the country as was the case when the country held the 19th ordinary session of the Commission from 26 March to 4 April 1986.⁶⁴

Furthermore, a representation of Burkinabè Commissioners could help enhance its impact in the country, as the commissioners play a key role in advocating for the improvement of the human rights situation in their countries. It was so during the mandate of Ms Salamata Sawadogo as Chairperson

64 AfricanCommission 'State report and concluding observations' <https://www.achpr.org/state-reportsandconcludingobservations> (accessed 31 March 2021).

of the African Commission from 2003 to 2007.⁶⁵ During her mandate, people learnt more about the African Commission and its activities. She also advocated for the adoption of legislations that comply with the African Charter. She was also Commissioner for Political Affairs from 2016 to 2020 and played a key role in increasing awareness about the activities of the AU in Burkina Faso. This is ongoing because she was re-elected in 2021 as Commissioner for Health, Humanitarian Affairs and Social Development at the African Union Commission.

The media actors are also not familiar with the African Commission's activities and therefore, do not include information about the African Commission and the Maputo Protocol in their programme. Giving them information and training them on the African Commission's activities may also help enhance the impact as they will relay the information to people.

The general trend, from comparison with previous years, is that the influence of the Maputo Protocol is increasing. More women's rights NGOs are being created and NGOs that deal with human rights in general are starting to give focus to women's rights. For these reasons, the Maputo Protocol is becoming more and more known, although there is still much to be done

65 Ministère des Affaires Etrangères, de la Coopération et des Burkinabè de l'Extérieur 'Commissaire Santé, Affaires humanitaires et Développement social de l'UA: Minata Samaté/Cessouma élue' https://www.mae.gov.bf/detail?tx_news_pi1%5Baction%5D=detail&tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Bnews%5D=409&cHash=8410b3e660b0799c346acf4c982118e0 (accessed 19 January 2022).