

THE IMPACT OF THE MAPUTO PROTOCOL IN CAMEROON



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1 Introduction

While the majority of countries have ratified or acceded to the Maputo Protocol, its implementation and application are still far from becoming a reality.¹ Having said that, Cameroon has made noticeable strides towards the advancement of women's rights through its commitments to international and regional obligations. At national level, the Preamble of Cameroon's 1996 Constitution (the Constitution) states that 'the human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights' and further that 'the state shall guarantee all citizens of either sex the rights and freedoms set forth in the Preamble of the Constitution'.² The principles of equality and non-discrimination are further guaranteed by article 16 of the Civil Code, article 1 of the Penal Code and article 84 of the Labour Code.

In Cameroon, there are several institutions that deal with human rights in general and women's rights specifically. These institutions include the Ministries of External Relations, Ministry of Women's Empowerment and the Family, Social Affairs and Justice, and the Cameroon National Commission on Human Rights and Freedoms (NCHRF). Under the decree establishing the Ministry of Women's Empowerment and the Family,³ there is an entire directorate for the Promotion and the Protection of the Family and the Rights of the Child. Cameroon has acceded to the major international and regional human rights treaties, including the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and the Maputo Protocol.⁴

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1 Equality Now 'The Maputo Protocol turns 18 today. But what does this mean for women and girls in Africa?' https://www.equalitynow.org/maputo_protocol_turns_18 (accessed 9 September 2021).

2 Preamble of the Constitution of the Republic of Cameroon.

3 Decree 2012/0638 of 21 December 2012 on the Organisation of the Ministry of Women's Empowerment and the Family.

4 These include: International Covenant on Civil and Political Rights (Accession 27 June 1984); Optional Protocol to the International Covenant on Civil and Political Rights (Accession 27 June 1984); International Convention on the Elimination of All Forms of Racial Discrimination (Ratification 24 June 1971); Convention on the Elimination of All Forms of Discrimination against Women (Ratification 23 August 1994); Optional Protocol to the Convention on the Elimination of Discrimination against Women (Accession 7 January 2005); Supplementary Convention on the Abolition of

As far as policy is concerned, initiatives at the level of protecting women against female genital mutilation (FGM) and gender-based violence (GBV) include the draft Code of the Person and the Family, which contains favourable provisions on the rights of women, and provides a major opportunity for gender equality and equity. Moreover, the draft Bill on the Prevention and Punishment of Violence on Women and Gender based Discrimination protects women and establishes legal equality between men and women. Also worth mentioning is the update of the National Action Plan to fight Female Genital Mutilation which focuses mainly on sensitisation of both victims and actors of the phenomenon. Areas of concern for women's rights in Cameroon include the promotion of equal and equitable access of women and men, and girls and boys to education, training and information; the promotion of equal opportunities for women and men in the areas of economy and employment; and increasing the participation and representation of

Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Accession 27 June 1984); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Accession 19 February 1982); Convention against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment (Accession 19 December 1986); Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Signature 15 December 2009); Convention on the Rights of the Child (Ratification 11 January 1993); Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (Ratification 4 February 2013); Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Ratification 5 June 2002); Convention relating to the Status of Refugees (succession 23 October 1961); African Charter on Human and Peoples' Rights (Ratification 20 June 1989); and African Charter on the Rights and Welfare of the Child (Ratification 5 September 1997).

women in the spheres of decision making and elective offices. In addition, draft bills remain for decades at parliament, which has an impact on the full enjoyment and implementation of women's rights in the country.

2 Ratification of the Maputo Protocol

Cameroon signed the Maputo Protocol on 25 July 2006, ratified on 13 September 2012 and the instrument of ratification was deposited on 28 December 2012, amidst uproar from the clergy, which called for withdrawal of signature of the instrument. Members of the clergy based their arguments against signature of the Maputo Protocol on article 14 on health and reproductive rights.⁵ According to the clergy, the phrasing of article 14 and specifically 14(a), (b) and (c) encourages women to have abortions. General Comment 2 released in 2014 however brings clarity and states that article 14(a), (b) and (c) cover the rights to exercise control over one's fertility, to decide one's maternity, the number of children and the spacing of births, and to choose a contraception method are inextricably linked, interdependent and indivisible. General Comment 2 went further to lay down the conditions under which abortion can be done.⁶

In terms of the Constitution,⁷ the executive, through the President of the

5 PM Djongo 'Avortement et homosexualité de Maputo: le rôle trouble de la France' *Le Messenger* 1 July 2009 https://www.bonaberi.com/ar,avortement_et_homosexualite_le_ro_le_trouble_de_la_france,6577.html (accessed 22 May 2022).

6 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.

7 Constitution of the Republic of Cameroon, Law 96-06 of 18 January 1996 amending the Constitution of 2 June 1972.

Republic, has the responsibility to ratify all international treaties. Article 43 provides as follows:

The President of the Republic shall negotiate and ratify treaties and international agreements. Treaties and international agreements falling within the area of competence of the Legislative Power as defined in article 26 above shall be submitted to Parliament for authorisation to ratify.

On its part, article 44 states the following:

Where the Constitutional Council finds a provision of a treaty or of an international agreement unconstitutional, authorisation to ratify and the ratification of the said treaty or agreement shall be deferred until the Constitution is amended.

Further still, article 45 suggests that Cameroon is a monist state as it stipulates that '[d]uly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement'.

The Minister of Women's Empowerment and the Family explained during a press conference at the time of the Maputo Protocol ratification, the reasons for this ratification. She stated the following:

The Maputo Protocol is in line with the head of state's vision in terms of women's rights. Its ratification stands in line with the national aspirations that match the international community's goodwill in terms of human development. It is furthermore in line with the national strategic plan of promotion and protection of women's rights. It is an instrument that enriches and strengthens the national legal arsenal, without in the least contradicting the legal framework in force. In this way, it increases the possibilities of eliminating the discrimination to which women are

victims and which are so many obstacles to the expression of their fundamental choices.⁸

As for the interpretations of some articles of the Maputo Protocol, the Minister lamented the fact that certain circles had denounced the fact that Cameroon had decriminalised abortion:

Some have taken conjecture and presumption so far as to see the text in question as a hymn to homosexuality. I would like to say solemnly that under the current state of national legislation, neither abortion nor homosexuality are allowed.⁹

Indeed, article 337 of the Penal Code which deals with abortion severely punishes this act which can only occur in the event of pregnancy resulting from rape and with the authorisation of the public prosecutor, for medical reasons, in accordance with the article 339 of the same code.

What had not been said, according to the Minister, is that the disputed text brings important innovations to the care of widows. Issued in 2020.¹⁰

It provides for concrete measures aimed at ensuring the widow's exercise of all human rights, by avoiding any form of degrading treatment as reinforced by General Comment 6 on women's rights to property in cases of separation, divorce or annulment of marriage on article 7(d).

Moreover, it should be noted that the ratification of the Maputo Protocol was carried out in accordance with the law, the text having been submitted to the National Assembly, which examined it in detail as required by the rules. It

8 Droits de la femme : Pourquoi le Cameroun a ratifié le protocole de Maputo' <http://www.camerooninfo.net/article/droits-de-la-femme-pourquoi-le-cameroun-a-ratifie-le-protocole-demaputo-120417.html> (accessed 2 October 2020) (own translation).

9 As above.

10 As above.

supports the existing legislation (fundamental law of Cameroon, Penal Code, Civil Code and various conventions) aimed at the full exercise of the citizen and human rights of women for a just, equal society and respectful of human dignity. 'Therefore, no one can invoke the Maputo Protocol to justify infanticide, or similar practices,' concluded the Minister.¹¹

Cameroon ratified the Maputo protocol with the following reservation:¹²

The acceptance of the protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa should in no way be construed as endorsement, encouragement or promotion of homosexuality, abortion (except therapeutic abortion), genital mutilation, prostitution or any other practice which is not consistent with universal or African ethical and moral values, and which could be wrongly understood as arising from the rights of women to respect as a person or the free development of her personality.

Any interpretation of the present protocol justifying such practices cannot be applied against the government of Cameroon.

3 Government focal point

There is no specific organ in charge of implementation of the Maputo Protocol in Cameroon. However, the government has created an institutional framework that protects and promotes the rights of women and girls. In 1975, the Ministry of Social Affairs was created, and this later became the Ministry of Women Affairs, and then the Ministry of Promotion of Women and the Family and today exists as the Ministry of Women Empowerment and the Family. The mandate of the Ministry is to put in place measures aimed at respect for the rights of women in Cameroon, the elimination of all forms of discrimination against women and the promotion of equality in political, economic, social and cultural life.¹³

The Ministry is mandated to study and propose strategies and measures aimed at reinforcing the promotion and protection of the rights of the child to take into account the definition of woman given by the Maputo Protocol which is child inclusive. In this context, girls are victims of, for example, forced marriages, sexual abuse and discrimination in educational opportunities.¹⁴

4 Domestication or incorporation

Domestication under the Cameroonian law may be assessed pursuant to article 45 of the Constitution which provides that: 'Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party

11 J Ndouyou-Mouliom 'Droits de la femme: Pourquoi le Cameroun a ratifié le protocole de Maputo' *Cameroon-Info.Net* 24 September 2009 <http://www.cameroon-info.net/article/droits-de-la-femme-pourquoi-le-cameroun-a-ratifie-le-protocole-de-maputo-120417.html> (accessed 2 October 2020).

12 JL Asuagbor (Commissioner, Special Rapporteur on the Rights of Women in Africa) 'Status of Women Status of Implementation of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (New York) 18 March 2016, 60th meeting <https://reliefweb.int/report/world/status-implementation-protocol-african-charter-human-and-peoples-rights-rights-women> (accessed 2 October 2020).

13 Decree 2011/408 of 9 December 2011 organising the government.

14 Report by the Ministry of Justice on Human Rights in Cameroon in 2012 (2013) 284 to the African Charter and the Maputo Protocol.

implements the said treaty or agreement'. Evaluation of the implementation of international Human Rights Conventions by courts revealed a dual tendency. Indeed, some judges consider that these Conventions are part of the block of constitutionality and can therefore only be applied by the constitutional judge. Others, however, consider that these conventions are part and parcel of the legal corpus and apply them depending on whether they are self-executing or not.¹⁵ There is no separate section in the Constitution that could be referred to as a bill of rights. The revised Constitution of 1996 (1996 Constitution) gives full effect to the fundamental rights and freedoms spelt out in the Universal Declaration of Human Rights (Universal Declaration), the African Charter on Human and Peoples' Rights (African Charter) and other ratified international treaties. The 1996 Constitution limits itself to, in the Preamble, enumerating human rights such as the rights to life, physical and moral integrity and to humane treatment; the right to freedom and security; the right to education; the protection of minorities; the rights of indigenous populations in accordance with the law; freedom of movement; privacy; the right not to be unduly prosecuted, arrested or detained; the right to a fair hearing before the courts; the right to presumption of innocence; the right not to be harassed on grounds of one's origin, religious, philosophical or political opinions or beliefs, freedom of religion and worship; freedom of communication, of expression, of the press, of assembly, of association, and of trade unionism, as well as the right to strike; the right to a healthy environment; and the obligation to work.

Article 65 clearly states that the Preamble shall be part and parcel of the Constitution. Therefore, fundamental rights mentioned in the Preamble as per article 45 have primacy over every domestic law. It is the duty of lawmakers to ensure that, prior to ratification, no provisions of an international convention conflict with existing national laws.

However, the adoption in 2010 of a National Plan of Action for the Elimination of Female Genital Mutilation in Cameroon is a genuine example of an explicit measure adopted to give effect to the Maputo Protocol.

5 Legislative reform or adoption

There is no available information about a compatibility study of domestic law with the Maputo Protocol that was undertaken before its ratification. Though a monist state, Cameroon does not have a real problem in matters of domestication as treaty ratification cannot occur without Parliament's authorisation,¹⁶ which process should ensure that there is no conflict between a treaty proposed for ratification and the Constitution. To comply with national laws, the proposed international instrument is presented to the Foreign Affairs Committee of the National Assembly which has the duty to control the constitutionality of international treaties and agreements. There is no particular law that was adopted to facilitate implementation of the Maputo Protocol.

However, the government says that in keeping with international human rights law, the Maputo Protocol is in conformity with the national law in

15 African Commission 'Cameroon: 4th-6th Periodic Report, 2015-2019'.

16 The 1996 Constitution of the Republic of Cameroon, art 43.

force by reaffirming the traditional civil, political, economic, social and cultural rights of women. Some of the rights have been consolidated while others have been reinforced with the aim of wiping out gender inequality in family management, institutionalisation of political equality, greater involvement of women in decision-making processes and the drawing up and implementation of development programmes.¹⁷

Some noticeable strides have been made by the government of Cameroon towards the implementation of the Maputo Protocol. On budget allocation, Cameroon allocated successive budgets to the Ministry of Women's Empowerment and the Family to enable it to effectively fulfil its missions. These allocations have varied slightly over the years. The overall budget allocated to the Ministry stood at 6.888.000.000 FCFA in 2016, 5.643.000.000 FCFA in 2017 and 6.072.000.000 FCFA in 2018.¹⁸

The government is striving to uphold its international obligations under CEDAW and Maputo Protocol through equality and non-discrimination constitutional norms set by the constitution and implemented through the internal regulatory and institutional framework. For instance, the amendment of the section on adultery by a woman in the Penal Code. Section 361 of the new Penal Code now provides for the same punishment for adultery for both men and women. More so, marriage between a rapist and their

victim is no longer an exemption from prosecution as it used to be in the past (Penal Code, section 297).¹⁹

The draft Code of the Person and the Family, which contains favourable provisions on the rights and aspirations of women, provides a major opportunity for gender equality and equity. The draft code provides amongst other things that: 'dowry and gifts cannot be returned';²⁰ 'spouses owe each other mutual love, respect, fidelity, help and assistance', and in the 'case of polygamy, each wife has the right to equal treatment in relation to the other wives';²¹ each spouse has freedom to work without obtaining the consent of the other;²² in case of dissolution of a marriage, the wife is entitled to her share of the marriage property before the husband;²³ and in cases of polygamy, 'all the widows have the right to inheritance shared between them in proportion to the number of years in marriage with the deceased'.²⁴

The content of the right to health has been updated as per the Maputo Protocol by highlighting the right of women to control reproductive functions and more specifically through recognition of a legal right to medical abortion.²⁵

Finally, of importance, is the creation by Order 081/CAB/PMd of 15 April 2011 of an inter-ministerial

17 U Kouokam *Report by the Ministry of Justice on Human Rights in Cameroon in 2009* LEGALIS Cameroon (2018) available at <http://www.minjustice.gov.cm/index.php/en/publications/reports/271-report-of-the-ministry-of-justice-on-human-rights-in-cameroon-in-2009>

18 1 USD is more or less 500 CFAF.

19 Law no 2016/007 of 12 July 2016 relating to the Penal Code.

20 Draft Code of the Person and the Family sec 215.

21 Draft Code of the Person and the Family (n 20) sec 234(3).

22 Draft Code of the Person and the Family (n 20) sec 240.

23 Draft Code of the Person and the Family (n 20) sec 459(2).

24 Draft Code of the Person and the Family (n 20) sec 545(2).

25 Penal Code of Cameroon sec 339.

monitoring committee for the implementation of international and regional human rights promotion and protection mechanisms including the African Commission on Human and Peoples' Rights (African Commission).

This inter-ministerial Committee, which reports to the Prime Minister, is vested with the power to draw up a list of the different cases before these bodies, propose ways of addressing the recommendations and decisions of these bodies, ensure the implementation of validated proposals, brainstorm on the possibility of reducing or avoiding situations where the government is blamed in cases investigated by these bodies, and encourage and oversee training schemes relating to the promotion and protection of human rights.²⁶

6 Policy reform or formulation

Prior to 2016, FGM was dealt with by soft laws through the National action Plan to fight Female Genital Mutilation. The revised Penal Code has introduced section 277-1 which criminalises FGM as read together with section 350 ('Assault on Children') of the same Penal Code which specifically addresses genital mutilation committed on children and provides a more severe punishment if the offence is committed against a person under the age of 15. These legal dispositions are being followed up by a series of activities and events. For instance, every 6th February, Cameroon joins the international community to observe the International Day of Zero Tolerance for FGM. Moreover, the Ministry of Women Empowerment and

the Family has issued a brochure explaining the aim, goal and articles of the Maputo Protocol.²⁷

The government admits that the promotion and protection of the rights of women according to the norms established under the Maputo Protocol is a progressive process that calls on all stakeholders to ensure their effective implementation. Significant progress has been made towards the promotion and protection of the rights of vulnerable classes although much is still to be done.²⁸

Also worth mentioning is a national action plan for resolution 1325 and companion resolutions of the United Nations Security Council on women, peace and security (2018-2020). In its introduction, the plan stresses that the resurgence of crises in society and the emergence of new forms of conflict constitute a major challenge for governments in the world. The insecurity of life, the feeling of exclusion, the weakness of job opportunities and poor governance provoke enormous frustrations within populations. Moreover, most countries in the world are progressively confronted with different forms of claims which, if insufficiently catered for, progressively lead to radicalisation. In general, the world is facing an unprecedented cycle of violence with numerous consequences such as looting, atrocities, war lords, child soldiers, women and girls who are victims of all sorts of violence and despair. Abiding to its international and regional obligations, Cameroon through this action plan, recalls its commitment to the right

26 Fifty-third ordinary session of the African Commission Third Periodic Report of Cameroon within the framework of the African Charter on Human and Peoples' Rights Banjul, 9 to 24 April 2013.

27 <http://www.minproff.cm/wp-content/uploads/2015/05/PROTOCOL-DE-MAPUTO-Brochure.pdf> (accessed 2 October 2020).

28 Report of the Ministry of Justice, 287.

to peace underscored in article 10 of the Maputo Protocol.

The Electoral Code states that for the election of parliamentarians to the National Assembly, municipal councillors and senators, 'each list shall take into consideration the various sociological components of the constituency concerned. It shall also take into consideration gender aspects'.²⁹

Currently in Cameroon, at the National Assembly, out of 180 members of parliament, 61 are women. At the Senate, out of 100 senators, only 26 are females and out of 58 division offices, we count only two females. Numbers speak for themselves as far as gender equality and positions of leadership are concerned.

Generally, to ensure better incorporation of the recommendation on the need to take measures for the total and effective implementation of the African Union Solemn Declaration on Gender Equality on the one hand, and the need to formulate a policy on gender representation in positions of responsibility on the other, it must be underscored that though the 50 per cent quota prescribed by the African Commission has not yet been achieved, initiatives taken by the government in this regard must be noted. These initiatives include, amongst others, an overall brainstorming on the status of the woman in Cameroon. Thus, a National Gender Policy (NGP) has been formulated, the vision of which is consistent with the general vision of Cameroon for 2035. It seeks to guarantee the enjoyment of the same rights by men and women including equitable and equal participation in the development of the country.³⁰

29 Electoral Code art 151(3).

30 Third Periodic Report of Cameroon para 32.

7 Impact on the judiciary

There is a great awareness among the legal profession on the Maputo Protocol and it has been invoked in a number of proceedings recently. The Maputo Protocol has enhanced the body of legislation on women's matters in Cameroon. It comes very handy in matters of female detainees and issues of succession and land inheritance for female children.

Moreover, in a bid to harmonise the practice, awareness-raising and capacity-building sessions were held with legal actors on the applicability of international human rights instruments. Increasingly, there is proof of mastery of the provisions of the Maputo Protocol as seen in court decisions. For example, the matter between *The People and 'Crédit du Sahel SA', Mora Branch v Mrs Apsatou Salki Bouba Bebe*³¹ rendered by the Mora High Court can be cited. To order the release of the accused who was pregnant, the Judge evoked both article 24 and article 14 of the Protocol, recalling the obligation of the State to protect

the right of pregnant or nursing women or women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity.³²

and to guarantee that

the right to health of women, including sexual and reproductive health is respected and promoted by establishing and strengthening existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding.³³

31 *The People and 'Crédit du Sahel SA', Mora Branch v Mrs Apsatou Salki Bouba Bebe* (19 November 2015) Judgement No 36/ADD/CRIM, Mora High Court.

32 Maputo Protocol art 24(b).

33 African Commission (n 15).

In the Cameroonian case of *Immaculate Vefonge v Sammuuel Lyonga Yukpe*,³⁴ the Court of Appeal of Buea ruled to sustain a Bakweri custom whereby a husband is forbidden to send away a nursing mother from the matrimonial home or contemplating divorce proceedings against her.³⁵

Furthermore, the NCHRF registered some cases in which the Maputo Protocol was violated.³⁶ For example:

- *Nzecke Marie v Ngo Etogo Apollinaire* in which on 23 January 2012, the NCHRF received a report by the Ngo Etogo family denouncing the violation of physical integrity suffered by Ms Nzecke Marie, on the part of Mr Etogo Appollinaire, her father, who inflicted burns on her.
- Ms Otteh Ernestine Ndam, in which a teacher in a government primary school in Yaoundé filed a report to the NCHRF to denounce the physical, moral and psychological abuse she suffered regularly at the hands of her husband, alongside his failure to contribute in any way to running of the household.
- Ms Ewane Njombo Dora Claire, widow of late Ewane Nnoko who died in a road accident in 2002 in Lagos (Nigeria), filed a report to the NCHRF to denounce the violation of her right to compensation by the management of African Reinsurance Corporation (AFRICA-RE), which had not fulfilled its contractual obligations relative to the case of her late husband's fatal accident.

The NCHRF having a quasi-judicial status settled these matters by reconcil-

ing the parties with reference to the African Charter and the Maputo Protocol.

8 Awareness and use by civil society

Non-governmental organisations (NGOs) and Civil society organisations (CSOs) in Cameroon are governed by law N099/014 of 22 December 1999 and law N090/053 of 19 December 1990 on freedom of association. They are organised around specific thematic areas such as human rights, child rights, health-care, charity. They are usually funded by donors and run by volunteers.

CSOs in Cameroon are well-aware of the Maputo Protocol. As is illustrated below, the Maputo Protocol has been used in NGOs' work and its provisions mentioned as well. As stated above, ratification of the Maputo Protocol in Cameroon has been met with stiffness on the part of the Catholic Church with respect to article 14 of the Protocol on health and reproductive rights. Following the Bishops' Resolution opposing the Maputo Protocol, a protest was held in the Douala Archdiocese by CSOs.³⁷

In recent years, the Maputo Protocol has gained more popularity within civil society. It has been evoked in a parallel report to the UN Committee on Economic, Social and Cultural Rights by the Women's International League for Peace and Freedom (Cameroon chapter) during its 65th session in 2019. The NGO, based on the provisions of the Maputo Protocol, highlighted the subordinate position of women in Cameroon exacerbated by the unrest in South-West and North-West region and in the North. The NGO further noted that Cameroon is not upholding its obli-

34 *Immaculate Vefonge v Samuel Lyonga Yukpe*, Appeal CASWP/CC/21/81 (unreported).

35 National Commission on Human Rights and Freedoms, 104.

36 National Commission on Human Rights and Freedoms, 67-69.

37 Report of the Ministry of Justice (n 28) 252.

gations to provide the right to peace as enshrined in article 10 of the Maputo Protocol.³⁸

More recently, in a shadow report by Human Rights Watch to the African Commission³⁹ in response to the 6th periodic report of Cameroon pertaining to the implementation of the African Charter, the Maputo Protocol and the Kampala Convention, the NGO observed that Cameroon's 6th periodic report states that

from 2013 to 2017, 313 elements of defence forces were prosecuted before the courts for different offences including rape and attempted rape and notes that 30 of the 313 were convicted and sentenced.⁴⁰

The report however fails to provide evidence of any efforts on the part of the government of Cameroon to prosecute those implicated in human rights violations, including sexual violence, committed in the Anglophone regions since late 2017, or any details of cases brought against security forces which were tried before courts.

The report states that sections 295 and 296 of the Penal Code introduced new penalties for offences of rape and sections 346 and 347 include punishments for 'offences on minors accompanied by sexual intercourse or rape'. The

report affirms that 264 cases of rape were prosecuted in 2016 and 309 were prosecuted in 2017. However, the report fails to provide evidence of any investigations or prosecutions of cases of sexual violence. Human Rights Watch documented four cases of sexual violence by security forces members. Two women and one girl from a locality in the Northwest region each said that the *Bataillon d'Intervention Rapide* (BIR) soldiers raped them in January 2019. In another case in June 2019, a soldier reportedly raped a woman in Kumbo, Northwest region, Human Rights Watch expressed concerns that there are many more cases of sexual violence by security forces which go unreported due to survivors' fear of social stigma.⁴¹

The shadow report went further to recommend the Commission to pose questions to Cameroon on sexual violence (articles 3 and 4 of the Maputo Protocol). Cameroon's 6th periodic report states that 'from 2013 to 2017, 313 elements of defense forces were prosecuted before courts for different offences' including rape and attempted rape and notes that 30 of the 313 were convicted and sentenced. The Cameroon report however fails to provide evidence of any efforts on the part of Cameroon to prosecute those implicated in the human rights violations, including sexual violence committed in English speaking regions since late 2017 or any details of cases brought against security forces which were tried before courts.

38 Women's International League for Peace & Freedom Cameroon 'Women's Economic, Social and Cultural Rights in Cameroon: Parallel Report to the UN Committee on Economic, Social and Cultural Rights' (65th Session, Feb-Mar 2019) available at https://www.wilpf.org/wp-content/uploads/2019/11/Cameroon-CESCR_EN.pdf (accessed 9 September 2021).

39 'Shadow report to the African commission on human and peoples' rights in response to the 6th Periodic Report of Cameroon' Human Rights Watch (30 March 2020) available at <https://www.hrw.org/news/2020/03/30/shadow-report-african-commission-human-and-peoples-rights-response-6th-periodic> (accessed 6 November 2020).

40 As above.

41 Human Rights Watch (n 39).

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

As alluded to earlier in this report, since its ratification by Cameroon, the Maputo Protocol has known an increasing level of awareness among the public but also within the legal profession. The Maputo Protocol has been explicitly evoked in a court case.

Fute, a lawyer at the Cameroon Bar, emphasised that although there has been advances in the position of women in Cameroon, the Maputo Protocol has further enhanced the legal system as far as women's rights are concerned. She says that:

We have come a long way before Beijing and Maputo and much ground has been covered since then. There was a time in this country whereby a married woman had to get the written authorisation from her husband before traveling outside the country until as recently as 1987. The Maputo Protocol came to further improve the position of women in general and specifically of women in matters of succession. The law clearly stipulates that all children are equal when it comes to inheritance. But in reality, there is still a lot of abuse and discrimination with the girl child often left out in inheritance especially in land inheritance. The Maputo Protocol has been increasingly invoked in the past few years in our courts of law.

From what the researcher gathered during this interview, the Maputo Protocol is beneficial to Cameroon's legal system and lawyers and magistrates are becoming more and more aware of its strengths. Once all available local remedies have been exhausted, the Maputo Protocol comes as an extra cover, filling in the gaps and silences in domestic laws.

In summary, as far as the legal profession is concerned, the Maputo Protocol helps in succession matters, and management of marital wealth. The Maputo Protocol brings about balance between spouses. Recommendation is therefore made for an increase in awareness-campaigns on the existence and importance of the Maputo Protocol. This goes to show that lawyers and judicial officers are ready to use the provisions of the Maputo Protocol in their arguments. This level of engagement is encouraging and should be emulated in more courts of law in the country.

10 Higher education and academic writing

The Maputo Protocol is steadily taking its place in institutions of higher learning in Cameroon. At the department of Law of the University of Buea, Southwest Cameroon, the human rights curriculum has a fully-fledged module on international human rights comprising gender studies and women rights.

According to an interview with JJ Ndjekinda, State Prosecutor at the 1st instance Court in Nkongsamba Littoral region, the Law Faculty at the University of Yaounde 2, Soa Campus offers a two-year Masters in human rights and state of law including gender and minorities. The Maputo Protocol is included in this curriculum. The National School of Administration and Magistracy (ENAM) offers a module in human rights and fundamental freedoms and international humanitarian law, whereby the Maputo Protocol is very often evoked. According to the prosecutor, the Maputo Protocol should be seen as a model law to be reflected in all our institutions and this is very well on its way. This goes without saying that the coun-

try is making progress, reinforced by the advent of the Maputo Protocol.

The Law Faculty of the University of Dschang conducts training on human rights. Before 2009, the programme was a *Diplôme d'Etudes Supérieures Spécialisées* (DESS) in human rights and humanitarian action. Since the University Reform in 2009, this programme is the equivalent of a masters' degree and has a module in African human rights law which draws content from the African Charter as well as the Maputo Protocol.

The *Association pour la Défense des Droits de l'Homme en Afrique Centrale* (APDHAC), an NGO based at the Catholic University of Central Africa (UCAC), has a fully-fledged programme on human rights in Africa. This institution, through UCAC, offers master's degree and doctorate programmes in human rights. The institution also offers yearlong short courses on different aspects of human rights, including women's rights in the African human rights system and beyond. The Maputo Protocol is integral to the UCAC human rights curriculum.

Since the passing of Law *no 2009/003 du 14 avril 2009*, authorising the Head of State to ratify the Maputo Protocol, the latter has been the subject of awareness by way of academic articles and bulletins issued by academic institutions. For instance, APDHAC has issued a bulletin explaining in detail what the protocol is all about, how it came into force, the strife caused by its ratification and the positive impact it could have for women advancement.⁴²

42 Bulletin de l'APDHAC 'EX cathedra' N°32 (October 2009) available at https://dial.uc.louvain.be/pr/boreal/object/boreal%3A194792/datastream/PDF_01/view (accessed 6 November 2020).

The National Advanced Police School, Yaoundé, has human rights as a subject and human rights is also mainstreamed into other subjects. In classroom lectures, especially on gender and policing, reference is made to the provisions of the Maputo Protocol. Recently, some students in their dissertation for the fulfilment of the requirements of the diploma of Superintendent of Police, included in their writing ideas which drew on the provisions of the Maputo Protocol in assessing whether police efficiency might be enhanced if gender concerns are more expressly considered during recruitment, training, deployment and promotion. Such thoughts are often regarded as contrary to views that more women in the police academy will make the service less efficient.

11 Impact on independent state institutions

The National Commission on Human Rights and Freedoms (NCHRF) frequently refers to Cameroon's ratification of the African Charter and the Maputo Protocol amongst other international conventions relating to the rights of women in its work. However, it regrets that the social and cultural context in which the Cameroonian woman lives is characterised by long lasting challenges that largely emanate from customs and religious precepts that encourage or justify distinction, exclusions or gender-based restrictions, and uphold the primacy of men at all levels.⁴³

In addition to the above, the NCHRF occasionally organises awareness sessions with a range of CSOs

43 National Commission on Human Rights and Freedoms Report on the state of Human Rights in Cameroon 2007-2008 (2008) 39.

including women's rights organisations. Regarding the use of the Maputo Protocol, it has been used in preparing the latest periodic report to the African Commission. Their role is to facilitate consultations with CSOs which are requested to share their actions as far as the implementation of the Maputo Protocol is concerned on the one side. And on the other side, they must suggest recommendations to the state for its implementation. In 2020, the Cameroon report was examined by the Commission and the report was available at the NCHRF on request. The NCHRF also makes follow-ups of the concluding observations that arise from the Cameroon periodic reports consideration by the Commission.

12 State reporting

According to article 62 of the African Charter and article 26(1) of the Maputo Protocol, state parties are required to submit every two years a report on legislative and other measures taken in relation to their protection of these rights recognised and guaranteed by the African Charter and the Maputo Protocol. A state report in Cameroon is prepared by inter-ministerial collaboration between the Ministry of Foreign Affairs and the Ministry of Justice. More specifically, periodic reports are prepared by the Division of International Cooperation and the Division of Human Rights in the Ministry of Justice. The African Affairs Division at the Ministry of Foreign Affairs also takes part in this process.

Cameroon presented its initial report on 5 May 2002 in Pretoria, South Africa at the 31st session of the African Commission. The 1st, 2nd, and 3rd periodic reports of Cameroon were presented in Banjul, The Gambia, respectively

at the 39th session of the African Commission, held from 9 to 23 May 2006, the 47th session, held from 12 to 26 May 2010, and at the 54th session, held from 22 October to 5 November 2013.

Most recently, the government organised a workshop for the external validation of Cameroon combined 4th, 5th and 6th Periodic Report under the African Charter and the 1st report under the Maputo Protocol and the Kampala Convention from 4 to 5 December 2018 at the Ministry of Justice in Yaoundé. At the concluding session, the representative of the Minister of Justice mentioned that the document would serve as a yardstick by which the general situation of human rights and the rights of women and the those of displaced persons in Cameroon would be assessed. He further noted that the report witnessed the participation of civil society in the validation session indicating government commitment to involve all stakeholders in its vision on the collaborative management of public affairs as recommended in the previous state report consideration.⁴⁴

In January 2020, in a combined document, Cameroon submitted its 4th, 5th and 6th Periodic Reports covering the period of 2016 to 2019 to the African Commission and its initial report on the Maputo Protocol and Kampala Convention, which were considered at the 66th session of the Commission.⁴⁵

44 E Amabo 'Human rights situation in Cameroon: government to submit report before continental commission' *Cameroon Tribune* 7 December 2018 available at <https://www.cameroon-tribune.cm/article.html/22833/fr.html/human-rights-situation-in-cameroon-govt-submit-report-before-continental-commission> (accessed 6 November 2020).

45 Human Rights Watch (n 39).

The goal of periodic reports is to present the progress and difficulties in implementing human rights in a country. In the case of Cameroon, periodic reports have been cited as a means to show that international conventions constitute domestic legislation and could be invoked in a court of law in Cameroon.⁴⁶

The Commission noted that Cameroon is the first African country to submit a report covering three conventions. Cameroon was encouraged to look closely at the crisis in English-speaking regions of the country and work with the Commission to find an end to the crisis.⁴⁷ The commissioners noted that the situation of human rights defenders is still worrisome in the country and are not mentioned in the combined report.

In addition to recommending that Cameroon 'harmonize the national legislation with the regional and international standards on the rights of indigenous populations or communities' and 'work towards the consideration of their cultural peculiarities', the African Commission also expressly urged Cameroon to 'take special measures to guarantee the protection and implementation of indigenous women's rights due to their extreme vulnerability and the discrimination to which they are subject'. These recommendations constitute important legal standards and a significant step for indigenous peoples

and women. They can now be used at the national level for the recognition and realisation of rights.⁴⁸

13 Communications

While there have been a few communications filed against Cameroon with respect to the violations of the African Charter, to date, there are no reported communications related to the Maputo Protocol submitted to the African Commission.

14 Special mechanisms and promotional visits of the African Commission

The first promotional visit to Cameroon was conducted in 1998 by the then Commissioner EVO Dankwa.⁴⁹ A subsequent visit was made in 2002, which was specific to prisons and places of detention. The most recent promotional visit was conducted in 2012. It was a joint mission by the Special Rapporteur on the rights of women and the Chairperson of the Committee on the rights of persons living with HIV.⁵⁰ The visit met with various women's rights groups and examined the situation of women in Cameroon.

46 BR Guimdo Dongmo 'Le droit d'accès à la justice administrative au Cameroun: Contribution à l'étude d'un droit fondamental' (2008) 33(121) *Revue de la recherche juridique-droit prospectif* 463.

47 African Commission 67 'Periodic review of the Republic of Cameroon' International Service for Human Rights <https://ishr.ch/latest-updates/achpr67-periodic-review-re-public-cameroon/> (accessed 6 September 2021).

48 See Forest Peoples Programme 'Advocacy efforts lead to African Commission's increased consideration of indigenous women's rights' (3 June 2011) <http://www.forestpeoples.org/topics/gender-issues/news/2011/06/advocacy-efforts-lead-african-commission-s-increased-consideration> (accessed 8 November 2020).

49 African Commission Report on Promotional visit to Cameroon 1998 <https://achpr.au.int/en/node/551>.

50 African Commission Report on Promotional Visit to Cameroon 2012 <https://achpr.au.int/en/mission-reports/cameroon-promotion-mission-2012>.

Although Cameroon has not yet hosted a session of the African Commission, Chief Justice Lucy Asuagbor, a native of Cameroon, was appointed as the African Commission Special Rapporteur on Human Rights Defenders in Africa and the Special Rapporteur on the Rights of Women in Africa 2010 till 2020. Her appointment helped to create more awareness about the Maputo Protocol. Her end-of-mandate report reflects the need for African countries to ratify the Maputo Protocol without reservation in order to allow women to fully enjoy their rights.⁵¹ From 19 to 20 November 2019, the Special Rapporteur was invited to participate in the 10th anniversary of Network of Human Rights Defenders in Central Africa (REDHAC) in Yaoundé, Cameroon under the theme 'Protecting and supporting Human Rights Defenders: our engagement for durable peace'. During this meeting, she participated in a panel on 'Protection, effective security of Women Human Rights Defenders in the context of Violent Extremism in Africa: what specific protection'. In her presentation, she applauded the important role played by women human rights defenders in the protection of human rights in general and women's rights in particular. She highlighted the challenges faced by women human rights defenders and the legal framework protecting them at the global and regional levels including the soft law instruments adopted by the African Commission. She concluded by explaining the impact of violent extremism on

women as victim, perpetrator and agent of peace. The Special Rapporteur received an award for her relentless work in the protection and promotion of human rights defenders in Africa, and in particular, the rights of women human rights defenders.

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

There are indeed factors that play in favour or against implementation of the Maputo Protocol in Cameroon. In the past five years, progress has been noted following the ratification of the Maputo Protocol by Cameroon. The Penal Procedure Code (*Code de Procédure Pénale*) which was revised and was supposed to be published in 2005, took another year for the legislator to ensure that provisions of the Maputo Protocol are adequately reflected in the Code, which was publicised in 2007. There is a clear will of the government to comply with regional and international standards as far as women's rights are concerned in Cameroon. We also note the creation of call centres in the past few years in four out of the ten regions of the country. These call centres are meant for victims of domestic violence. There is a need, however, to put them in all the ten regions of the country.

Concerning the Penal Code (2016), new provisions have been introduced and old ones have been revised. The Penal Code has introduced FGM as a crime punishable under section 277-1. Expulsion of the matrimonial house by one spouse has also been introduced under section 356-1 as well as punishment of violence on a pregnant woman

51 End of mandate activity report of hon. Commissioner Lucy Asuagbor Presented to the 66th Ordinary Session of the African Commission on Human and Peoples' Rights 13th July to 7 August 2020 ZOOM WEBINAR https://www.achpr.org/public/Document/file/English/Com_Lucy%20Asuagbor_SRRW_InterssionReport%2066OS_ENG.pdf (accessed 9 September 2021).

under section 338. These sections not only give more protection to women but are also inspired by the Maputo Protocol.

Moreover, we note the persistence of customary and religious practices that impede the full enjoyment of rights by women, especially those that deny women and girls their rights to inheritance; the practice of inhuman and degrading widowhood rites; FGM; and the primacy of masculinity, disproportionate access to education for the girl child and the patriarchal system.

The lack of a fully-fledged bill of rights in the Constitution added to the long-awaited passing of draft codes and bills. For instance, the civil code reform has been tabled for over 20 years and so is the case for the Draft of the Persons and the Family, the draft Bill on the Prevention and Punishment of Violence on Women and Gender-based Discrimination.

Cameroon has made key strides toward gender equality and women's empowerment through major international commitments, including the CEDAW, the Beijing Declaration and Platform for Action, the Declaration of Heads of State and Government of the African Union on Equality Between Women and Men, and the Sustainable Development Goals. However, though these international and regional commitments take precedence over Cameroon's national laws, customs, and traditions, the preference for customary laws remains, and means that discrimination against women continues in Cameroon, especially in rural areas.⁵²

Other challenges include ignorance of their rights, poverty and conflicts in

certain parts of the country namely the North with the Boko Haram and the English-speaking regions with the so-called Anglophone crisis. In such environments, women often bear the brunt of violence as a weapon of war, insecurity and dropout of school.

The impact of the COVID-19 pandemic cannot be underestimated. On 6 May 2020, the Special Rapporteur on women's rights in Africa made a press statement on violations of women's rights during the COVID-19 pandemic. She expressed concern over the high level of complaints of violence against women, including GBV and domestic violence in African countries occasioned by lockdown measures imposed as a response to the COVID-19 pandemic. She noted that calls have tripled from women trapped in their homes with abusive partners. She said the pandemic has given rise to economic consequences; limited access to sexual and reproductive health care services; closure of schools, with millions of girls out of school, leading to increased risk of sexual exploitation, early pregnancies, rape, as well as early and forced marriages. She highlighted gains registered so far in the protection of women's rights over the years and urged state parties not to lose sight of these gains and adopt the principle of equality in all COVID-19 related responses. She further urged states to provide special protection to women and girls through access to sexual and reproductive health services; alternative accommodation to victims of GBV, as well as counselling services for women and girls who are victims of GBV support to women who

52 'Ending inequality against women in Cameroon' *United Nations Foundation* 7 December 2017, available at <https://unfoundation.org/blog/post/ending-inequality-women-cameroon/> (accessed 9 September 2021).

have lost their sources of income and involving women in all plans and actions aimed at protecting their rights during and after the pandemic.