

Article 19

Right to sustainable development

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Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to:

- (a) introduce the gender perspective in the national development planning procedures;
- (b) ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes;
- (c) promote women's access to and control over productive resources such as land and guarantee their right to property;
- (d) promote women's access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women;
- (e) take into account indicators of human development specifically relating to women in the elaboration of development policies and programmes; and
- (f) ensure that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.

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1 Introduction

A majority of the world's populace are women and girls whose development is excessively affected by poverty, limited access to resources, political exclusion, health system deficiencies, and globalisation.¹ According to a report by the World Bank, as of 2019, women are more likely than men to live in

1 PK Mishra & P Tripathi 'Women and sustainable development goals' (2018) 12 *Journal of Gender Equality and Sensitivity* 29.

poverty in Africa, with female-headed households often experiencing higher levels of poverty.² Women in Africa often have limited access to financial resources and are more likely than men to work in low-paying and insecure jobs, which can contribute to lower levels of wealth accumulation.³ While land ownership is critical to production,⁴ food security and wealth, less than 13 per cent of African women aged 20-49 years enjoy sole ownership of land, compared with 36 per cent of African men.⁵ The representation of women in decision-making and political offices is low in Africa.⁶ Furthermore, disparities in education across gender have limited women's access to exports of products and new technological opportunities associated with globalisation.⁷

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is the first instrument to expressly guarantee the right of women in Africa to sustainable development. Article 19 is important because its different elements respond to the social, political, economic, and cultural factors undermining women's sustainable development. It does so by requiring states to implement measures that equip women in Africa to cope with the challenges affecting their development. Such measures include participation, access to land, access to credit facilities, human development interventions, training and skills development and economic empowerment in Africa.⁸

Neither the International Covenant on Civil and Political Rights, nor the International Covenant on Economic, Social and Cultural Rights (ICESCR), which generally guarantee rights for both women and men, contain a provision on sustainable development. Moreover, the concept of sustainable development does not feature in the Convention on Elimination of all Forms of Discrimination against Women (CEDAW). The idea of sustainable development is not, however, unknown to the United Nations (UN)'s normative standard setting on protecting the environment and development. It is reflected in UN General Assembly Resolutions,⁹ the UN General Assembly Declaration on the Right to Development,¹⁰ the Beijing Platform,¹¹ the UN Millennium Declaration,¹² and the UN Sustainable Development Goals (SDGs).¹³ It furthermore features in the jurisprudence of the International Court of Justice (ICJ).¹⁴

2 World Bank 'Poverty and shared prosperity 2018: piecing together the poverty puzzle' 2019 <https://openknowledge.worldbank.org/handle/10986/30418> (accessed 10 May 2023).

3 Credit Suisse Research Institute 'Global Wealth Report' October 2020 <https://www.credit-suisse.com/about-us/en/reports-research/global-wealth-report.html>. (accessed 10 May 2023).

4 On productive resources, see sec 3.4 of this chapter.

5 I Gaddis, R Lahoti & W Li 'Gender gaps in property ownership in Sub-Saharan Africa' World Bank Group Policy Research Working Paper 8573 (2018).

6 See T Mkali & A Rudman 'Article 9' in this volume.

7 J Maigua, L Maina & C Ndegwa 'Challenges and opportunities in Kenya macadamia nuts industry: a gender perspective' (2017) 6(4) *Bridges Africa* 8. See S Wamahiu & C Musembi 'Article 12' in this volume.

8 Maputo Protocol art 19(a)-(e).

9 For instance, see United Nations General Assembly of Resolution A/RES/70/1.

10 Declaration on the Right to Development: Resolution/ adopted by the General Assembly, 4 December 1986, A/RES/41/128.

11 Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995.

12 United Nations Millennium Declaration, Resolution Adopted by the General Assembly, 18 September 2000, A/RES/55/2 (United Nations Millennium Declaration).

13 Report of the United Nations Department of Economic and Social Affairs on Global Sustainable Development (2015).

14 *Gabčíkovo-Nagymaros Project case, Hungary v Slovakia* ICJ (25 September 1997) 1997 ICJ Reports (*Gabčíkovo-Nagymaros Project*).

In particular, principle 20 of the 1992 UN Declaration on Environment and Development acknowledges that women's full participation is necessary for sustainable development.¹⁵ The same messages are echoed in article 8(1) of the 1986 Declaration on the Right to Development.¹⁶ Resolution 35 of the Beijing Platform similarly indicates the need to focus on women's development by urging all actors to:

ensure women's equal access to economic resources, including land, credit, science and technology, vocational training, information, communication and markets, as a means to further the advancement and empowerment of women and girls, including through the enhancement of their capacities to enjoy the benefits of equal access to these resources, *inter alia*, by means of international cooperation.¹⁷

The UN Millennium Declaration and the Millennium Development Goals (MDGs) commit states to combat poverty, hunger, disease, illiteracy, environmental degradation, and discrimination against women.¹⁸ Several aspects of the MDGs refer to the concerns of women. However, Goal 7 focuses on environmental sustainability without a specific emphasis on the situation of women and other aspects of their sustainable development. This gap was addressed in the UN SDGs, where most SDGs recognise women's equality and empowerment. This is not unexpected as, according to the World Bank, 'gender issues are highly relevant to achieving sustainable development'.¹⁹

The aim of this chapter is to offer a comprehensive analysis of article 19 of the Maputo Protocol by examining its drafting history, relationship with other treaty provisions, the nature and scope of state obligations and implementation measures deployed by states. The chapter concludes with recommendations for strengthening the implementation of article 19 to improve the realisation of the right to sustainable development of women in Africa. The chapter is organised into six sections. Following this introduction, section 2 discusses the drafting history of article 19. Section 3 deals with concepts and linkages with other treaty provisions, while section 4 examines the nature and scope of the obligations imposed on states under article 19. The extent of measures deployed by states to implement article 19 is the focus of section 5 of this chapter. Section 6 concludes the chapter and offers recommendations.

2 Drafting history

In 1995 the African Commission, in collaboration with Women in Law and Development in Africa (WILDAF), organised a Seminar on the situation of African Women and the African Charter on Human and Peoples' Rights.²⁰ It is uncertain whether the need to have a provision on the right to the sustainable development of women specifically featured at the event. However, the need for an additional instrument (Maputo Protocol), which eventually accommodates the right to sustainable development in article 19, was endorsed by the Organization of African Unity (OAU) Assembly of Heads of State and Government in July 1995.²¹

15 Rio Declaration on the Environment and Development, UN Doc A/CONF.151/26 (vol 1) and Declaration on the Right to Development (n 10) art 8(1).

16 Declaration on the Right to Development (n 10).

17 Beijing Platform (n 11) Resolution 35.

18 United Nations Millennium Declaration (n 12).

19 Report of the United Nations Entity for Gender Equality and the Empowerment of Women on Women and Sustainable Goals (25 September 2015) 12.

20 Seminar on the African Woman and the African Charter on Human and Peoples' Rights, Lomé, Togo, 8-9 March 1995, organised in collaboration with WILDAF, as referred to in the 8th Annual Activity Report of the African Commission 1994-1995.

21 Resolution AHG/Res 240 (XXXI), 31st ordinary session OAU Assembly of Heads of State and Government in June 1995.

Article 19 of the Maputo Protocol went through a number of phases before taking its current form under the Maputo Protocol. It is notable that the right to sustainable development was missing in the Nouakchott Draft,²² which emanated from the Expert Meeting on the Preparation of a Draft Protocol to the African Charter on Human and Peoples' Rights Concerning the Rights of Women,²³ and the Kigali Draft,²⁴ the second draft of the Protocol. Article 20 of the Nouakchott Draft and article 21 of the Kigali Draft only provide for 'the right to development', which covered some of the elements of article 19 of the Maputo Protocol. Given the similarities between the initial article 20 of the Nouakchott Draft, article 21 of the Kigali Draft, and the current article 19 of the Maputo Protocol, it can be assumed that it was largely the right under article 21 of the Kigali Draft Protocol that was subsequently renamed as 'the right to sustainable development' under the Maputo Protocol. No reason can be distilled from the drafting history of the instrument for the subsequent rewording of 'the right to development' as the 'right to sustainable development'. A possible rationale is that it reflects the thinking in the late 1980s that development should consider not only the needs of the present but also the future generations.²⁵

The idea and eventual merger of OAU Convention on Harmful Practices (2000) with the then Draft Protocol on women's rights did nothing to shape the formulation of the right to the sustainable development of women.²⁶ However, the Final Draft²⁷ made the first elaborate provisions on the right to sustainable development in article 19 as follows:

1. Women shall have the right to fully enjoy their right to sustainable development.
2. State Parties shall take all appropriate measures to:
 - (a) ensure that women participate fully at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes;
 - (b) facilitate women's access to land and guarantee their right to property, whatever their marital status;
 - (c) facilitate women's access to credit and natural resources through flexible mechanisms;
 - (d) take into account indicators of human development specifically relating to women in the elaboration of development policies and programmes; and
 - (e) ensure that in the implementation of trade and economic policies and programmes such as globalisation, the negative effects on women are minimised.²⁸

22 Expert Meeting on the Preparation of a Draft Protocol to the African Charter on Human and Peoples' Rights Concerning the Rights of Women, Nouakchott, Islamic Republic of Mauritania, 12-14 April 1997.

23 Expert Meeting on the Preparation of a Draft Protocol to the African Charter on Human and Peoples' Rights Concerning the Rights of Women, Nouakchott, Islamic Republic of Mauritania, 12-14 April 1997 (Nouakchott Draft).

24 Draft Protocol to the African Charter on Women's Rights, 26th ordinary session of the African Commission on Human and Peoples' Rights 1-15 November 1999 Kigali, Rwanda (Kigali Draft).

25 Report on the World Commission on Environment and Development – Our Common Future, UN Doc A/42/427 4 August 1987.

26 OAU Convention on Harmful Practises (2000): Organisation of African Unity (OAU) Convention on the Elimination of all Forms of Harmful Practices (HPs) Affecting the Fundamental Rights of Women and Girls IAC/OAU/197.00, IAC/OAU/199.000 and CAB/LEG/117.141/62/Vol.I. (Merged with Second Draft in Final Draft).

27 Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, CAB/LEG/66.6; final version of 13 September 2000 (Final Draft). Reprinted in MS Nsibirwa 'A brief analysis of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women' (2001) 1 *African Human Rights Law Journal* 53-63.

28 As above.

Proposals were made on the above Final Draft Proposal, first by the Expert Meetings of November 2001²⁹ and subsequently by the Office of the Legal Counsel in 2002³⁰ and the NGO Forum in 2003.³¹ In the Expert Meeting Report of November 2001, except for sub-article 19(d), which was adopted without amendment,³² substantial amendments were made to other aspects of article 19. In terms of the Report, it was agreed that sub-articles 1 and 2 be merged to form a single introduction that reads as follows: 'Women shall have the right to enjoy their right to sustainable development. In this connection, the State Parties shall take all appropriate measures to'.³³

A new sub-article (a) was suggested and accepted, which reads: 'introduce the gender issue in the national development planning procedures'.³⁴ Former sub-article 19(a) was amended as follows: 'ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes'.³⁵ Former sub-article 19(b) was amended to read 'promote women's access to and control over productive resources such as land and guarantee their right to property'.³⁶ Former sub-article 19(c) was amended as follows: 'promote women's access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a quality of life and reduce the level of property among women'.³⁷ Former sub-article 19(e) was adjusted to read 'ensure that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes be reduced to the minimum for women'.³⁸

However, Comments by the Office of the Legal Counsel in 2002 did not include any substantive comment on the right to sustainable development, which is featured under article 18.³⁹ Generally, editorial corrections were recommended for article 18(a) and (b). What is noteworthy is that under article 18(d), it was proposed that 'the phrase "extension services" should be defined, otherwise its meaning is obscured'.⁴⁰

The draft with comments by NGO,⁴¹ which featured the right to sustainable development in article 18 was different in key respects when compared to previous versions of the provision. Under the 2003 Draft Protocol, measures to be taken under article 18(a) include the introduction of 'sex equality and gender mainstreaming issue into the national development planning procedure'. Also, 'affirmative action' was deemed a necessary measure to be implemented under article 18(b). The word 'macro and micro enterprises' was added to article 18(d), and 'gender disaggregated data' was included under article 18(e) of the Draft. A reason that is obvious in the document for the introduction of keywords

29 Report of the Meeting of Experts on the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Expt/Prot.Women/Rpt(I), Addis Ababa, Ethiopia, November 2001 (Report of the Meeting of Experts).

30 Comments by African Union Office of the Legal Counsel (AUOLC), CAB/LEG/66.6/Rev.1, 2002 (Comments by the AUOLC).

31 Comments by the NGO Forum, CAB/LEG/66.6/Rev.1. January 2003.

32 Report of the Meeting of Experts (n 29) para 138.

33 Report of the Meeting of Experts (n 29) para 134.

34 Report of the Meeting of Experts (n 29) para 135.

35 Report of the Meeting of Experts (n 29) para 136.

36 Report of the Meeting of Experts (n 29) para 137.

37 Report of the Meeting of Experts (n 29) para 138.

38 Report of the Meeting of Experts (n 29) para 140.

39 Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (as adopted by the Meeting of Government Experts in Addis Ababa on 16 November 2001) CAB/LEG/66.6/Rev. 1. Comments by the AUOLC (n 30).

40 As above.

41 Comments by the NGO Forum (n 31).

under article 18(a) and 18(d) is that the Beijing Platform of Action considers ‘gender equality’ as a driver of sustainable development while ‘macro and micro-economic’ measures may have a negative impact on women.⁴² No reasons are evident in the document for the introduction of ‘affirmative action’ under article 18(b) and ‘gender disaggregated data’ under article 18(e).

In that same year, 2003, the right to sustainable development was featured in the Draft Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Addis Ababa Draft),⁴³ which is the fourth draft. The Draft did not embody the changes suggested in the NGO Draft of 2003. Rather, its provisions on article 19 reflect the current version of article 19 of the Maputo Protocol adopted in 2003.

Looking at the wording of article 19(d) of the Maputo Protocol, however, it appears that the call to define ‘extension services’ proposed by the Office of the Legal Counsel in 2002 remains unheeded.⁴⁴ Nonetheless, it seems that the word ‘extension services’ refers to agricultural skills and knowledge development that farmers need in order to be productive in their work. It has been shown that agricultural extension services are generally biased towards men, with agricultural skills and knowledge information often targeting male farmers and rarely tailored to female farmers.⁴⁵ The themes covered under article 19 of the Maputo Protocol, such as the effects of poverty, globalisation, active participation in decision-making, access to resources and gender inequality, resonate with article 14 of CEDAW. They affirm the call in the 2003 Draft Protocol with Markup that provisions of the proposed Protocol should measure up with the Provisions on CEDAW and general international standards.⁴⁶ The similarity with article 14 of CEDAW shows that article 19 is on par with article 14 of CEDAW in terms of its key elements.

3 Concepts and linkages

Article 19(a) to (f) is one of the lengthiest articles of the Maputo Protocol, and it contains key concepts such as ‘sustainable development’, ‘gender perspective’, ‘participation’, ‘productive resources’, ‘access to credit’, ‘indicators of human development’ and ‘globalisation’. The clarification of these concepts and their linkages with other treaty rights is the focus of this section.

3.1 Sustainable development

The term ‘sustainable development’ has grown both in significance and prominence since 1987, when it was first defined by the Report on the World Commission on Environment and Development (WCED) as:

42 Report of the Meeting of Experts (n 29) 17.

43 Draft Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, MIN/WOM. RTS/DRAFT.PROT(II)Rev.5, as adopted by the Meeting of Ministers, Addis Ababa, Ethiopia, 28 March 2003 (Addis Ababa Draft).

44 Comments by the AUOLC (n 30).

45 Bias in agricultural extension services was flagged as early as 1970 in the pioneering work of E Boserup *Women’s role in economic development* (1970). See also E Lecoutere, DJ Spielman & BV Campenhout ‘Discussion Paper Women’s empowerment, agricultural extension, and digitalization: disentangling information and role model effects in rural Uganda’ IFPRI Discussion Paper (2019).

46 Report of the Meeting of Experts (n 29).

development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It seeks to reconcile economic development with the protection of social and environmental balance.⁴⁷

Codified definitions of sustainable development in African regional instruments do not exist. The WCED definition, however, shows that sustainable development is linked to the protection of the environment, a reality that intersects with article 18 of the Protocol dealing with the right to a sustainable environment and article 24 of the African Charter on Human and Peoples' Rights (African Charter),⁴⁸ which also refers to sustainability in the context of the environment. In particular, article 22 of the African Charter states:

[a]ll peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

The African Commission on Human and Peoples' Rights (African Commission) has interpreted article 22 as encompassing the concept of sustainable development in the General Comment 3 on the African Charter on Human and Peoples' Rights.⁴⁹ The ACHPR notes that sustainable development is a fundamental aspect of the right to development, and that states have an obligation to ensure that development is sustainable and does not compromise the rights of future generations.⁵⁰ Furthermore, the African Commission has emphasized that the right to sustainable development is closely linked to the rights to a healthy environment, food, water, and health, which are essential components of the right to development. Hence, development should be participatory and inclusive, taking into consideration the voices and perspectives of marginalised and vulnerable groups such as women in decision-making processes related to development.⁵¹

The connection between a sustainable environment and sustainable development is distilled from the ICJ's exposition in *Gabcikovo-Nagymaros Project*. According to the ICJ, the need 'to reconcile economic development with the protection of the environment is aptly expressed in the concept of sustainable development'.⁵² A similar position is noticeable at the African regional level in *SERAC*.⁵³ In interpreting article 24 of the African Charter or the right to a healthy environment, the African Commission affirmed that states should take 'reasonable and other measures' to prevent pollution and ecological degradation, conserve and ensure ecological and sustainable use of natural resources for development purposes.⁵⁴ These cases show that sustainability is also related to health, well-being, life and general economic, social and cultural development conditions.

3.2 A gender perspective

Article 19(a) calls for the introduction of the gender perspective. In doing so, it acknowledges that the social construction of the role between men and women may constitute an impediment to sustainable development. 'Gender' refers to the social practices of constructing different roles for men and women

47 Report on the World Commission on Environment and Development – Our Common Future, UN Doc A/42/427 4 August 1987.

48 Organization of African Unity (OAU), African Charter on Human and Peoples' Rights (Banjul Charter), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982).

49 African Commission on Human and Peoples' Rights, 'The Right to Development in Africa: General Comment 3' 2002.

50 As above.

51 Resolution on Guidelines and Measures for the Promotion and Protection of Sustainable Development in Africa (2003) para 4.

52 *Gabcikovo-Nagymaros Project* case, *Hungary v Slovakia* ICJ (25 September 1997) 1997 ICJ Reports 7.

53 *Social and Economic Rights Action Center (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2011) (*SERAC*).

54 *SERAC* (n 53) para 52.

with the purpose of fostering inequalities based on that difference.⁵⁵ Such a construct determines power as well as access to material resources, including land, credit and training.⁵⁶

The United Nations Entity for Gender Equality and the Empowerment of Women (UNEGEE Women) outlines that to achieve sustainable development of women, addressing gender inequalities should be paramount in all the pillars of development: economic, political, social and cultural development.⁵⁷ The call in article 19(a) for the application of gender perspective links to article 4(l) of the Constitutive Act of the African Union (Constitutive Act), which affirms the need to promote gender equality,⁵⁸ and article 3 of the Protocol on Amendments of the Constitutive Act which urges the states to promote gender equality and ensure the effective participation of women in decision-making, especially in the political, economic and socio-cultural areas. A similar commitment to gender perspective is illustrated through the adoption of the Solemn Declaration on Gender Equality in Africa,⁵⁹ and the African Union (AU) Strategy for Gender Equality and Women's Empowerment 2018-2028.⁶⁰ According to Aspiration 6 of the Strategy, for the developmental goals of states to be achievable, such goals must be people driven, 'relying upon the potential offered by people, especially its women and youth and caring for children'.⁶¹ The foregoing reinforces the idea that an inclusive developmental plan is not achievable without gender consideration that targets the well-being of women.

3.3 Participation

Participation simply connotes that people are involved in decisions that affect their lives.⁶² Article 19(b) of the Protocol introduces the concept of the participation of women as an essential element for realising their right to sustainable development. As development policies and programmes feature in the public space, women cannot contribute or be impacted meaningfully in that space unless they enjoy the right to participate in all phases of development policies and programmes. Active participation of women in decision-making and political leadership positions and processes improves women's development and contributes to overall governance quality by increasing accountability and transparency.⁶³

Article 19(b) links with article 9 of the Maputo Protocol, dealing with the right of women to participate in the political and decision-making process. Along a similar line, it connects with article 13 of the African Charter on the right to participation. It is linked to the object of article 29 of the African Charter on Democracy, Elections, and Governance to 'create the necessary conditions for full

55 CL Ridgeway & L Smith-Lovin 'The gender system and interaction' (1999) 25 *Annual Review of Sociology* 191.

56 As above.

57 The report for the United Nations Entity for Gender Equality and the Empowerment of Women on Gender Equality and Sustainable Development (2014) (UNEGE 2014 Report) 10.

58 Organization of African Unity (OAU), Constitutive Act of the African Union, 1 July 2000, done at Lomé, Togo. The Act, which came into force on 26 May 2001.

59 African Union 'Solemn Declaration on Gender Equality in Africa' AU Doc. Assembly/AU/Decl.12 (III) Rev.1 (July 2004) (AU Declaration on Gender Equality).

60 African Union 'AU Strategy for Gender Equality and Women's Empowerment 2018-2028' adopted 20 March 2019 <https://au.int/documents/20190320/au-strategy-gender-equality-womens-empowerment-2018-2028> (accessed 23 June 2023) (AU Gender Strategy).

61 As above.

62 Eldis 'What is participation' <https://www.eldis.org/keyissues/what-participation> (accessed 23 June 2023).

63 OECD 'Gender and sustainable development: maximizing the economic, social and environmental role of women' a Report to the United Nations Commission on Sustainable Development (UNCSD) (2008) <https://www.oecd.org/social/40881538.pdf> (accessed 7 September 2022) 61; see also UN Women 'Facts and figures: women's leadership and political participation' <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures> (accessed 23 June 2023).

and active participation of women in the decision-making processes and structures at all levels'.⁶⁴ The Preamble to the Solemn Declaration on Gender Equality in Africa reinforces the same position by specifically acknowledging the limited participation of women in the social, economic and political decision-making structures and feminisation of poverty.⁶⁵ The essence of the participation of women in development is underscored in article 14 of CEDAW. It stresses that states are to ensure that women, especially in rural areas, enjoy the right to participate in development planning and stipulates a range of other rights to help address factors that undermine their benefit from development.⁶⁶ While the provisions under article 14 focus on the elimination of discrimination and participation of women in rural areas, article 19 of the Maputo Protocol makes no such distinction. This signifies that article 19(b) of the Maputo Protocol considers that participation is required in the developmental concerns of women in both urban and rural areas in Africa.

3.4 Productive resources

Labour, land and capital are recognised in the literature as factors of production.⁶⁷ In addition, expanding the list to include managerial ability has gained traction.⁶⁸ The understanding is that managerial ability makes a specific contribution to the productive process.⁶⁹ The African Commission's pioneering Resolution 262 on women's right to land and other productive resources reinforces the need for women to access such resources by urging states 'to fully comply with their obligations and commitments to ensure, protect and promote women's right to land and property'.⁷⁰ Hence, women's access to productive resources enunciated under article 19(c) is closely linked to other rights, such as the right to property under article 14 of the African Charter.

What may constitute property rights has been considered in a number of decisions of the African Commission. For instance, in *Malawi African Association and Others v Mauritania*, land was considered 'property' for the purposes of article 14 of the African Charter.⁷¹ In *Endorois*,⁷² traditional land was regarded by the African Commission as constituting 'property' under the Charter.

3.5 Access to credit

The concept of access to 'productive resources' under article 19(c) links to 'access to credit' under article 19(d) of the Maputo Protocol in that property is often required as collateral by financial institutions for women to access credit. The term access to credit demands the removal of obstacles that women entrepreneurs encounter in trying to obtain credit.⁷³ Credit refers to the total amount of funds available

64 African Charter on Democracy and Electoral Governance 2007.

65 Solemn Declaration on Gender Equality in Africa (2004).

66 CEDAW art 14(2).

67 V Papaya 'On production factors' (2017) *Bulletin of the Georgian National Academy of Sciences* 145.

68 B Gentile 'The new factors of production and the rise of data-driven applications' (Forbes, October 2011) 31.

69 DN Chigbo 'Management as a factor of production and as an economic resource' (2014) 4(6) *International Journal of Humanities and Social Science* 162.

70 Resolution on Women's Right to Land and Productive Resources – ACHPR/Res.262(LIV)2013 (Resolution 262) para 2.

71 *Malawi African Association and Others v Mauritania* (2000) AHRLR 149 (ACHPR 2000) para 128.

72 *Minority Rights Development (Kenya) and Minority Rights Group International obo Endorois Welfare Council v Kenya (Endorois)* (2009) AHRLR 75 (ACHPR 2009) para 187.

73 United Nations Economic Commission for Africa, 'United Nation Economic Commission for Africa African Training and Research Centre for Women' (2001) *Increasing the access of African women to credit: an integrated approach*, Addis Ababa.

to an individual from a financial institution.⁷⁴ In the context of women, literature shows that access to credit entails the integration of specific needs of women in the policies and practices of financial and microcredit institutions, especially poor women and women heads of households.⁷⁵ Although its focus is on rural women, article 14(g) of CEDAW specifies that access of women is required to ‘agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes’. In doing so, it sheds light on what ‘access to credit’ connotes under article 19(c) of the Maputo Protocol. CEDAW General Recommendation 34 stresses that accessing financial services on fair terms is important for the development of rural women’s enterprises.⁷⁶ Hence, a combined reading of CEDAW Recommendation 34 and article 14(g) of CEDAW can offer an interpretive insight into article 19(c) of the Maputo Protocol.

3.6 Indicators of human development

The human development index (HDI) considers three main dimensions to evaluate development: long and healthy life, education, and standard of living.⁷⁷ According to the World Health Organization, due to gender inequity, poverty, and sexual and gender-based violence, women’s health is often at risk in Africa.⁷⁸ They are more likely to die from communicable diseases, maternal and perinatal conditions, and nutritional deficiencies than women in other regions.⁷⁹ Girls and young women are especially vulnerable to early pregnancy and child marriage.⁸⁰ While increased education of women and girls can reduce poverty,⁸¹ educational attainment in sub-Saharan Africa ranks lowest globally, with a gender gap of 85.3 per cent.⁸² Gender roles still affect women’s access to food and their livelihood.⁸³ Ensuring that states consider the indicators of human development under article 19(e) is, therefore, a justifiable component of the right to the sustainable development of women in Africa.

Considering its focus on human development factors, article 19(e) of the Maputo Protocol connects with other articles of the Maputo Protocol, such as article 12 (right to education and training) and article 14 (health and reproductive rights). It also relates to articles 15 (food security), 16 (health) and 17 (education) of the African Charter.

Both the Maputo Protocol and African Charter have no clear provision on ‘standard of living’, but article 11 of the ICESCR guarantees the ‘right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions’. What constitutes a gauge of ‘standard of living’ can be deduced from a combined reading of articles 14, 15 and 16 of the Maputo Protocol. A number of general comments produced by the UN Committee on Economic and Social Cultural Rights (CESCR) emphasise that ensuring an adequate standard of living in the context of sustainable development of women requires

74 ‘Credit’ 26 February 2020 <https://corporatefinanceinstitute.com/resources/knowledge/credit/credit/> (accessed 10 May 2023).

75 H Morsy ‘Access to finance: why aren’t women leaning In? Women are self-selecting out of the African credit market’ March 2020 <https://www.imf.org/Publications/fandd/issues/2020/03/africa-gender-gap-access-to-finance-morsy> (accessed 23 June 2023).

76 Committee on the Elimination of Discrimination against Women General Recommendation 34 on the rights of rural women CEDAW/C/GC/34 Distr.: General 4 March 2016 para 67.

77 UNDP Human Development Reports ‘Human Development Index (HDI)’ <https://hdr.undp.org/data-center/human-development-index#/indicies/HDI> (accessed 23 June 2023).

78 WHO ‘Africa women’s health’ <https://www.afro.who.int/health-topics/womens-health> (accessed 23 June 2023).

79 As above.

80 UNDP Human Development Report 2020 *The next frontier Human development and the Anthropocene*.

81 UNDP Human Development Report 2020 (n 80) 41-42.

82 World Economic Forum *Global Gender Gap Report* (2022) 23.

83 World Economic Forum (n 82) 66.

access to food, housing and health care. For instance, the UN CESCR General Comment 4 notes that adequate housing is an important social and cultural right for everyone, including women and should not be subject to any form of discrimination.⁸⁴ It interprets the word ‘family’ to include female-headed households.⁸⁵ Equally, the importance of food and the need to avoid discrimination is stressed in General Comment 12 on the right to food.⁸⁶ General Comment 14 on the right to health calls for the elimination of discrimination against women, the promotion of their health all through their lifespan, and the reduction of health risks associated with maternal mortality and domestic violence.⁸⁷

3.7 Globalisation

The meaning of the concept of globalisation is nebulous due to its nature. It is a concept used in articulating the process of growing, developing and expanding the business, services and technologies throughout the world.⁸⁸ A fundamental feature of globalisation in Africa is the opening up of the economy and market system of the continent freely and widely to the global market and its forces.⁸⁹ International Labour Organization Declaration further clarifies the constituents of globalisation on Social Justice for fair globalisation as:

the diffusion of new technologies, the flow of ideas, the exchange of goods and services, the increase in capital and financial flows, the internationalization of business and business processes and dialogue as well as the movement of persons, especially working women and men.⁹⁰

The advantages of globalisation include increased world trade and incomes for several of the world’s poorest, resulting from opportunities they have been afforded by the freeing of markets and the expansion of trade.⁹¹ However, its negative effects are evident in the implementation of trade and economic policies and programmes. Women of Africa suffer more from globalisation due to their limited participation in formal economic sectors and the labour market, which potentially excludes them from the general benefits of globalisation.⁹² African women are mostly absorbed in informal economic sectors where they engage in small-scale sole business proprietorships and smallholding farming activities,⁹³ a reality which itself is problematic in that it portrays the feminisation of this sector.⁹⁴ Yet, these sectors are not spared from the adverse effects of trade liberalisation associated with

84 CESCR General Comment 4: The Right to Adequate Housing (Art 11(1) of the Covenant) Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights, on 13 December 1991 (Contained in Document E/1992/23) paras 1, 6.

85 CESCR General Comment 4 (n 84) para 6.

86 CESCR General Comment 12: The Right to Adequate Food (Art 11) adopted at the 20th session of the Committee on Economic, Social and Cultural Rights, on 12 May 1999 (Contained in Document E/C.12/1999/5) para 1.

87 CESCR General Comment 14: The Right to the Highest Attainable Standard of Health (Art 12) adopted at the 22nd session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (contained in Document E/C.12/2000/4) para 21.

88 ED Oruonye ‘Multinational oil corporations in Sub-Sahara Africa: an assessment of the impacts of globalisation’ (2012) 2 *International Journal of Humanities & Social Science* 152.

89 World Council of Churches ‘The effects of globalization on culture in Africa in the eyes of an African woman’ <https://www.oikoumene.org/resources/documents/the-effects-of-globalization-on-culture-in-africa-in-the-eyes-of-an-african-woman> (accessed 23 June 2023).

90 ILO Declaration on social justice for a fair globalisation, adopted at the International Labour Conference, meeting in Geneva on the occasion of its 97th session Geneva, 10 June 2008.

91 R Martin et al ‘Globalization at a critical juncture?’ (2018) 11(1) *Cambridge Journal of Regions, Economy and Society* 3.

92 U Efobi, B Tanankem & S Asongu ‘Female economic participation with information and communication technology advancement: Evidence from Sub-Saharan Africa’ (2018) 86(2) *South African Journal of Economics* 231.

93 JI Uduji & EN Okolo-Obas ‘Does corporate social responsibility (CSR) impact on development of women in small-scale fisheries of sub-Saharan Africa? Evidence from coastal communities of Niger Delta in Nigeria’ (2019) *Marine Policy* 1.

94 A Simplicio et al ‘Globalisation and female economic participation in Sub-Saharan Africa’ (2020) 37 *Gender Issues* 61.

globalisation. For instance, due to a lack of collateral security, resource-constrained women are unable to access credit and are therefore exempted from private titling, which is a hallmark of the property regime in trade liberalisation.⁹⁵

The Constitutive Act acknowledges that it will be difficult to attain socio-economic development in Africa without addressing the challenges of globalisation.⁹⁶ The AU Assembly's 2004 Decision on the social dimension of globalisation affirms that exclusion and marginalisation of populations can result from globalisation, which may, in turn, threaten stability.⁹⁷ Earlier, an ILO Report warned that globalisation threatens nationally based systems in Africa.⁹⁸ Therefore, in urging states to address the negative effects of globalisation, article 19(f) of the Maputo Protocol aligns with the aspiration set out in both regional and international instruments to ensure that globalisation does not hinder the development of vulnerable populations.

4 Nature and scope of state obligations

The main provision of article 19 of the Maputo Protocol requires States Parties to undertake certain measures which it lists under article 19(a) to (e). While this constitutes the obligations of states in respect of article 19, there is no specific General Comment on article 19 of the Maputo Protocol to explain these measures. The nature and scope of state obligations under article 19 can be clarified by reference to human rights soft law instruments, which stipulate measures that are relevant to different aspects of its elements. Although the soft law instruments are non binding,⁹⁹ as shown in the discussion under this heading, such reference can offer an interpretive insight into the application of article 19 of the Maputo Protocol. The legal basis for this is that while referring to articles 60 and 61 of the African Charter, the Preamble to the Maputo Protocol notes that international human rights instruments are significant reference points of interpretation.

Article 19(a) calls for the introduction of a gender approach which signifies that states should mainstream a gender approach to the planning and implementation national development agenda. According to the UN Economic and Social Council (ECOSOC), gender mainstreaming requires the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation of, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally, and inequality is not perpetuated.¹⁰⁰

Although it is not focused on sustainable development, CEDAW General Recommendation 37 on Gender-related Dimensions of Disaster Risk Reduction in the Context of Climate Change showcases key highlights of what gender-based measures entail for states.¹⁰¹ It requires gender-inclusive,¹⁰²

95 S Razavi 'Liberalisation and the debates on women's access to land' (2007) 28(8) *Third World Quarterly* 1479.

96 Constitutive Act of the African Union, adopted by the 36th ordinary session of the Assembly of the Heads of State and Government 11 July 2000, Lome, Togo.

97 Decision on the final report of the Commission on the Social Dimension of Globalisation Doc. Assembly/AU/11 (V) Add.6, Assembly of African Union, 3rd ordinary session, 6-8 July 2004 Addis Ababa, Ethiopia.

98 'The challenge of globalization in Africa: The trade union response' Labour Education 2001/2 No 123, 11.

99 AT Guzman & TL Meyer 'International soft law' (2010) 2(1) *Journal of Legal Analysis* 171.

100 Gender Mainstreaming 'Extract from report of the economic and social council for 1997' (A/52/3, 18 September 1997) <https://www.un.org/womenwatch/daw/csw/GMS.PDF> (accessed 23 June 2023) 2.

101 General Recommendation 37 on Gender-related dimensions of disaster risk reduction in the context of climate change CEDAW/C/GC/37 Distr.: General 7 February 2018.

102 General Recommendation 37 (n 101) para 28.

disaggregated data and monitoring mechanisms to measure baseline and progress¹⁰³ and develop programmes to address structural inequalities.¹⁰⁴ CEDAW Recommendation 34 affirms that the range of states' gender-responsive measures should cover institutional, legal and policy frameworks¹⁰⁵ and be supported by adequate budgets, institutional procedures, accountability frameworks, and effective coordination mechanisms.¹⁰⁶ Consequently, in the context of article 19(a), it is imperative for states to embark upon the reform and/or repeal of domestic legislation policies and programs on national development planning procedures that hinder women's role in the design, implementation, monitoring and evaluation of development-related policies, programmes and legislation.

Article 19(b) requires states to take measures to ensure the participation of women in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes. CEDAW General Recommendation 34 emphasises women's right to participate in and benefit from rural development, economic and social life, political and public life, land and natural resources.¹⁰⁷ Such active and effective participation can be ensured by: establishing quotas and targets for women's representation in decision-making positions, such as parliaments and other governance bodies; involving women organisations in policy formulation, implementation and monitoring through participation in political parties and governing bodies, such as community and village councils; and designing and implementing tools to monitor participation so as to eliminate discrimination.¹⁰⁸ States should also establish decision-making structures that are responsive to women's participation and develop action plans for removing practical barriers to women's participation in community life, implement awareness campaigns on the importance of women's participation, and ensure participatory assessments of projects.¹⁰⁹ In terms of General Recommendation 28, participation of women can be boosted by establishing codes of conduct on principles of equality and non-discrimination for public officials,¹¹⁰ the involvement of the media in public education programmes about the equality of women and men, and ensuring that women are aware of their right to equality without discrimination.¹¹¹ Similarly, CEDAW Recommendation 23 urges states to appoint women to senior decision-making positions and to incorporate ideas and interests of women groups to enhance the public and political life of women.¹¹² Implementing these measures is, therefore, necessary to ensure the participation of women in developing policies and programmes under article 19(b) of the Maputo Protocol. In terms of article 19(c), measures are required of states to ensure that women access and control productive resources such as land and guarantee their right to property. In terms of the African Commission's Resolution on women's right to land and other productive resources, to achieve this purpose, states are urged 'to repeal discriminatory laws and adopt legislative measures to sanction customary practices that limit or have a negative impact on women's access to, use of and control over land and other productive resources.'¹¹³

CEDAW Recommendation 34 further stipulates specific measures to ensure women's access to land and property. Such measures require states to ensure that land acquisitions respect women's

103 General Recommendation 37 (n 101) para 40(b).

104 General Recommendation 37 (n 101) para 44.

105 General Recommendation 34 (n 76) para 36.

106 General Recommendation 34 (n 76) para 36(b).

107 As above.

108 General Recommendation 34 (n 76) para 54(a) & (b).

109 General Recommendation 34 (n 76) para 54(c)-(e).

110 General Recommendation 28 on the core obligations of states parties under art 2 of the Convention on the Elimination of All Forms of Discrimination against Women para 38(b) & (d).

111 General Recommendation 28 (n 110) para 38(e).

112 CEDAW General Recommendation 23: Political and Public Life Adopted at the 16th Session of the Committee on the Elimination of Discrimination against Women, in 1997 (contained in Document A/52/38) para 26.

113 Resolution 262 (n 70) para 3.

rights and do not cause forced eviction; protect women from the negative impacts of acquisition of land by national and transnational companies for development projects, obtain women's prior consent for projects on their lands or territories and resources; pay compensation where acquisition is inevitable; and implement laws and policies that limit the sale of women land to third states or companies.¹¹⁴ Considering that these measures protect the security of land tenure of women, they are necessary for promoting access of women to credit and reduction of poverty. In that context, CEDAW Recommendation 34 urges states to initiate community-managed and mobile financial services for women who lack collaterals; facilitate their access to formal financial service providers; provide necessary information on financial services and facilities; and initiate financial skills-building programmes.¹¹⁵

Article 19(e) of the Maputo Protocol requires states to consider indicators of human development in development policies and programmes affecting women. These are a long and healthy life; access to healthcare, education, and standard of living; access to food; and access to housing. In relation to healthy life and access to healthcare in a reproductive health context, the African Commission released two general comments on article 14 of the Maputo Protocol, which shed light on the obligation of states to address reproductive health issues of women. In so far as reproductive health can affect the economic development and empowerment of women,¹¹⁶ the General Comments are relevant to article 19(e) of the Maputo Protocol. General Comment 2 on article 14(1)(a), (b), (c) and (f) and article 14(2) (a) and (c) provides that to create enabling environment for reproductive health, states should reform restrictive laws, policies and administrative procedures on family planning/ contraception and safe abortion. They should prevent coercion of women to use specific contraceptive measures because of health conditions, train practitioners, ensure implementation of relevant laws, ensure accountability, grant access to information and education on family planning and allow access to a variety of usages.¹¹⁷ In dealing with the right to self-protection and right to be informed on partners' health status, the General Comment on article 14(1)(d) and (e) of the Maputo Protocol urges states to take measures, including educational programmes, access to information concerning HIV, including through sex education and public awareness campaigns, on available health services responsive to all women's realities in all context'. They are urged to enact and implement appropriate laws, remove barriers, ensure accountability, provide financial resources, and redress wrongs.¹¹⁸

Due to its impact on their livelihood, domestic violence threatens women's economic development and empowerment.¹¹⁹ Thus, interventions in domestic violence are essential to fulfil the rights of women to sustainable development. CEDAW Recommendation 35 on domestic violence against women stipulates measures that should be part of the consideration in ensuring the right to the sustainable development of women. On gender-related violence involving state actors, CEDAW Recommendation 35 suggests measures that include the application of legislation and administrative regulations, investigation, prosecution of claims territorially and extraterritorially, and enforcement of remedies and disciplinary sanctions.¹²⁰ For gender-based violence occasioned by non-state actors, CEDAW General Comment 35 requires legislative, executive and judicial interventions. States are

114 General Recommendation 34 (n 76) para 62.

115 General Recommendation 34 (n 76) para 68 (a)-(c).

116 M Lee & J Finlay *The effect of reproductive health improvements on women's economic empowerment: a review through the population and poverty (POPPOV) Lens* (2017).

117 General Comment 2 on art 14(1)(a), (b), (c) & (f) and art 14(2)(a) & (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa see generally paras 46-63.

118 General Comment 2 (n 117) paras 25-42.

119 R Ouedraogo & D Stenzel 'How domestic violence is a threat to economic development' (2021) <https://blogs.imf.org/2021/11/24/how-domestic-violence-is-a-threat-to-economic-development/> (accessed 23 June 2023).

120 General Recommendation 35 on gender-based violence against women, updating General Recommendation 19 CEDAW/C/GC/35 Distr.: General 14 July 2017 paras 22-23.

required to enact legislation that prohibits violence against women and girls and ensure that domestic law aligns with the provisions of CEDAW.¹²¹ At the executive level, expected measures include allocating an adequate budget, designing focused public policies, and developing and implementing monitoring mechanisms.¹²² Judicial bodies are urged to refrain from gender-based violence, apply criminal law provisions and punitive measures strictly, observe fairness and impartiality in legal procedures, and avoid gender stereotypes or discriminatory interpretations of the law.¹²³ CEDAW General Recommendation 34 calls on states to monitor the health status of pregnant women and new mothers and investment health insurance schemes.¹²⁴ It requires deliberate actions of the states to involve women in the design, plan and strategies related to health, education, employment, and social security.¹²⁵ States are urged to boost women housing through the design and implementation of targeted policies and programmes which take into account the specific needs of women¹²⁶ and protect women from displacement and forced eviction by state and non-State actors.¹²⁷

Article 19(f) obliges states to address the negative consequences of globalisation on women, which is essential to the realisation of their right to sustainable development. In responding to issues of globalisation, CEDAW Recommendation 34 is important to clarify article 19(f) of the Maputo Protocol. It requires state parties to implement macroeconomic policies and encourage developmental assistance that responds to rural women and strengthens their productive capacity.¹²⁸ ILO Recommendation 204 is furthermore relevant to the plight of women working in the informal setting in a globalised world. Hence, it can offer a guide to the obligation of states in relation to article 19(f) of the Maputo Protocol.¹²⁹ Considering that globalisation can limit women's access to productive resources, the protection of land tenure of women, as envisaged by ILO Recommendation 204, is necessary. This instrument urges member states to formulate an appropriate legislative framework that promotes a conducive business and investment environment; supports entrepreneurship, diverse business enterprises, and business models, lifelong learning and skills development; gives access to financial and business services and markets; provides infrastructure and technology; and offers social security coverage.¹³⁰ It urges states to provide means for such persons to obtain recognition of property rights or formalise their access to lands.¹³¹ States are also urged to put in place an integrated policy framework that promotes sustainable development, addresses poverty and promotes inclusive growth.¹³²

5 Implementation

To analyse the trend on the implementation of article 19 of the Maputo Protocol, state reports submitted by member states to the African Commission pursuant to article 26 of the Maputo Protocol and article 62 of the African Charter as well as Concluding Observations of the African Commission are investigated along with other measures that may exist outside the reporting process. The following sections discuss legislative, administrative and judicial measures as well as implementation challenges faced by states.

121 General Recommendation 35 (n 120) para 26(a).

122 General Recommendation 35 (n 120) para 26(b).

123 General Recommendation 35 (n 120) para 26(c).

124 General Recommendation 34 (n 76) para 17(b).

125 General Recommendation 34 (n 76) para 17(b).

126 General Recommendation 34 (n 76) para 80.

127 As above.

128 General Recommendation 34 (n 76) para 11.

129 ILO Recommendation 204 – Transition from the Informal to the Formal Economy Recommendation 204 of 2015.

130 ILO Recommendation 204 (n 129) para 11.

131 ILO Recommendation 204 (n 129) para 13.

132 As above.

5.1 Constitutional and legislative measures

The right to sustainable development in general, and specifically for women, is not expressly guaranteed in any legislation, but some states in Africa have provisions that can be understood as addressing different elements of sustainable development.¹³³

In terms of article 19(a), for instance, section 13(3) of the Zimbabwean Constitution mandates the state to take measures to ensure the protection and enhancement of the right of people, including women, to equal opportunities in development.¹³⁴ Section 17 generally deals with gender balance and requires the state to promote equal representation of men and women in all institutions and agencies of government at every level and full participation of women in all other spheres of Zimbabwean society on the basis of equality with men.¹³⁵ Article 21(3) of the Kenya Constitution imposes the duty on state organs and all public officers to address the needs of women, while article 27(3) stipulates that women and men have the right to equal treatment, including the right to equal opportunities in the political, economic, cultural and social sphere.¹³⁶ Section 187 of the South African Constitution establishes the Commission for Gender Equality, whose role is to 'promote respect for gender equality and the protection, development and attainment of gender equality'. Section 14 of the Constitution of the Democratic Republic of Congo (DRC) stipulates equitable representation of women in national, provincial, and local institutions.¹³⁷ The foregoing shows that there is a normative basis for the implementation of key components of article 19 of the Maputo Protocol.

Regarding article 19(c) of the Maputo Protocol, a major progress in ensuring women's right to sustainable development has been the reform of South Africa's land policy,¹³⁸ which has impacted rural women positively.¹³⁹ The South African White Paper on Land Reform laid the policy framework for the abolition of all laws that discriminated against women in relation to property ownership.¹⁴⁰ Several pieces of legislation have given effect to the White Paper and the Land Reform Gender Policy. The legislation includes the Land Reform (Labour Tenants) Act 1996,¹⁴¹ the Housing Act 1997,¹⁴² the Water Services Act 1997,¹⁴³ and the Land Bank Amendment Act 1998.¹⁴⁴ Section 34 of the DRC Constitution guarantees everyone the right to property, a provision which is reported as ensuring women's access to land.¹⁴⁵ Seychelles guarantees women opportunities to own, access and dispose of the property

133 Africa Renewal 'Report on Africa's Priorities for Sustainable Development' (April 2012).

134 Zimbabwe's Constitution of 2013 sec 13(3); see generally the Republic of Zimbabwe Combined 11th, 12th, 13, and 15th report under the African Charter on Human and Peoples' Rights and 1st, 2nd, 3rd and 4th Combined Report under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women' (2007-2019) 97 para 10.1.

135 Zimbabwe's Constitution of 2013, sec 17(1)(a)-(c).

136 Kenya Constitution 2010; see also Republic of Kenya 'Combined report of the 12th and 13th Periodic Reports on the African Charter on Human and Peoples' Rights and the initial report on the Protocol to the African Charter on Human and Peoples' Rights of Women in Africa' April 2020 (Kenya Report) para 221.

137 Democratic Republic of Congo Report to the African Commission on Human and Peoples' Rights on the implementation of the African Charter on Human and Peoples' Rights from 2008 to 2015 (11th, 12th, and 13th Periodic Reports) and of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa from 2005 to 2015 (Initial Report and 1st, 2nd and 3rd Periodic Reports) (2017) para 305.

138 JK Moeng *Land reform policies to promote women's sustainable development in South Africa* (2011) 102.

139 The International Labour Organisation 'Report on Empowering Women in the Rural Economy' (2019) 3.

140 DL Miller & A Pope 'South African land reform' (2000) 44(2) *Journal of African Law* 173.

141 The Land Reform (Labour Tenants) Act 3 of 1996; South Africa: 2nd Periodic Report, 2003-2014, submitted 10 February 2015, 58th ordinary session, 6 April-20 April 2016 (South Africa Report) para 512.

142 The Housing Act 107 of 1997.

143 The Water Services Act 108 of 1997.

144 The Land Bank Amendment Act 21 of 1998.

145 Democratic of Republic of Congo Report (n 137) para 307.

in line with section 24 of the Constitution, which guarantees the right of everyone to property.¹⁴⁶ Through a number of legislative measures on agrarian reform¹⁴⁷ and rural land governance,¹⁴⁸ Burkina Faso entrenches principles of gender and equity to ensure women's participation in the governance of forests and other natural resources,¹⁴⁹ while section 211 of the Constitution of Eswatini provides that gender shall not exclude anyone from equal access to land for normal domestic purposes.¹⁵⁰

Legislative measures in the interest of women that conforms with article 19(d) are evident in some African states. The South African Land Reform Gender Policy aims to create an enabling environment for women to access, own, control, use and manage land, as well as access credit facilities.¹⁵¹ Through its legislation, DRC has set the rule on microfinance which is beneficial to women.¹⁵² The Enterprise Seychelles Agency (ESA), an institution established by law,¹⁵³ is required to consider women in its functions and provide assistance to female entrepreneurs.¹⁵⁴

Indicators of human development are broad-ranging and have implications on a number of rights covered by other articles of the Maputo Protocol.¹⁵⁵ Therefore it is rare to find one specific legislative measure implementing article 19(e) of the Maputo Protocol in the specific context of sustainable development.¹⁵⁶ Legislation put in place to ensure the implementation of article 19(f) of the Maputo Protocol is rarely specifically reported by the state. Globalisation is used in the South Africa report but only in the context of the negative toll that the free market system and the relaxing of border controls have on organised crime.¹⁵⁷ It does indicate that women are over-represented in the informal job market,¹⁵⁸ as is the case in other states such as Eswatini,¹⁵⁹ Burkina Faso,¹⁶⁰ and DRC,¹⁶¹ a reality that may expose them to the impact of globalisation, as earlier mentioned. DRC, however, has signed a range of ILO instruments and put in place national legislation to protect working women, including those in the informal sector.¹⁶² Section 59(3) of the Eswatini Constitution imposes an obligation on the state to integrate women into the mainstream of economic development, while section 60(3) mandates states to enact legislation for the economic empowerment of citizens.¹⁶³

146 Seychelles '3rd Periodic Report, 2006-2019, submitted 23 April 2021, 69th ordinary session, 15 November-5 December 2021 (Seychelles Report) para 19.1.

147 Burkina Faso Law No 034-2012/AN of 2 July 2012 on Agrarian and Land Reform.

148 Burkina Faso Law No 0034-2009/AN of 24 July 2009.

149 Burkina Faso: 3rd and 4th Periodic Report (2011-2013), submitted: 7 August 2015, 57th ordinary session, 18 November 2015 (Burkina Faso Report) para 285.

150 Kingdom of Eswatini Combined 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 9th Periodic Report on the African Charter on Human and Peoples' Rights and Initial Report to the Protocol to the African Charter on the Rights of Women in Africa (2021) para 605. Kingdom of Eswatini formerly known as the 'Kingdom of Swaziland'.

151 A Gendered Analysis of Land Reform Policy and Implementation Outcome in South Africa (2006-2008) 32.

152 Law No 11-020 of 15 September 2011; Democratic Republic of Congo Report (n 137) para 305.

153 Enterprise Seychelles Agency Act 3 of 2018.

154 Seychelles Report (n 146) paras 13.2 & 19.1.

155 See discussions on arts 12, 14 & 15 of the Maputo Protocol.

156 Elements which constitute the human development index have been discussed in sec 3.6 of this chapter.

157 South Africa Report (n 141) para 492.

158 South Africa Report (n 141) para 21.

159 Eswatini Report (n 150) para 520.

160 Burkina Faso Report (n 149).

161 Democratic of Republic of Congo Report (n 137) para 166.

162 Democratic of Republic of Congo Report (n 137) para 252.

163 Eswatini Report (n 150) para 606.

5.2 Administrative measures

States are already taking a number of administrative initiatives and measures to implement article 19(a) and (b) of the Maputo Protocol, which indicates that some states are committed to the implementation of certain aspects. For instance, Eswatini tasks the Department of Gender and Family Issues with the mainstreaming of gender into all areas of national development.¹⁶⁴ In addition to adopting a National Gender Policy, initiatives such as the National Programme for the Promotion of Women is operated in DRC to eliminate legal discrimination against women in both the economic and political spaces, deploying strategies such as training, sensitisation, formulation of draft laws, support for women's NGOs and the establishment of new structures.¹⁶⁵ Zimbabwe Gender Commission plays key roles, including the monitoring and investigation of possible violations of gender rights to seek redress.¹⁶⁶ Kenya,¹⁶⁷ Mauritania,¹⁶⁸ and Ethiopia¹⁶⁹ also have gender policies/strategies/action plans to aid the protection of women in private and public spaces. These measures are consistent with articles 19(a) and (b), which call for gender inclusiveness and participation in matters relating to development.

Administrative measures are being taken to implement article 19(c) and (d) of the Maputo Protocol, which demonstrates that some aspects of state obligations in respect of the provision are taken seriously by some states. In Zimbabwe, the policy position is that women should constitute 20 per cent of all those allocated large-scale farming land. Women are also entitled to agricultural land in their own right under existing schemes so that they can exercise control over means of production.¹⁷⁰ However, this figure is inadequate considering that women generally play a bigger role in subsistence farming.¹⁷¹ South Africa implemented the land restitution programme from which female-headed households benefited,¹⁷² while DRC initiated a programme to combat women's poverty by enhancing their right to property and access to land and credit.¹⁷³ In Namibia, programmes to pursue macroeconomic stability include fiscal discipline, which directly benefits women, especially rural women who are vulnerable and extremely poor.¹⁷⁴

A number of states establish structures and programmes that speak to article 19(e) in that they address long and healthy life, education, and standard of living, which constitute essential elements of human development for women. For instance, to respond to the threat that violence poses to women's health, in DRC, the Ministry of Social Affairs, Humanitarian Action and National Solidarity carries out awareness and propagates national anti-sexual violence against women.¹⁷⁵ The National Strategy to Combat Gender-Based Violence and the National Strategy to Combat Infant and Maternal Morbidity in the DRC utilises approaches like community sensitisation and family planning advocacy in the implementation of national development policies and programmes.¹⁷⁶ In Sudan, the government has adopted a national policy of empowering women through girls' education. The objective of the

164 Eswatini Report (n 150) para 42.

165 Democratic of Republic of Congo Report (n 137) para 76.

166 Zimbabwe Report (n 134) para 2.7.

167 Kenya Report (n 136) para 291.

168 Islamic Republic of Mauritania 10th, 11th, 12th, 13th & 14th Periodic Report on the implementation of the African Charter (2017) 50-51.

169 Ethiopia 5th and 6th Periodic Report, 2009-2013, submitted 7 May 2015, 56th ordinary session, 21 April-7 May 2015 (Ethiopia Report) 39.

170 Zimbabwe Report (n 134) 93.

171 FAO 'The role of women in agriculture' ESA Working Paper No 11 – 2 March 2011.

172 South Africa Report (n 141) para 515.

173 Democratic Republic of Congo Report (n 137) para 307.

174 B Ames et al *Macroeconomic policy and poverty reduction* (International Monetary Fund 2001).

175 Democratic Republic of Congo Report (n 137) para 361.

176 Democratic Republic of Congo Report (n 137) para 76.

plan is to raise women's awareness of their rights and means of protecting those rights, in addition to legislation enacted by the state to facilitate and simplify measures of protecting women's rights.¹⁷⁷ Programmes and campaigns are initiated to condemn and curb domestic violence and sexual offences in Eswatini,¹⁷⁸ a trend also found in states such as Zimbabwe,¹⁷⁹ South Africa,¹⁸⁰ the DRC,¹⁸¹ and Nigeria.¹⁸²

To combat female genital mutilation (FGM), a special unit to handle FGM was established in the office of the Director of Public Prosecution in Kenya.¹⁸³ Media sensitises the public on the adverse effects of FGM on women's health in Tanzania,¹⁸⁴ while a renewable five-year action plan to combat FGM was put in place in Cameroon.¹⁸⁵ The foregoing reflects that steps are being taken to improve the livelihood and health of women in the developmental direction of these countries, a trend which is in line with article 19(e) of the Maputo Protocol.

The negative consequences of globalisation under article 19(f) undermine the inclusiveness of women in a modern economy and raise questions as to what steps states may take to address this critical aspect of their right to sustainable development. Measures to strengthen the participation of women in the economy include the establishment of Eswatini's Ministry of Commerce Industry and Trade and Small, Micro, Medium and Enterprise (SMME) Policy to strengthen women's participation in the economy.¹⁸⁶ A similar approach is followed in South Africa, where it is recognised as a critical response to the challenges of unemployment, poverty, socio-economic conditions and inequality for all.¹⁸⁷ The Republic of Benin launched a Microcredit Programme for the Poorest on 27 February 2007 to enable the poorest segments of the population to become economically active, especially women.¹⁸⁸ In addition, it offers grants and low-interest loans to women in the informal sector¹⁸⁹ and encourages women to form savings and credit cooperative associations.¹⁹⁰

5.3 Judicial measures

There has been no reported judicial decision on the right to the sustainable development of women. This is concerning as it means the jurisprudence of the right as guaranteed under article 19 of the Maputo Protocol largely remains untested. However, the review of the reports by states shows that certain aspects of article 19 have been subjected to litigation at the domestic level. This is without any reference specifically to article 19. Considering the multifaceted nature of the right, this sub-section

177 Republic of Sudan the 4th and 5th Periodic Reports of the Republic of Sudan in Accordance with Article 62 of the African Charter on Human and Peoples' Rights 2008-2012 (2012) 40.

178 Eswatini Report (n 150) para 403.

179 Zimbabwe Report (n 134) para 3.4.

180 South Africa Report (n 141) paras 110 & 420.

181 Democratic Republic of Congo Report (n 137) paras 177 & 178.

182 Federal Republic of Nigeria's 6th Periodic Country Report 2015-2016 on the Implementation of the African Charter on Human and Peoples' Rights in Nigeria (2017) 172.

183 Kenya Report (n 136) para 246.

184 Report, 1992-2006, submitted May 22, 2008, Session:43rd ordinary session, 7 May-22 May 2008 (Tanzania Report) 19, 32.

185 Republic of Cameroon Single Report Comprising the 4th, 5th and 6th Periodic Reports of Cameroon relating to the African Charter on Human and Peoples' Rights and 1st Reports relating to the Maputo Protocol and the Kampala Convention (2020) para 706.

186 Eswatini Report (n 150) para 610-13.

187 South Africa Report (n 141) para 356.

188 Republic of Benin Combined (6th-10th) Periodic Reports on the Implementation of the provisions of the African Charter (2009-2018) and Protocol to the African Charter on the Rights of Women in Africa 59.

189 Benin Periodic Report (n 188) 21.

190 Benin Periodic Report (n 188) 32.

analyses these cases across the various states so as to detail the extent to which they relate to elements of article 19, such as participation, property and the general empowerment of women.

Participation of women in national development initiatives for their sustainable development is a key focus of article 19(a) and (b) of the Maputo Protocol. There are relevant cases from Lesotho¹⁹¹ and Kenya,¹⁹² which showcase the struggles of women and their vindication in certain areas critical to their sustainable development. In Lesotho, the issue in *Molefi Tse'pe v the IEC*¹⁹³ was whether the reservation of 1/3 of seats for women on the local government council constituted discrimination against men in breach of section 18 of the Constitution of Lesotho. The Court of Appeal held that such reservation of seats for women under the Local Government Elections Act 2005 was a justified affirmative action under section 18 as well as Lesotho's international human rights obligations under the African Charter and the Maputo Protocol. Participation and leadership of women in politics allow them to influence development-related decisions, which is crucial to achieving sustainable development; hence, this case is particularly relevant in view of article 19(b) of the Maputo Protocol, which imposes obligations on states to ensure women's participation in every aspect of national development initiatives and processes.

Women's access to property and ownership of it is directly linked to the enjoyment of article 19(c), which deals with land, and indirectly relevant to article 19(d), dealing with access to credit and 19(e) as a key indicator of human development. There are cases from Eswatini,¹⁹⁴ Cameroon,¹⁹⁵ and Namibia¹⁹⁶ that vindicate the right of women to property. In *Mary Joyce Doo Aphane*,¹⁹⁷ an Eswatini law which prohibited women married in community of property from registering property in their own names or in the joint names of themselves and their husbands was struck down by the court on the ground that it was unconstitutional. In *Nouteping*,¹⁹⁸ the High Court in Cameroon was confronted with the question as to whether the sale of a jointly owned real estate property by the husband without the consent of the wife was valid. The Court declared the sale null and void as it is incompatible with the provisions of article 15 CEDAW.¹⁹⁹ The issue before the Appeal Court in the case of *Agness Kahimbi Kashela v Katima Mulilo Town Council* was whether communal land passed to the appellant by her father could be transferred by the State of Namibia to a local authority based on the ground that all communal lands became the property of the State of Namibia. The Court established that the Constitution of Namibia guaranteed the enforcement of customary land rights; hence, it concluded that the appellant had an exclusive right to the use and occupation of the land in question, despite its proclamation as townland. Thus, the appeal was successful. The case shows that in some instances, state organs are not averse to the recognition of the right of women to own and use land.

191 The Kingdom of Lesotho Combined 2nd to 8th Periodic Report under the African Charter on Human and Peoples' Rights and Initial Report under the Protocol to the African Charter on the Rights of Women in Africa (2018) para 27.

192 Kenya report (n 136) para 78.

193 *Molefi Ts'ephe v The Independent Electoral Commission and Others* (2005) AHRLR 136 (LeCA 2005) (*Molefi Tse'pe v the IEC*).

194 Eswatini Report (n 150) 21.

195 Tanzania Report (n 184).

196 Republic of Namibia 7th Periodic Report (2015-2019) on the African Charter on Human and Peoples' Rights and the Second Report under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2020) paras 76.4 & 76.5.

197 *The Attorney-General v Mary Joyce Doo Aphane* Appeal Case No 12/2010.

198 *Nouteping née Noubissie Julienne v Mr Nouteping Jean-Marie, the Société Coopérative Mutuelle d'Épargne et de Crédit* Judgement No 281/Com of 15 June 2017; Cameroon Report (n 185).

199 *Nouteping* (n 198); Cameroon Report (n 185) para 812.

Jurisprudence relating to the indicators of women's 'human development' under article 19(e) with reference to a long and healthy life, education, and standard of living can be found in cases from South Africa,²⁰⁰ Mauritius,²⁰¹ Uganda²⁰² and Nigeria.²⁰³ In *S v Baloyi*,²⁰⁴ the South African Constitutional Court declined to declare unconstitutional the reverse onus of proving the absence of guilt on a person charged with breach of a family violence interdict (restraining order), a development that shows that courts take serious exception to violence against women. The attitude of the court was equally protective in *S v Chapman* where the Supreme Court of Appeal held that rape constituted 'a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim'.²⁰⁵ Mauritius' Employment Relations Tribunal, in *Mrs SD v The Residence Mauritius Hotel*, ruled that the prohibition and threat of sanctions against an employee who continues to wear Tikka (red dot on the forehead) despite repeated warnings is discriminatory and unconstitutional.²⁰⁶ In Uganda, the Constitutional Court in *Law & Advocacy for Women in Uganda* declared the practice of female genital mutilation unconstitutional and against human rights.²⁰⁷

5.4 Implementation challenges

Many hurdles remain in the implementation of article 19 of the Maputo Protocol. Lack of adequate gender-responsive budgets and participation, which undermines article 19(a) and (b), is a challenge mentioned in the reports of South Africa,²⁰⁸ Eswatini,²⁰⁹ Nigeria,²¹⁰ Cameroon,²¹¹ Mauritania,²¹² and Burkina Faso.²¹³ On the issue of a gender-responsive budget, South Africa indicates that it is missing in the government planning and budgeting cycle. As a result of limited budgets, Eswatini struggles with sensitisation and awareness creation on gender issues.²¹⁴ In Nigeria, inadequate funds have adversely affected the performance of key activities of relevant ministries and agencies responsible for the promotion of security, socio-economic welfare and poverty eradication programmes among women.²¹⁵ Cameroon takes the view that the financial and economic dependence of women predisposes them to vulnerability.²¹⁶ Mauritania acknowledges that it lacks human and financial resources to aid the advocacy and campaigns of institutions and organisations defending women's rights.²¹⁷ The lack of a gender-responsive budget does not only reflect that some states do not adequately take their obligations,

200 South Africa Report (n 141).

201 The Republic of Mauritius 9th to 10th Combined Periodic Report to the African Commission on Human and Peoples' Rights Implementation of the African Charter on Human and Peoples' Rights (2020) 81-83.

202 Republic of Uganda Periodic Report by the Government of Uganda to the African Commission on Human and Peoples' Rights (2013).

203 Nigeria Report (n 182).

204 *S v Baloyi* 2000 (1) BCLR 86 (CC).

205 South African Report (n 141) para 114.

206 Mauritius Report (n 201) 81-83.

207 *Law Advocacy for Women in Uganda v Attorney General* (Constitutional Petition 13 of 2005) [2007] UGSC 71 (5 April 2007); see Uganda Report (n 202) para 15.

208 South Africa (n 141) para 57.

209 Eswatini Report (n 150).

210 Nigeria Report (n 182) para 40.

211 Cameroon Report (n 185) para 100.

212 Mauritania Report (n 168).

213 African Commission Concluding Observations and Recommendations on the Combined Periodic Report of Burkina Faso on the Implementation of the African Charter on Human and Peoples' Rights adopted during its 21st extraordinary session 23 February to 4 March 2017, para 56.

214 Eswatini Report (n 150).

215 Nigeria Report (n 182).

216 Cameroon Report (n 185).

217 Mauritania Report (n 168).

especially under article 19(a) and (b). It is a gap that has implications on the other elements of article 19 as a gender-responsive budget implicates all the obligations of states towards women.

While participation in development-related decisions may exist in different forms, including political positions, town hall meetings, consultations, focus groups, and public debates, this is either unreported or limited in some states. In its Concluding Observations, the African Commission observes that the report by Cameroon does not show that measures are being taken to improve the political representation of women in decision-making institutions.²¹⁸ A similar concern was made in the report of Burkina Faso²¹⁹ about the unimpressive representation of women in positions of power and authority in Nigeria,²²⁰ Kenya,²²¹ and Liberia.²²² The foregoing constrains the opportunities of women to influence development-related projects and programmes. Participation of women is often limited by cultural practices. The *Tinkhundla* traditional governance system, which excludes political parties, constrains opportunities for participation in general and also specifically for women in Eswatini.²²³ Cultural and societal dynamics hinder the representation of women in political positions in Kenya, in spite of the constitution's two-thirds gender rule.²²⁴ Other challenges include a lack of adequate statistics²²⁵ and a paucity of jurisprudence on women's rights.²²⁶ Entrenched cultural beliefs in most states in Africa signal that the total commitment of states to the implementation of article 19(c) and (d) of the Maputo Protocol is not realised. While there are progressive decisions of courts on issues relating to the provisions in some states,²²⁷ the practical realities for women in other societies and areas are different. For instance, the African Commission noted that the Report of Cameroon does not mention the measures taken concerning the fight against poverty and lack of opportunity for women's access to housing, employment, loans, and revenue-generating activities.²²⁸ There is a general lack of economic empowerment of women in Nigeria,²²⁹ Liberia,²³⁰ and Mauritania.²³¹

Agenda 2063 seeks to advance sustainable development in Africa through a range of measures, including economic diversification, investment in infrastructure, and promotion of good governance.²³² In particular, Agenda 2063 emphasizes the need for sustainable development that is inclusive, equitable, and environmentally sustainable. It calls for a shift towards more sustainable patterns of production and consumption, with a focus on renewable energy, sustainable agriculture, and environmentally friendly technologies.²³³ Furthermore, Agenda 2063 emphasizes the importance of empowering women and

218 African Commission Concluding Observations and Recommendations on the Second Periodic Report of the Republic of Cameroon adopted at its 47th ordinary session 12-26 May 2010, paras 22.

219 African Commission Concluding Observations and Recommendations on Burkina Faso (n 213) para 54.

220 African Commission Concluding Observations and Recommendations on the 5th Periodic Report of Nigeria, 2011-2014 adopted at 57th ordinary session 4 November to 18 November 2015, para 75.

221 African Commission Concluding Observations and Recommendations – Kenya: Combined 8th-11th Periodic Report, 2008-2014 adopted at its 19th extraordinary session 16-25 February 2016, para 39(i).

222 African Commission Concluding Observations and Recommendations – Liberia: Initial and Combined Periodic Reports, 1982-2012, adopted at 17th extraordinary session 19-28 February 2015, para 19.

223 Eswatini Report (n 150) para 157.

224 Kenya report (n 136) para 222; also see Concluding Observations and Recommendations on Kenya (n 228) para 39(ii)

225 Nigeria Report (n 182) para 57.

226 Mauritania Report (n 168).

227 See sec 5.3 of this paper.

228 Concluding Observations and Recommendations on Cameroon (n 218) para 23.

229 Concluding Observations and Recommendations on Nigeria (n 220) para 75.

230 Concluding Observations and Recommendations on Liberia (n 222) para 19.

231 Concluding Observations – Mauritania: 10th, 11th, 12th, 13th & 14th Periodic Report, 2006-2014. Adopted at 23rd extraordinary session 13-22 February 2018, Banjul, Gambia (Concluding Observations on Mauritania) para 72.

232 African Union 'Agenda 2063: The Africa We Want' <https://au.int/en/agenda2063/overview> (accessed 4 April 2023).

233 See African Union 'Agenda 2063: The Africa We Want' (2015) para 6.

youth, and promoting gender equality and social inclusion in all aspects of development. It recognizes that these groups are often marginalized and excluded from decision-making processes related to development, and that their full participation is essential for achieving sustainable development in Africa.²³⁴

Agenda 2063 does not explicitly mention article 19 or the Maputo Protocol, its goals and objectives are in line with the principles and values set forth in article 19. Some specific examples of how Agenda 2063 goals align with article 19 of the Maputo Protocol include gender equality and social inclusion. Agenda 2063 emphasizes the importance of promoting gender equality and social inclusion in all aspects of development, including economic, political, and social spheres. This is also a key principle of article 19, which recognizes the importance of empowering women and ensuring their full participation in all aspects of development.²³⁵

The obligation of states under article 19(e) of the Maputo Protocol to consider indicators of human development relating to women in national developmental policies is also struggling for fulfilment. States such as DRC,²³⁶ Cameroon,²³⁷ Ethiopia,²³⁸ and Nigeria²³⁹ experience security challenges that threaten women's key indexes on development, which shows that there is inadequate consideration of the HDI as indicated under article 19(e). A recurrence of armed conflicts in some parts of the country further challenges the DRC.²⁴⁰ Cameroon indicated that security challenges resulting from the abuses of the *Boko Haram* terrorist group and armed gangs coupled with the economic crisis jeopardise human rights.²⁴¹ A similar reason was given by Ethiopia, which indicated in its report that promoting human rights while protecting citizens from terrorism is a challenge.²⁴² Cultural constraints pose problems for the access and educational development of women in Tanzania.²⁴³ The socio-cultural burden in the DRC is identified as one of the major challenges in combating domestic violence.²⁴⁴ The African Commission noted that the Report of Cameroon does not mention the maternal and reproductive health of women and the prevalence of FGM and forced marriage.²⁴⁵ It expressed similar concerns about Kenya²⁴⁶ and about clandestine excision, which increasingly affects girls of an early age, despite the existence of a law prohibiting FGM in Burkina Faso.²⁴⁷ It also warned that the harmful cultural and traditional practices of *ukuthwala* continue to restrict South African women and children from fully enjoying their rights.²⁴⁸ The high rate of maternal mortality is considered a serious concern in Nigeria.²⁴⁹ The foregoing examples show that state obligations relating to article 19(e) on the consideration of

234 As above.

235 As above.

236 Democratic Republic of Congo Report (n 137).

237 Cameroon Report (n 185).

238 Ethiopia Report (n 169).

239 Concluding Observations and Recommendations on Nigeria (n 220) para 73.

240 Ethiopia Report (n 169) para 15(v).

241 Cameroon Report (n 185) para 1057.

242 Cameroon Report (n 185) para 34.

243 Tanzania Report (n 184) 35.

244 Cameroon Report (n 185) para 798.

245 Concluding Observations and Recommendations on Cameroon (n 218) para 22.

246 Concluding Observations and Recommendations on Kenya (n 221) para 39(ii).

247 Concluding Observations and Recommendations on Burkina Faso (n 219) paras 60-62.

248 Concluding Observations and Recommendations on South Africa: 2nd Periodic Report, 2003-2014 Adopted at 20th extraordinary session June 9 to 18 June 2016, Gambia (Concluding Observations and Recommendations on South Africa) para 23.

249 Concluding Observations and Recommendations on Nigeria (n 220).

human development indicators in the elaboration of development policies and programmes of the Maputo Protocol are not yet effectively discharged in Africa.

Regarding article 19(f) of the Maputo Protocol, according to the African Commission, there is a general lack of rapport in the examined reports. There are exceptions, though. In Mauritania, there is a lack of integration of women as dynamic and inclusive development stakeholders.²⁵⁰ Cameroon's report does not reflect on the situation of women in the informal sector of the economy.²⁵¹ The situation of international economics poses challenges in Burkina Faso to the enjoyment of key rights under the Maputo Protocol.²⁵² In Liberia, inadequate economic opportunities for women remain a challenge.²⁵³ The dearth of consideration of article 19(f) in the reporting process signifies that states are not taking expected measures to address the negative consequences of globalisation on women.

6 Conclusion

The realisation of the multifaceted right to sustainable development for women remains a concern in Africa. The challenge of poverty looms large, as does discrimination. Article 19 seeks to tackle these challenges. However, the normative content of article 19 remains largely untested. Also, state parties hardly report on its specific elements. While the ACHPR aims to cover all provisions of the Protocol in its Concluding Observations, it is possible that some elements of article 19 may not be specifically addressed in all of its reviews of state compliance. This could be due to a variety of factors, such as limitations in available information or resources, or differences in the extent of implementation of article 19 among different states parties.

Even the somewhat disjointed jurisprudence with specific reference to article 19 does not yet exist. For instance, there are no cases testing the adequacy or otherwise of gender perspective in national development planning, women's access to credit and extension services, policies to mitigate the negative effects of globalisation and trade and economic policies and programmes on women. Also, but for a few exceptions, states hardly report on all the elements of article 19 of the Maputo Protocol. The predominant focus of reports by states has been on the property or land rights of women and access to credit facilities. While that is important, other elements are often missing or not properly developed in the reports. A possible reason for this is the overlapping nature of the article with other provisions of the Maputo Protocol. Another factor might be a lack of understanding by states about the reporting expectations on article 19 of the Maputo Protocol.

All in all, there is a need for sensitisation and awareness around the reporting demands of article 19 to give all stakeholders a better understanding. A new reporting guideline which clearly spells out the reporting items of article 19 should be developed to enhance reports by states. Non-state actors working on women's empowerment initiatives in Africa need to be equipped to take on issues of advocacy and litigation relating to article 19. States should take the implementation of all rights in the Maputo Protocol seriously as they are interdependent and impact on the realisation of article 19. Empowerment is required in the economic, political, and social spaces of their private and public lives to achieve sustainable development for African women.

250 Concluding Observations on Mauritania (n 231) para 72.

251 Concluding Observations and Recommendations Cameroon (n 218) para 22.

252 Concluding Observations and Recommendations on Burkina Faso (n 219) para 55.

253 Concluding Observations and Recommendations on Liberia (n 222) para 19.