

THE IMPACT OF THE MAPUTO PROTOCOL IN CÔTE D'IVOIRE



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1 Introduction

Côte d'Ivoire is a West African country that gained independence in 1960. Since it acceded to independence, Côte d'Ivoire has shown its commitment to promoting and protecting human rights by ratifying a range of instruments, including the African Charter on Human and Peoples' Rights (African Charter) in 1992. However, over a long period, the ratification of these conventions had not really influenced the promotion and protection of human rights as it could have been expected at the national level. This situation gave rise to the birth of new human rights organisations, such as *Mouvement Ivoirien des Droits Humains* (MIDH)¹ and

Action pour la Protection des Droits de l'Homme (APDH),² as well as *Ligue Ivoirienne des Droits de l'Homme* (LIDHO),³ created in 1987, and the Ivorian section of Amnesty International. The 2000s ushered in a new era of mainstreaming human rights as efforts have been on course by successive governments, which adopted national legislation, and national policies aligning more with the international commitments of the state. The legislation emphasised the rights of vulnerable people including children, people with disabilities, and women.

The situation of human rights in Côte d'Ivoire and especially that of women witnessed a positive development, particularly post the year 2010. After the post-electoral crisis of 2011, the socio-political situation was more or less stable, and the state took advantage to catch up as far as the gaps, loopholes,

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1 The *Mouvement Ivoirien des Droits Humains* (MIDH) was created on 8 October 2000. The MIDH aims to provide new support and strengthen the promotion and defense of human rights. It carried out many major projects since 2001 focusing on observing the various national electoral processes, providing aid and assistance to victims of human rights violations, promoting non-violence, campaigns conciliation, mediation, and conflict resolution.

2 *Action pour la Protection des Droits de l'Homme* (APDH) was created in 2003. It has set itself the following missions: Fight against all violations of human rights and the abuse of power; provide legal, or even psychosocial aid and assistance to any needy person with a view to the recognition of their rights.

3 The LIDHO is the pioneer of ONGs acting in the field of human protection in Côte d'Ivoire. It actively fought for the ratification of the African Charter of 1981 by Côte d'Ivoire.

and inconsistencies are concerned in terms of guaranteeing acceptable standards on the rights of women in the country. In 2012, the state ratified the additional protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁴ and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the Maputo Protocol. Since then, policies and programs in favour of women have multiplied and have gradually been implemented.

2 Context of ratification of the Maputo Protocol

The Maputo Protocol, signed by Côte d'Ivoire in February 2004, was ratified in September 2011⁵ without any reservation and the instruments of ratification deposited on 9 March 2012. In practice, after the signature of a treaty, the Constitutional Council needs to control its conformity with the Constitution before the parliament authorises ratification by the President of the Republic. The ratification of the Maputo Protocol did not follow the mechanism provided for in the Constitution. There was no law authorising ratification for the simple reason that in 2011, the National Assembly was dissolved, and the Constitutional Council was not seized although it existed and functioned. The ratification of the Maputo Protocol was part of the general context linked to the promotion of the gender issues in Côte

d'Ivoire specifically to the implementation of the Beijing Action Program adopted in 1995. The Beijing Action Program is a strategic framework for actions that propose concrete measures to be taken by states and the international community to effectively fight against the inequalities and discrimination suffered by women in all sectors of public and private life. It has both an empirical and a legal basis and calls on all governments to step up their efforts to address the issue of gender equality, ensuring that a gender perspective is applied to all policies and programs at national, regional, and international levels. It seems that the Maputo Protocol was ratified more to fulfil commitments under the Beijing Action Program and less for the interest of this instrument.

3 Government focal point for implementation of the Maputo Protocol

Up to 2016, there was the Ministry of Solidarity, Family, Women and Children Affairs that oversaw gender equality issues. Within this Ministry, there was a Directorate aimed at ensuring implementation of the national policy on equal opportunities, equity and gender, and at instilling an enabling environment for gender mainstreaming in all sectors and at all levels. In 2014, the Directorate was transformed into an Observatory of equity and gender, the French name of such body is *Observatoire National de l'Équité et du Genre* (ONEG). The ONEG which is located within the Office of the Prime Minister, was created by decree 842 of 17 December 2014 with the mandate to monitor, evaluate and make recommendations for the promotion of gender equality in all public policies. The government also

4 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&clang=_fr (accessed 5 December 2020).

5 *Décret no 2011-226 du 16 septembre 2011 portant ratification et publication du protocole à la Charte africaine des Droits de l'Homme et des Peuples relatif aux droits des femmes, adopté le 11 juillet 2003 à Maputo.*

created in October 2011 a Compendium of women competencies. The *Compendium des Compétences Féminines de Côte d'Ivoire* so-called COCOFCI was set up on 4 October 2011 by the Gender Advisor to the President of the Republic of Côte d'Ivoire to strengthen the visibility, participation and leadership of women in the management of public and private affairs.⁶ Thus, the Compendium was viewed as providing the government with a comprehensive database of qualified Ivorian women for the purpose of appointing them to high-level decision-making positions. The government has also set up a National Committee to fight violence against women and children and adopted a National Strategy to fight sexual and gender-based violence.

Currently, it is the Ministry of Women, Family and Children that monitors the implementation of the Maputo Protocol. Within the said Ministry, a department, the Directorate for the Promotion of Gender and Equity, has been established and is responsible for ensuring the protection and promotion of women's rights as well as implementing international commitments through gender equity and equality. Members of this directorate have undergone specialised training both nationally and internationally on women's rights, particularly on the Maputo Protocol. The recent international training in which the members of this department took part is one organised in Dakar from 23 November to 4 December 2020 by the *Fondation René Cassin* and the Friedrich Nauman Foundation. It should be noted that the

Fondation René Cassin offers numerous training courses relating to human rights in connection with current themes. These training sessions allow human rights actors to develop their knowledge to achieve effective protection of human rights by providing them with the necessary tools to prevent but also to sanction human rights violations. The 11th delocalised training session, held in Dakar, Senegal, in November and December 2020 focused on the theme: 'Women's rights and international human rights law'.⁷ The Directorate for the Promotion of Gender and Equity also works in collaboration with the Directorate of Human Rights of the Ministry of Justice and the National Human Rights Institution of the country, known as *Conseil National des Droits de l'Homme de Côte d'Ivoire*. These last two entities are in direct contact with the African Commission on Human and Peoples' Rights (African Commission). All this could fall under the overall move of the implementation of the Maputo Protocol at the institutional level as far as the government is concerned.

4 The value of the Maputo Protocol in the Ivorian legal order

Like other French-speaking countries in Africa, Côte d'Ivoire has adopted the monist legal system with the primacy of international law. Once ratified, treaties become part of the law of the land without a transposition or domestication mechanism. Under article 123 of the Ivorian Constitution of 8 November 2016, duly ratified conventions have, upon publication, superior authority

6 <http://docstore.ohchr.org/SelfServices/FileHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsoVqDbaslinb8oXgzpEhivi6LX%2BvdSMxgLpq7OF7NMTvG9IV38e4897A0H1skPSgym4IuFf7nmUe2OPDBP3IRp7Dg7mkGzAJRaeA%2FAayuDv%2F> (accessed 5 December 2020).

7 *Fondation René Cassin 'Du 19 au 12 mai 2022 2ème session spéciale de Dakar 2022'* <https://www.iidh.org/index.php?p=page&idP=9&pays=4> (accessed 20 December 2020).

than the one attributed to ordinary laws passed by the parliament.⁸ However, the primacy given to the international law over the national law does not include the Constitution, which, in its preamble, is said to be the supreme law of the land, and any other legal instruments should be deemed of a lower authority before the Constitution. In any case, there is no conflict between the Maputo Protocol and the current Ivorian Constitution insofar as most of the provisions of the Maputo Protocol have been included in the 2016 Constitution in its first title devoted to Rights, Freedoms and Duties. Moreover, national legislation has been amended to comply with the provisions of the Maputo Protocol.

5 Legislative reform guided by the Maputo Protocol

The national legislation has been amended to give full effect to the provisions of the state's international commitments to promote and protect women's rights. The Maputo Protocol, alongside other instruments, has largely guided the adoption and amendment of legal frameworks at various levels:

Right to education:

- The law 2015-635 of 17 September 2015 introduces compulsory education in the Ivorian education system in its article 2(1) which specifies that within the framework of the public service of education, schooling is compulsory for all children of both genders between the ages of six and 16;

8 Art 123 of the Constitution of Ivory Coast reads: *les traités ou accords régulièrement ratifiés ont, dès leur publication, une autorité supérieure à celles des lois, sous réserve, pour chaque traité ou accord, de son application réciproque par l'autre partie*.

- The ministerial order 0041 MENETFP/DELC of 13 April 2017 on the Creation, Organization, Operation and Allocation of *Clubs mères d'élèves filles* in schools (CMEF) to support the education and maintenance of girls in school in case of interruption due to pregnancy or unpaid domestic work.

Right to health:

- The decree 2015 on the obligation to notify cases of maternal death and the creation of the *Comité National de Surveillance des Décès Maternels et de Riposte* (SDMR);
- The law 2015-532 of 20 July 2015 prohibits discrimination against people living with HIV/AIDS.

Fight against gender-based violence (GBV):

- The ministerial order 1651/MEME / CAB of 5 June 2012 on the Reception Charter in the Police services promotes access to the Police services and reserves a privileged reception for victims of criminal offenses relating to gender;
- The decree 2016-781 of 12 October 2016 allows anyone to have free access to justice and therefore facilitates access to justice for victims of sexual violence throughout the national territory;
- The amendment of the Penal Code in June 2019 with the strengthening of the criminalisation and repression of several forms of violence: female genital mutilation, forced and early marriages, etc.
- Several measures to prevent violence against women:
 - Circular 015/MJ/CAB of 13 July 2016 relating to the repression of rape to put an end to the practice of requalifying facts which constitute rape (this was leading to situations where perpetrators escape the punishment provided for culprits of rape and

getting lesser punishments to the extent of jeopardising the very aim of giving harsh sanctions for rape; namely the protection of potential victims through deterrence);

- Interministerial Circular 016/MJ/MEMIS/MPRD of 4 August 2016 relating to the receipt of complaints resulting from GBV.

The Civil Code:

- Law 2019-570 of 26 June 2019 relating to marriage brings a major change in terms of equality between men and women. Previously, the marriage law designated men as the head of the family, giving them a casting vote in household management. From 2019, there is a removal of men being the sole head and master of the household in a marriage. Under article 51 of the 2019 law, the spouses now manage the family jointly. Henceforth, man and woman together assume the moral and material direction of the family. Thus, the family record book, which was initially given to the man during the civil celebration of marriage, is now given to the spouses. This situation often caused problems, because each of the two spouses could be seen pulling the family record book towards themselves. To resolve this inconvenience, the bride and groom are asked to designate, before the ceremony, the one to whom the civil officer will hand over the family record book. The law of 2019 on marriage raises a major innovation because black African civilisations, in general, are predominantly phallographic. Ivorian society is not an exception; men have always had dominance over women. This explains the fact that despite this provision of the law on equality between spouses, traditionally the parents of the bride remind her that it is her husband who has the last word;

- Law 2019-573 of 26 June 2019 relating to inheritance also brings a change by correcting an injustice. Previously, neither spouse could inherit from the deceased spouse. With the law of 2019, the surviving spouse is now among the heirs of the deceased spouse. Thus, the widow will benefit from a quarter of her husband's property. This amendment is important insofar as it brings legal protection to the widow who was very often marginalised by her in-laws when her husband died. She was often deprived of everything, and her property acquired in marriage was confiscated;
- Law 2020-490 of 29 May relating to name gives new prerogatives to women and thus strengthens equality between the two sexes. Under articles 2 and 3 of the law, the mother can request the addition of her name to a child in addition to that of the father.

6 Impact of the Maputo Protocol on policy formulation

The ratification of the Maputo Protocol has undoubtedly influenced the adoption of policies in favour of women. Since 2013, the government's action in favour of women and young people has strived to be in line with the recommendations of the African Commission and the Beijing Platform for Action. At the political level, in education, health and employment, the situation of women has undergone remarkable development. The number of women in the government increased. Previously, there were three to four women at most in the government. Now, there are seven women at least. The Constitution of 2016 expressly enshrines the principle of equality between men and women. In March 2018, there was the launch of *Plan Stratégique d'Accélération de l'Éducation des Filles* (PSAEF). In terms of

empowerment and specific support to women and girls, specific plans and programs partners have been adopted to provide technical and financial support. In March 2019, the government adopted a draft law concerning a minimum quota of 30 per cent of women out of the total number of candidates presented for the ballots relating to the election of deputies, senators, regional, district and municipal councillors. It is certainly in line with this trend that in April 2019, the President appointed 33 senators, including 11 women representing 33 per cent of the members. The law was finally adopted by the National Assembly and promulgated by the President of the Republic on 14 October 2019 as Law 2019-870 promoting the representation of women in elected assemblies. However, the election of deputies of 6 March 2021 did not at all follow the law of 2019 in question, leading to missing the objectives of 30 per cent women in the National Assembly. The *Conseil National des Droits de l'Homme de Côte d'Ivoire* noted in a press release from 3 February 2021 that the candidate lists of all Ivorian political formations and coalitions did not meet the 30 per cent representation quota as provided for by law.⁹ The *Rassemblement des Houphouëtistes pour la Démocratie et la Paix* (RHDP) presented 40 female candidates out of 255 candidates; the *Parti Démocratique de Côte d'Ivoire-Rassemblement Démocratique Afric-*

ain (PDCI-RDA) presented four female candidates out of 46 candidates; the *Front Populaire Ivoirien* (FPI) presented nine female candidates out of 64 candidates; the *EDS* platform presented five female candidates out of 71 candidates and the *EDS-PDCI* coalition presented 22 female candidates out of 128 candidates. Finally, for the legislative elections of 6 March, the Independent Electoral Commission (CEI) validated 1584 candidatures including 212 female candidates¹⁰ for 255 positions of deputies.

7 Impact of the Maputo Protocol on the judiciary

Even if the provisions of the Maputo Protocol are directly applicable, national judges make few references to these texts, as well as other international instruments. It follows that international jurisprudence is not mentioned. Tanoh and Adjolohoun, in their article on the problems of human rights litigation in Côte d'Ivoire and Benin,¹¹ pointed out the lack of decisions from Ivorian courts with respect to human rights. One of the

9 Conseil National des Droits de l'homme 'Communiqué no 002/2021/CC/BE du février 2021 du Conseil National des Droits de l'Homme (CNDH) relatif à la représentation des femmes sur les listes provisoires de candidature à l'élection des députés à l'assemblée nationale du 06 mars 2021' <http://www.gouv.ci/doc/1612390012> CONSEIL-NATIONAL-DES-DROITS-DE-L-HOMME-REPRESENTATION-DES-FEMMES-SUR-LES-LISTES-PROVISOIRES-DE-CANDIDATURE-A-L-ELECTION-DE-S-DEPUTES-A-L-ASSEMBLEE-NATIONALE-DU-06-MARS-2021.pdf (accessed 6 March 2021).

10 The *Groupe des Organisations Féminines pour l'Egalité Homme-Femme* (GOFEHF), gathering 19 networks and organisations, organised on Thursday, 4 February and Friday, 5 February 2021, in Abidjan-Cocody, a training course for these 212 women, candidates for legislative elections. This training was part of the implementation of the project, '*Appui au renforcement de la participation des femmes aux processus électoraux en Côte d'Ivoire*', which benefits from the support of UN-Women. This project aims to strengthen the support for women in politics and especially those who are running for deputy positions. During the two days, the participants were instructed on modules relating to campaign planning, self-knowledge, the legal environment of elections and institutions of the Republic, communication and public speaking and finally resource mobilisation.

11 A Tanoh & H Adjolohoun 'International law and human rights litigation in Côte d'Ivoire and Benin' in M Killander (ed) *International law and domestic human rights litigation in Africa* (2010).

main challenges for the popularisation of the Maputo Protocol is that lawyers who are supposed to take human rights issues to court do not play their part. The training of judges and lawyers may explain this quasi-inexistent reference to international sources. The emphasis is instead on national texts, including the Criminal Code and the Civil Code, and most of the time, they are focused on issues connected to the usual legal subjects such as commercial law, civil law and penal law. Before closing its offices in Côte d'Ivoire, the Peacekeeping Mission of the United Nations in the country, known as *Opération des Nations Unies en Côte d'Ivoire* (ONUCI), through its Human Rights Division, together with the Institute for Human Rights and Democracy in Africa (IHRDA) had been providing training to judges on the use of international instruments and mechanisms to protect human rights. However, that was not enough to change the trend. The Maputo Protocol as well as other international instruments for the protection of human rights remain unused before Ivorian national courts. At this stage, it is expected that the situation will improve with courts referring to African instruments and jurisprudence when the judiciary is staffed with former law students and other people who have dealt with International Human Rights Law and its practice, such as former participants in national and international Human Rights Moot Court Competitions as well as attendees to various international training and conferences about African instruments and jurisprudence.

8 Significant appropriation of the Maputo Protocol by civil society

Ivorian civil society is particularly dynamic with regard to the popularisation of instruments for the protection of women's rights in Africa. Since the entry into force of the Maputo Protocol in 2006, NGOs have started training their members on the instrument. The Human Rights Division of the ONUCI took an important part in the popularisation of the Maputo Protocol through training sessions organised in 2008 that focused on women's rights protection instruments.¹² The popularisation of the protocol has increased with the ratification by Côte d'Ivoire. The *Association des Femmes Juristes de Côte d'Ivoire* (AFJCI)¹³ in collaboration with other NGOs or IO¹⁴ and the *Association des Etudiants Juristes de Côte d'Ivoire* (AEJCI)¹⁵ organised several national campaigns around the Maputo Protocol.

12 One of these training sessions held in April 2008 at *Université Méthodiste de Côte d'Ivoire* (UMECI) in collaboration with *Association des Etudiants Juristes de Côte d'Ivoire* (AEJCI) in which took part youth associations as *Association des Etudiants Musulmans de Côte d'Ivoire* (AEMCI) and the *Jeunesse Estudiantine Catholique* (JEC).

13 It was in 1984 that a group of women lawyers began to work on the rights of women and children. In 1986, the *Association des Femmes Juristes de Côte d'Ivoire* (AFJCI) was officially created. Its members are women who have made a career in law. We therefore find within it, magistrates, lawyers, notaries, jurists, etc., which deal with the following themes: discrimination and violence based on gender, child labour; access to justice.

14 As UNDP and UN-WOMEN.

15 The *Association des Etudiants Juristes de Côte d'Ivoire* (AEJCI) is a non-profit structure, created in 1999, which brings together law students from public and private universities in Côte d'Ivoire. Its main objective is to promote the law while promoting the professional social integration of its members. AEJCI is committed to the promotion of Human Rights through various popularisation activities, one of the most

As part of the *Projet d'appui à l'Amélioration de l'Accès aux droits et à la Justice* (PALAJ), legal clinics have been set up in several areas of the country.¹⁶

The PALAJ is an important project for AFJCI. Its main objective is to bring justice and litigants closer together, that is to say, to strengthen both the supply and demand for justice. The project aims in particular to improve access to justice for vulnerable groups such as women and children. The legal clinics were responsible for supporting the most vulnerable people, including rape victims, with justice services. The actors in this project, mostly from women's organisations, were tasked with raising awareness of women's rights. To do this, they monitor the relevant legal frameworks, in order to check the level of implementation and advise on all the recommendations and observations of treaty bodies, including the African Commission. Despite the dynamism of Ivorian civil society and women's organisations, there has not yet been a submission as far as shadow reports to the African Commission under the Maputo Protocol are concerned. On this point, the NGOs and the state stand on the same line, considering that Côte d'Ivoire is yet to submit a maiden report under article 26 of the Maputo Protocol.

important of which is the *Concours National René DEGNI-SEGUI* for Human Rights, which it organises every year. This is a moot court competition as the one organised by the Centre for Human Rights of the University of Pretoria whose one of the pioneers and former Director, Professor Christof Heyns, recently passed away. AEJCI is also a member of the *Convention de la Société Civile Ivoirienne* (CSCI).

16 Twelve legal clinics cover 11 courts, 40 departments, and 201 sub-prefectures.

9 Low appropriation of the Maputo Protocol by lawyers and judicial officers

The situation described in the 2016 edition of this publication has not changed significantly. Only a few lawyers who are human rights activists, or are involved in human rights activities, know about the Maputo Protocol and other human rights instruments and use these instruments in their work. Lawyers are not familiar with international law as well as international human rights law. Only a few lawyers know about the instruments and fewer have ever used human rights conventions in their arguments before domestic courts. The rare references to international instruments concern, in most cases, political trials.

10 Higher education and academic writing

Human rights education in primary and secondary schools in Côte d'Ivoire is still developing. Within the framework of the UN World Programme for Human Rights Education, the Government of Côte d'Ivoire adopted a decree in 2012, formally introducing human rights education in the curricula of educational systems at the primary and high school levels. This is being pursued at higher levels, in the professional training academies, Police and Gendarmerie Academies as well as at the National School of Administration (ENA), which trains civil servants. At university level, human rights education has evolved over the last few years with the development of various master's degrees by the National University as well as different human rights institutes. The Maputo Protocol is part of the curricula of the university as well as the institutes.

Several public and private universities now offer master's programs in human rights law. Many Ivorian academics have discussed the Maputo Protocol, but these discussions are mostly philosophical and too academic to have a wider impact in Côte d'Ivoire. The literature in Côte d'Ivoire with respect to the Maputo Protocol is thus limited. Lecturers at the National University have written and published a few articles, which have unfortunately not received a wider distribution.

11 Impact of Maputo Protocol on independent state institutions

Côte d'Ivoire has two independent state institutions that deal with human rights issues. These are the national human rights institution and an Ombudsman Office. The Ombudsman Office is known as the *Médiateur de la République*. The *Médiateur de la République* is an independent administrative body. It enjoys constitutional status and is an alternative dispute resolution mechanism.¹⁷ However, this institution cannot really be considered as working in the field of Human Rights. Neither the law of 2007,¹⁸ nor the 2014-2015 plan of action of the *Médiateur de la République* make any reference to the Maputo Protocol. The human rights institution is the *Conseil National des Droits de l'Homme de Côte d'Ivoire* (CNDHCI) established by law 2018-900 of 30 November 2018.¹⁹ CNDHCI appears to be an independent consultative body whose functions are

to ensure consultation, evaluation, and make recommendations in the area of human rights. The current Conseil has been created in replacement of the former *Commission Nationale des Droits de l'Homme de Côte d'Ivoire* established by law 2012-1132 of 13 December 2012. The former Commission, despite several advocacy efforts and pieces of advice, did not comply with the Paris Principles on the establishment and functioning of national human rights institutions in several respects and rendered the Commission more of a consultative body. The role of the new CNDHCI is more extended regarding following up on the implementation of concluding observations and/or decisions of international human rights mechanisms. Article 2 of the law of 2018 establishing the CNDHCI enumerates the powers of the institution, and some important prerogatives are to be noted. It can receive complaints about human rights violations and carry out investigations. It is also involved in the submission of state reports under international human rights instruments. The CNDHCI has recently launched its 4th cycle of training on human rights²⁰ with an emphasis on women's rights. As part of the implementation of law 2019-870 of 14 October 2019 promoting the representation of women in elected assemblies, the CNDHCI has initiated a coaching program for women.²¹

17 The *Médiateur de la République* is instituted by the Constitution (art 165 of the Constitution of 2016).

18 *Loi organique no 2007-540 du 1er août 2007 fixant les attributions, l'organisation et le fonctionnement de l'organe de Médiation dénommé le 'Médiateur de la République'.*

19 *Loi no 2018-900 du 30 novembre 2018 portant création, attributions, organisation et fonctionnement du Conseil national des Droits de l'Homme (CNDH).*

20 'Le CNDH a lancé le cycle IV de l'université des droits de l'homme' *CNDH* (21 January 2021) <https://cndh.ci/le-cndh-a-lance-le-cycle-iv-de-luniversite-des-droits-de-lhomme/> (accessed 21 January 2021).

21 'Coaching des femmes: Le CNDH poursuit la formation des femmes' *CNDH* (19 January 2021) <https://cndh.ci/coaching-des-femmes-le-cndh-poursuit-la-formation-des-femmes/> (accessed 21 January 2021).

12 State reporting

Despite the mechanism instituted by decree 61-157 of 18 May 1961 to monitor the implementation of conventions, resolutions and other instruments, there is no clarity on who does what when it comes to state reporting. The responsibility is rather based on the thematic issues being reported. For instance, the ministry in charge of human rights and public liberties led the reporting process under international Human Rights instruments. In practice, the State Secretary in charge of Human Rights is responsible for state reporting under the Maputo Protocol. Its Directorate of the Promotion of Human Rights prepares the state report with main contributions from the *Direction de la Promotion du Genre et de l'Équité* of the *Ministère de la Femme, de la Famille et de l'Enfant* and the *Conseil National des Droits de l'Homme de Côte d'Ivoire*.

Côte d'Ivoire did not submit any state report under article 26 of the Maputo Protocol since the ratification. The general observation is that Côte d'Ivoire has a habit of submitting its periodic reports with delay. For the African Charter, for example, the initial report was submitted in 2012, 20 years after the ratification of the Charter in 1992. As at May 2021, the country had three overdue reports.²² Its last report submitted was in November 2016 at the occasion of the 59th ordinary session. Regarding the Maputo Protocol, one of the reasons for the failure to submit a report is the political will as it seems that the government is mainly focused on the Universal Periodic Review (UPR) before the Human Rights Coun-

22 African Commission 'State reports and Concluding Observations' <https://www.achpr.org/statereportsandconcludingobservations> (accessed 5 April 2021).

cil and any other reporting obligation at the universal or global level while neglecting or at least not putting the same efforts and resources into reporting under the African human rights system. A personal and logical opinion on this trend is that there seems to be no substantial consequences for failing to report under the African human rights system as it could be in the United Nations human rights system. Various donors and financial partners refer to the UN reporting system to determine the level of commitment of a country to human rights, which is a leading consideration in disbursing or releasing funds and loans for the benefit of developing countries. This justifies why Côte d'Ivoire would rather put the emphasis on the report required by the CEDAW and the responses to comments made. However, the State Secretary in charge of Human Rights acknowledged the failure to report as inappropriate and assured that efforts are underway to catch up in the short-term period.

13 Communications

Several cases have been brought against Côte d'Ivoire before three African mechanisms of Human Rights protection and some are still pending. There were eight cases²³ finalised before the Economic Community of West African States (ECOWAS) Court of Justice and in

23 *Synecoci & Others v Côte d'Ivoire* (2018) ECW/CCJ/JUD/07/18; *M Bama Boubie & 10 Autres v Côte d'Ivoire* (2018) ECW/CCJ/JUD/05/18; *N'Guessan Yao v Côte d'Ivoire* (2016) ECW/CCJ/JUD/15/16; *Farouk Choukeir & Another v Côte d'Ivoire* (2015) ECW/CCJ/JUD/27/15; *Société Agriland v Côte d'Ivoire* (2015) ECW/CCJ/JUD/07/15; *Simone Ehiwet and Michel Gbagbo v Côte d'Ivoire* (2013) ECW/CCJ/JUD/03/13; *Amouzou Henri & 5 Others v Côte d'Ivoire* (2009) ECW/CCJ/JUG/04/09; *The National Co-ordinating Group of Departmental Representatives of the Cocoa-Coffee Sector (CNDD) v Côte d'Ivoire* (2009) ECW/CCJ/JUD/05/09.

most cases, the Court did not find a violation. Before the African Court of Human and Peoples' Rights, four cases were finalised.²⁴ Two of these cases were rejected²⁵ at admissibility stage and in two others,²⁶ the African Court went as far as to the merits stage.

There are six decided Communications against Côte d'Ivoire before the African Commission.²⁷ In two instances, the African Commission found that Côte d'Ivoire has violated its obligations under the African Charter. The first of these Communications deals with access to land in Côte d'Ivoire by foreigners.²⁸ The second Communication deals with the eligibility criteria for the office of President.²⁹ With regard to the first Communication, the law on access to land was not amended. With regard to the eligibility criteria for the presidency, one could first mention that a special decree was adopted in 2005 to allow all leaders of political parties to

run for Presidency.³⁰ Article 35 of the Constitution of 2000 was considered as a restrictive eligibility criterion to the Presidency. On his re-election in 2015, the President made the commitment to organise a referendum in order to amend this provision. Thus, the new Constitution promulgated on 8 November 2016 solved the problem of eligibility criteria raised by the former Constitution as per the findings in the Communication mentioned. No case to date has been filed on the Maputo Protocol.

14 Special mechanisms and promotional visits of the African Commission

The District of Yamoussoukro in Côte d'Ivoire hosted the 52nd ordinary session of the African Commission in October 2012. This session held at the occasion of celebration on the 25th anniversary of the African Commission helped in disseminating the Maputo Protocol and the Commission's work amongst NGOs and the broader human rights community.

The African Commission has organised three promotional visits to Côte d'Ivoire in 2001 and 2003. The first visit took place from 4 to 8 February 2001 and the delegation of the Commission was headed by Mrs Julienne Ondziel-Gnelenga, a member of the Commission and former Special Rapporteur on the Rights of Women in Africa. Given the political context of that time, the mission in its recommendations urged the Ivorian government to conduct

24 *Requête 044/2019 – Suy Bi Gohore Emile & 8 Others v Côte d'Ivoire*; *Requête 038/2016 – Gombert Jean-Claude Roger v Côte d'Ivoire*; *Requête 001/2014 – APDH v République de Côte d'Ivoire*; *Requête 006/2011 – Association des Juristes d'Afrique pour la Bonne Gouvernance v République de la Côte d'Ivoire*.

25 *Requête 038/2016 – Gombert Jean-Claude Roger v Côte d'Ivoire* and *Requête 006/2011 – Association des Juristes d'Afrique pour la Bonne Gouvernance v République de la Côte d'Ivoire*.

26 *Requête 044/2019 – Suy Bi Gohore Emile & 8 Others v Côte d'Ivoire* and *Requête 001/2014 – APDH v République de Côte d'Ivoire*.

27 *Communications 318/06 Open Society Justice Initiative v Côte d'Ivoire*; *400/11 Réseau Ouest Africain des Défenseurs des Droits Humains et Coalition Ivoirienne des Défenseurs des Droits de l'Homme v Côte d'Ivoire*; *289/04 Maîtres Brahim Koné et Tiéoulé Diarra v Côte d'Ivoire*; *246/02 Mouvement ivoirien des droits humains (MIDH) v Côte d'Ivoire*; *262/02 Mouvement ivoirien des droits Humains (MIDH) v Côte d'Ivoire*; *138/94 International PEN (on behalf of Senn and Sangare) v Côte d'Ivoire*.

28 *Mouvement ivoirien des droits Humains (MIDH) v Côte d'Ivoire* Communication 262/02.

29 As above.

30 Decision 2005-1/PR of 5 June 2005 regarding the designation of presidential candidates at the elections of October 2005 (*décision 2005-1/PR du 5 juin 2005 relative à la désignation à titre exceptionnel des candidats à l'élection présidentielle d'octobre 2005*).

investigations about allegations of rape of women in the police college in 2001 and other human rights violations that occurred during the electoral protests. So far, no trials have been organised and the perpetrators of these violations are yet to be identified. The second visit took place from 2 to 4 April 2001. The Chairperson of the Commission at that time, Professor EVO Dankwa, was the head of the delegation. The delegation met different high-level officials, including the President and ministers, to assess the human rights situation in Côte d'Ivoire. Different recommendations were made to the government of Côte d'Ivoire, amongst them, the setting up of commissions of inquiry on the massive human rights violations, the trial of the perpetrators of human rights violations and the submission of periodic reports under article 62 of the African Charter. The Commission itself admitted that no satisfactory measures had been taken in respect of the recommendations made. The third promotional visit of the African Commission took place from 24 to 29 May 2003, and the recommendations of the Commission were connected to peacebuilding and conflict resolution. These recommendations were in line with recommendations issued after the two preceding visits. Nothing has been done so far regarding the investigation and identification of perpetrators. The Commission's Special Rapporteur on Human Rights Defenders, Madam Reine Alapini-Gansou visited Côte d'Ivoire on two occasions in 2014 and 2015. She played an impressive advocacy role in the adoption of the law on human rights defenders in Côte d'Ivoire. The Special Mandate of the Special Rapporteur on

Human Rights Defenders³¹ is still supporting civil society groups in Côte d'Ivoire to disseminate and sensitise members of the public on the law.

The last visits of the African Commission in Côte d'Ivoire took place in 2016 and 2017.³² From 26 September to 4 October 2016, a delegation of the African Commission carried out a promotional mission in Côte d'Ivoire.³³ The delegation was made up of Commissioner Kayitesi Zainabo Sylvie, responsible for the promotion of human rights in Côte d'Ivoire and Chairperson of the Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Executions in Africa and Commissioner Jamesina Essie L. King, Chairperson of the Working Group on Economic, Social and Cultural Rights in Africa. The recommendations of the delegation dealt with many aspects of human rights. Recommendations made by the delegation were relating to various points. The main recommendations were relating to the low representation of women in the National Assembly and other institutions; the overcrowding in Abidjan prison, the long period of preventive detention in prison; the needs of political detainees, in terms of their rights as detainees and the acceleration of their judicial proceedings before the court; the problem of criminal justice and the need to find lasting solutions, in

31 Madam Alapini-Gansou has left the Commission after 12 years of service and joined the International Criminal Court; the current Special rapporteur on Human Rights Defenders is Commissioner Rémy Ngoy Lumbu who is continuing the work.

32 There is no information available on the visit of 2017.

33 Commission africaine des droits de l'homme et des peuples 'Communiqué de presse sur la mission de promotion de la Commission africaine des droits de l'homme et des peuples en République de Côte d'Ivoire' (4 October 2016) https://www.achpr.org/fr_pressrelease/detail?id=117 (accessed 23 January 2021).

particular on judicial practices and procedures in order to speed up investigations and trials, legal assistance which is not sufficiently operational. The government made efforts to improve the situation of women by adopting the law 2019-870 of 14 October 2019 promoting the representation of women in elected assemblies. Regarding the conditions of detention, the situation remains open to criticism.

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

The government of Côte d'Ivoire has the primary responsibility to respect, protect and fulfil the rights enshrined in the Maputo Protocol. In order to respect its international human rights obligations, the Ministry of Human Rights was established in 2003 with the mandate of promoting and protecting human rights. There were different campaigns and activities organised on the ground, but it remains that Ivorians, in general, are not aware of the existence of the Maputo Protocol. Other factors that impede the impact of the Maputo Protocol in Côte d'Ivoire are as follows:

- (a) Political environment: Côte d'Ivoire was a very unstable country for more than ten years (1999-2011). The civil war as well as the economic meltdown has brought the country to its knees. This instability complicates any action or effort aimed at the promotion of the Maputo Protocol in the country. Human rights violations are prominent and remedies or access to justice is not readily available. However, as mentioned above, the Ivorian authorities are fully aware of the work of the Commission as they regularly attend the sessions of the Commission. The challenge is to convey the messages or to promote the Protocol on a wider scale. Initiatives are being taken.
- (b) Lack of awareness and strong reliance of the judiciary on domestic law: As mentioned above, the judiciary plays a very important role in the recognition and justiciability of human rights. But, so far, no judgment has been rendered outlining violations of provisions of the Maputo Protocol. The judges still rely heavily on domestic law because this is the law they know better. There is no serious initiative or judicial activism despite different training organised by international NGOs and international human rights organisations. The standard training of judges does not include human rights and international law as such.
- (c) Lack of serious involvement of lawyers: Having decisions on human rights cases also requires the involvement of lawyers when writing or presenting their submissions to the courts. Lawyers in Côte d'Ivoire have not been able to submit cases on human rights violations. Only a few lawyers who are members of different human rights organisations have a good knowledge of human rights principles and treaties.
- (d) Poor media coverage: One of the means of popularisation of a human rights instrument is the media. In Côte d'Ivoire, the media has not been very active in the coverage of human rights activities because of the lack of resources and the limited number of private media agencies. For instance, if the media was interested in and active in covering

human rights activities and issues, the Maputo Protocol and any other legal framework that protect the rights of women could have been made accessible in user-friendly materials and local languages for the population.

16 Conclusion

Côte d'Ivoire is committed to promoting equality between men and women at the various levels of social, economic and political life. This commitment was reflected in the ratification of the Maputo Protocol in 2012 and the adoption of concrete measures for its implementation. At this stage, even if it has not yet submitted reports that would allow an objective assessment of the implementation of the protocol, it will be fair to welcome and encourage the efforts of the Ivorian government. However, there are always efforts to be made in order to effectively achieve this equality between men and women. This is not an easy venture, because the discrimination between these two sexes is above all cultural. Raising awareness will take time and young people have an important role to play. The state, in collaboration with civil society, must therefore ensure the training of the youth for a better appropriation of the Maputo Protocol and all the other relevant instruments.