

THE IMPACT OF THE MAPUTO PROTOCOL IN GHANA



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1 Introduction

1.1 Brief background and context of human rights in the country

Ghana is a relatively stable democratic country in West Africa. The country has an estimated total population of 30 million with women constituting about 51 per cent.¹ It has a young population with close to 60 per cent of the population under 25 years.²

The Constitution of Ghana guarantees the enjoyment of fundamental human rights, civil liberties and freedoms, and nurtures active civil society environment and media pluralism. State institutions such as parliament, the judiciary, Commissioner for Human Rights and Administrative Justice, police service, and many others have been empowered with some autonomous

status to ensure that rights, freedoms and liberties are enjoyed. Ghana is also a signatory to many international human rights treaties including the African Charter on Human and Peoples' Rights (African Charter) and the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol).

Ghana is considered as a beacon of democracy and good governance in Africa. The Global Peace Index 2020 ranks Ghana as the most peaceful country in the sub-region and third in sub-Saharan Africa.³ On freedom of speech and press freedom, Ghana was ranked second in Africa in the 2020 World Press Freedom Index.⁴ The country has made some significant gains in advancing human rights and particularly women's rights. In addition to the gains above, gender parity in school enrolment, access to health care, child and maternal health, access to potable water, women in public offices and leadership positions and social protection

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1 UNDP 'Women's Political Participation – a Catalyst for Gender Equality and Women Empowerment in Ghana' 2017.

2 USAID Ghana Country Development Cooperation Strategy (2020-2025) <https://www.usaid.gov/sites/default/files/documents/CDCS-Ghana-August-2025.pdf> (accessed 12 March 2021).

3 Institute for Economics and Peace 'Global Peace Index 2020: Measuring Peace in a Complex World' www.visionofhumanity.org/wp-content/uploads/2020/10/GPI_2020_web.pdf (accessed 14 March 2021).

4 Reporters without borders '2020 World Press Freedom Index' <https://rsf.org/en/ranking> (accessed 23 September 2020).

programmes, amongst others, have improved.⁵

However, over the years, there have been concerns and interest about the full actualisation of the rights and freedom that the country has committed to. As indicated above, women constitute more than half of the Ghanaian population (51 per cent) and also make up the majority of voters with a proportion of 51.7 per cent.⁶ Regrettably, women are often referred to as a 'vulnerable' or 'minority' group. Regrettably, women are often referred to as a 'vulnerable' or 'minority' group, and are underrepresented in decision making spaces. Women make up less than 15 per cent of legislators and less than 10 per cent of elected local government officials. Worst of all, women are subjected to horrendous practices such as witchcraft accusations and public lynching. Coupled with these are increases in cases of selective justice, police impunity and growing lack of public confidence in state institutions.⁷ The 2020 Mo Ibrahim Index under the gender category described Ghana as 'slowly deteriorating' and then under the security and rule of law categories described Ghana as 'increasing deterioration'.⁸ These have raised interest in the extent to which international and national human rights laws are enforced and protected. The next section studies the rights of women in Ghana.

5 'National Development Planning Commission Ghana Voluntary National Review Report on the Implementation of the 2030 Agenda for Sustainable Development' 2019.

6 Electoral Commission of Ghana, 2020.

7 US Bureau of Democracy, Human Rights and Labor 'Country Reports on Human Rights Practices: Ghana' 2019 <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/ghana/> (accessed 12 March 2021).

8 Mo Ibrahim Foundation 2020 'Ibrahim Index of African Governance Index Report' 2020.

1.2 Overview of the status of women's rights in the country

Ghana has committed to many developmental and international human rights mechanisms for the development and the protection of the rights of women. These include African Union's (AU) Agenda 2063, the 2030 Agenda for Sustainable Development, the United Nations (UN) Convention on the Elimination of all forms of Discrimination Against Women (1980), the Beijing Platform for Action (1995), the African Charter (1986) and the Maputo Protocol (2003).

The 1992 Constitution of Ghana has made elaborate provisions for the realisation of women's rights. Generally, Chapter 5 guarantees fundamental human rights and freedoms. Articles 17 and 27 of the Constitution make provision for the promotion of equality and freedom from discrimination of all people.⁹ More specifically, article 17(1) states that '[a]ll persons shall be equal before the law' and clause 2 provides that a person shall not be discriminated against on grounds of gender, and among others, race, colour, ethnic origin, religion, creed or social or economic status. Further, article 17(4) empowers parliament to pass laws to ensure that there is no discrimination.¹⁰ Articles 13 and 15 of the Ghanaian Constitution are related to Maputo Protocol's article 4 on the protection of life and article 3 on the right to dignity, respectively. Article 26(2) of the Constitution prohibits harmful cultural practices as enshrined in article 5 of the Maputo Protocol.

9 The 1992 Constitution of Ghana.

10 The Constitution of Ghana (n 9) art 17.

The Constitution also states that Parliament shall 'enact legislation regulating the property rights of spouses',¹¹ which will provide for 'equal access to property jointly acquired during marriage',¹² adding that 'assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage'.¹³ Similarly, article 7(d) of the Maputo Protocol provides that 'in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage'.

Article 27(1) of the Constitution of Ghana further provides that '[s]pecial care shall be accorded to mothers during a reasonable period before and after child-birth; and during those periods, working mothers shall be accorded paid leave'. This corresponds with article 13 of the Maputo protocol on economic and social welfare rights. Ghanaian women are entitled to at least 12 weeks of paid maternity leave under the country's Labour Act 2003 (Act 651). Article 13(i) of the Maputo Protocol provides that states parties shall 'guarantee adequate and paid pre- and post-natal maternity leave in both the private and public sectors'.

In view of Ghana's commitment to the advancement of women, deliberate steps have been taken to establish a specific Ministry to direct and coordinate national efforts for the promotion of women's rights, known as the Ministry of Gender, Children and Social Protection (MoGCSP). The Ministry is mandated to coordinate and ensure gender equality and equity, promote the

survival, social protection and development of children, vulnerable and excluded persons with disability and integrate fulfilment of their rights, empowerment and full participation into national development.

The MoGCSP is faced with enormous challenges in accomplishing its mandate, considering that as of 2020, it was still allocated less than 1 per cent of the national budget. As it bears on its shoulders the huge task of ensuring the well-being and promotion of social welfare and realisation of the human rights of various vulnerable groups in the country, the Ministry is unable to implement programmes that are geared towards the implementation of women's rights as enshrined in the Maputo Protocol. Instead, the Ministry is compelled to spread the meagre funds it receives for the implementation of projects.

A paper issued by the Parliament of Ghana in 2017, titled 'Addressing gender imbalances in Ghana's Parliament' identified the following as causes for the low representation of women in leadership offices: social-cultural practices and beliefs which restrict the role of women to domestic responsibilities, thereby preventing women from actively participating in politics; women recording low levels of education as compared to men; and lack of financial support, especially for women in the informal sector.¹⁴

To reduce the monumental deficit of women in leadership positions, the Ghanaian government has introduced a policy to appoint at least 30 per cent of

11 The Constitution of Ghana (n 9) art 22(2).

12 The Constitution of Ghana (n 9) art 2(3)(a).

13 The Constitution of Ghana (n 9) art 2(3)(b).

14 Parliament of Ghana & Awuah 'Background Paper – Addressing Gender Imbalance in Ghana's Parliament' 2017, 2 https://www.parliament.gh/epanel/docs/pub/Background%20Paper_2.pdf#viewer.action=download (accessed 12 March 2021).

women within public offices. However, that has not yet been implemented. Although short of the sub-Saharan regional average of 27.2 for women parliamentarians¹⁵, there has been some progress. The proportion of women in Ghana's current eighth parliament is 14 per cent, a marginal increase from the 13.4 per cent in the last parliament. As of February 2019, Ghana ranked 275th globally in terms of the percentage of women in parliament.¹⁶ Concerning women elected as members of local government, the number has fallen from 11 per cent in 2009 to 5 per cent in 2017. The number of women candidates and running mates in Ghana's 2020 presidential elections increased from two in the 2016 election to five. Similarly, the proportion of women appointed as Metropolitan, Municipal District Chief Executives increased from 10.3 per cent in 2016 to 14.8 per cent in 2018.

Despite these steps, Ghana was ranked 107 in the 2020 Global Gender Gap Index which assesses gender disparities in the areas of economic, education, health and politics, going down 18 places from the 2018 ranking.¹⁷ This might be due to several reasons. Although on the decline, obnoxious cultural and religious practices such as witch camps, *Trokosi* (a traditional religious servitude), and female genital mutilation (FGM) are still being practised in Ghana despite existence of laws banning these inhuman practices.¹⁸

15 Inter-Parliamentary Union 'Women in National Parliaments' 2019 <http://archive.ipu.org/wmn-e/classif.htm> (accessed 26 September 2020).

16 As above.

17 World Economic Forum 'The Global Gender Gap Report 2020' (2020) 9 http://www3.weforum.org/docs/WEF_GGGR_2020.pdf (accessed 26 September 2020).

For instance, in July 2020, a 90 year-old woman was publicly lynched on suspicion of witchcraft in Kafaba, a community in the Savannah Region of Ghana.¹⁹

2 Ratification of the Maputo Protocol

Ghana ratified the Maputo Protocol on 13 June 2007 with no reservations.²⁰ The year 2007 represented a watershed year for Ghana, as it marked 50 years of independence for the country. Ghana subscribes to the dualist tradition in international law, which means that the country must first ratify a treaty internationally and then proceed to incorporate it into domestic legislation before they can take effect. This is enshrined in article 75(2) of the 1992 Constitution which stipulates as follows:

A treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by – (a) Act of Parliament; or (b) a resolution of Parliament supported by the votes of more than one-half of all the members of Parliament.

18 GenCED 'Ghana scorecard on the Maputo Protocol' (2019) 19 <http://www.genced.org/wp-content/uploads/2019/02/ghana-scorecard-on-the-maputo-protocol.pdf> (accessed 29 September 2020).

19 E Adjetej 'Ghana: Outrage over the killing of a 90-year-old alleged witch' *Africa Feeds* 26 July 2020 <https://africafeeds.com/2020/07/26/ghana-outrage-over-the-killing-of-a-90-year-old-alleged-witch/> (accessed 29 September 2020).

20 African Union 'List of countries that have signed, ratified/acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' 2019 <https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf> (accessed 29 September 2020).

As explained in the Ghana Treaty Manual,²¹ the process of ratification starts with the executive, where the ministry handling the subject matter, also known as the sponsoring ministry of the treaty, seeks advice from the Attorney-General and Minister for Justice in accordance with article 88 of the 1992 Constitution. This is to assess the obligations under the treaty and to find out if it conflicts with domestic laws in any way. The next step is the sponsoring ministry preparing a Cabinet memorandum for approval of the treaty, agreement or convention to be ratified by an Act of Parliament or resolution of Parliament. This is submitted to the Cabinet Secretary together with copies of the treaty, agreement or convention signed by the minister of the sponsoring ministry or signed by ministers where it is joint sponsorship. A decision is then taken at a Cabinet Meeting and the ministry is informed by the Cabinet Secretary with the Attorney-General's department (AG) in copy.

Following approval from Cabinet, the ratification may be done by an Act of Parliament or by Resolution of Parliament. Ratification goes through a set of parliamentary procedures. Once the ratification is done by parliament, a copy of the ratification is sent to the Ministry of Foreign Affairs for the appropriate instrument to be prepared. This is then sent to the President for signature and seal. The Ministry of Foreign Affairs then deposits the instrument to the appropriate depository and

sends copies to the sponsoring ministry and the AG.²² The ratification process of the Maputo Protocol followed the same procedures. It was signed on 31 October 2003, ratified on 13 June 2007 and deposited on 20 July 2007.²³

3 Government focal point on implementation

While the Ministry of Foreign Affairs is responsible for the ratification, the AG and Ministry of Justice is responsible for the implementation.²⁴ The Ministry of Gender and Social Protection is the ministry responsible for the implementation of the Maputo Protocol.

The AG, under the Office of the Attorney General and Ministry of Justice has two main divisions. These are the Civil and the Criminal Divisions. The Civil Division is responsible for assisting treaty ratifications and coordination of responses for Ghana's treaty obligations. In terms of channels of communication with the African Commission on Human and Peoples' Rights (African Commission), the flow of communication between the AG and the African Commission and participation by the AG in the African Commission's sessions has not been consistent. This was largely attributed to the fact that specific persons have not been assigned for this task. There are currently efforts under way to ensure the operationalisation of a committee that will

21 Attorney General and Ministry of Justice Ghana Treaty Manual (2009) <https://legal.un.org/avl/documents/scans/GhanaTreatyManual2009.pdf?teil=II&j> (accessed 4 March 2021).

22 As above. See also MG Nyarko 'The impact of the African Charter and the Maputo Protocol in Ghana' in VO Ayeni (ed) *The impact of the African Charter and the Maputo Protocol in selected African states* (2016) 95 at 98.

23 As Above.

24 African Union 'Report of the Promotion Mission to the Republic of Ghana' (2008) para 29 https://www.achpr.org/public/Document/file/English/misrep_promo_ghana_2008_eng.pdf (accessed 11 March 2021).

oversee the implementation of reporting obligations.

4 Domestication or incorporation

Although Ghana has done well in signing and ratifying many international treaties, it has defaulted in domesticating these laws. For instance, during the AU Human Rights promotional visit to Ghana in 2008, Commissioner Bitaye reminded the Minister of Foreign Affairs and Attorney General and Ministry of Justice that despite Ghana's creditable record as a 'beacon of freedom in Africa' and also being one of the first countries to ratify the African Charter in 1989, it has not domesticated the African Charter.²⁵

Similarly, over the years, researchers and institutions including Dankwa (1991),²⁶ Nyarko (2016),²⁷ the Africa Centre for International Law and Accountability (2017)²⁸ and Dzah (2020)²⁹ have lamented the failure of Ghana to domesticate most of the instruments that it has ratified, being a dualist country in terms of international law. For instance, Dzah (2020) describes Ghana as a 'dualist in pronouncement than in practice'.³⁰ That

notwithstanding, it is also important to acknowledge that Ghana has come far by way of incorporating and enforcing human and women rights. The African Charter and the Maputo Protocol are reflected in Ghana's laws, policies and programmes, and thus enforced accordingly.

It is important to recognise that the Maputo Protocol stands out as one of the progressive international instruments that provides a comprehensive guideline for promoting and actualising the rights and development of women. As a result, as noted by Garr and Danso³¹ various governments have adopted policy measures that reflect the Maputo Protocol's provisions. To indicate this, the next paragraph proceeds to analyse how the various articles or elements of the Maputo Protocol have been incorporated in Ghanaian laws and policies.

Concerning the elimination of discrimination against women,³² the government of Ghana has over the years passed various laws and established institutions to achieve this objective. For instance, article 17 of the Constitution provides for the promotion of equality and freedom from discrimination of all people.³³ More specifically, article 17(1) states that '[a]ll persons shall be equal before the law' and clause 2 states a person shall not be discriminated against on grounds of 'gender, race, colour, ethnic origin, religion, creed or social or economic status'. Any such discrimination against women can punished in the courts. Further, article

25 African Union 'Report of the Promotion Mission to the Republic of Ghana' (2008) paras 28 and 58 https://www.achpr.org/public/Document/file/English/misrep_promo_ghana_2008_eng.pdf (accessed 11 March 2021).

26 E Dankwa 'Implementation of international human rights instruments: Ghana as an illustration' (1991) 3 *Annual conference – Africa Society of International and Comparative Law* 57-64.

27 Nyarko (n 22).

28 Africa Center for International Law and Accountability United Nations Third Universal Periodic Review Ghana, March 2017 Submission (2017).

29 GEK Dzah 'Transcending dualism: Deconstructing colonial vestiges in Ghana's treaty law and practice' in M Addaney and others (eds) *Governance, human rights, and political transformation in Africa* (2020).

30 As above.

31 EQ Garr & BJ Danso 'The state of human rights and women's empowerment in Africa: Focus on Ghana' *AU ECHO* (2016) 11-14.

32 Maputo Protocol art 2.

33 Maputo Protocol (n 32) art 17.

17(4) empowers parliament to pass laws to uphold the above.

The right to life, integrity and security of the person³⁴ and the right to dignity³⁵ are adequately guaranteed in the laws of Ghana. While the Constitution in articles 13 and 15 provides for the protection of life and dignity respectively, the Domestic Violence Act of 2007 (Act 732)³⁶ and the Criminal Code (Amendment) Act of 2003 (Act 646)³⁷ provide protection against gender-based violence (GBV) including acts of intimidation, harassment, psychological, physical and sexual abuse. Also, the establishment of the Domestic Violence and Victim Support Unit (DOVVSU) and the Domestic Violence (DV) Secretariat has increased attention and given some priority to addressing cases of abuse and violence against women and girls.³⁸

Ghana adopted the Domestic Violence Act in 2007 (Act 732) which spells out details on what constitute violence, domestic violence, and types of violence. The Act also provides for protection orders and punishment in line with the gravity of the offence. This is further supported by an established

Domestic Violence Management Board. Further to this, there are over 130 special designated courts for the trial of domestic violence cases across the country.

It is important to note that Ghana's laws do not differentiate between national and international laws but are unified in the promotion and protection of human rights.³⁹ In article 1(2), the 1992 Constitution states clearly the supremacy of the Constitution and in article 12, it states that the human rights shall be applied by the institutions of state and enforced in the Courts accordingly. It goes further to state in article 40(c) that the government shall 'promote respect for international law, treaty obligations ...' and in article 40(d)(i) the state shall adhere to the African Charter of the AU. Clearly, the African Charter and the Maputo Protocol have legal recognition in Ghana, although not explicitly. The Supreme Court has also upheld the fact that just because Ghana has not domesticated certain international human rights, it does not mean that they cannot be enforced in the Court.⁴⁰

5 Legislative reform or adoption

As explained in the previous section, the Constitution and other laws in Ghana contain several provisions that give effect to the Maputo Protocol. The Constitution and these other laws have not changed after the ratification of the Maputo Protocol but new legislation, policies and programmes are being guided by the Maputo Protocol.⁴¹ Given that the provisions within the 1992 Constitution have been explained in

34 Maputo Protocol (n 32) art 4.

35 Maputo Protocol (n 32) art 3.

36 The Domestic Violence Act since 2007 (Act 732) provides details on what constitutes violence, the types of violence and the accompanying punishments. The Legal Instrument (LI) for the operationalisation the Act was passed in 2016.

37 Republic of Ghana Criminal Code (Amendment) Act, 2003 (Act 646). Amendment of Criminal Code, 1960 (Act 29). Para 97 to 103. The Criminal Code of the Republic of Ghana 1993. 'The Criminal Code (Amendment) Act, 1993.' (accessed 7 March 2021).

38 Ministry of Gender, Children and Social Protection (2020) Ghana National Action Plan 2 (2020-2025): Building Inclusive Secured and Peaceful Societies for Women and Girls (2020) <https://gnwp.org/wp-content/uploads/Ghana-NAP-2-2020-2025.pdf> (accessed 7 March 2021).

39 The Constitution of Ghana (n 9).

40 *NPP v Inspector General* [1996-97] SCGLR 729 761. See also Nyarko (n 22).

41 Garr & Danso (n 31).

previous sections, the focus in this section is on laws that address the provisions of the Maputo Protocol.

The Labour Act, of 2003 (Act 651) contains provisions that ensure the right to equal pay for equal work, in line with article 13(b) of the Maputo Protocol which calls on states parties to promote the right to equal remuneration for jobs of equal value for women and men. Furthermore, the Domestic Violence Act, of 2007 (Act 732)⁴² criminalises violence against women and spells out the details on what constitute violence, domestic violence, and types of violence. A legal instrument (LI) to operationalise the Domestic Violence Act has been passed since July 2016; which in effect helps in smooth administration of the Domestic Violence Act. This legislation provides protection against GBV including acts of intimidation, harassment, psychological, physical and sexual abuse. This responds to article 4 of the Maputo Protocol – the right to life, integrity and security of the person.⁴³

The country has also adopted an FGM Amendment Act (Act 484) and the Criminal Code (Amendment) Act of 2007. Since the enactment of these legislations, considerable success has been achieved in eliminating FGM from most parts of the country.⁴⁴ This is in line with article 5 of the Maputo Protocol which seeks to eliminate harmful

practices against women. Moreover, the Human Trafficking Act of 2005 (Act 694) which was passed to address the trafficking of mostly women and children and the Criminal Code (Amendment) Act of 2003 (Act 646)⁴⁵ respond to articles 4 and 5 of the Maputo Protocol.

The Children's Act of 1998 (Act 560), under section 14 puts the minimum age of marriage at 18, and children between 16 and 18 years may marry under parental consent. This addresses the related section in article 6 of the Maputo Protocol, despite it not criminalising the marriage of a child below 18 years, thereby allowing child marriages in certain instances. Similarly, the Intestate Succession Law of 1985 (PNDCL 111) was passed to address the challenges faced by spouses when either of them died without leaving a will disposing of his or her estate. It responds to article 7 of the Maputo Protocol, which requires that women enjoy the same rights as men in the case of separation, divorce or annulment. However, some of these provisions do not meet international standards. To rectify this shortcoming, the Property Rights of Spouses Bill 2013 which seeks to enhance property or estate distribution upon dissolution of marriage or death of a spouse, is awaiting adoption by Parliament at the time of writing.

6 Policy reform or formulation

Generally, the government of Ghana has not explicitly adopted or amended its policies or plans to give effect to the

42 The Domestic Violence Act since 2007 (Act 732) provides details on what constitutes violence, the types of violence and the accompanying punishments. The Legal Instrument (LI) for the operationalisation the Act was passed in 2016.

43 Maputo Protocol (n 32) art 4.

44 EQ Garr 'Female Genital Mutilation in Ghana: Feasibility Studies' (2009) Study conducted for International Action Against the Circumcision of Girls and Women (INTACT). eV., see also *28 too many* (2018). Ghana: the Law and FGM.

45 Republic of Ghana Criminal Code (Amendment) Act of 2003 (Act 646). Amendment of Criminal Code of 1960 (Act 29) paras 97 to 103, Criminal Code of the Republic of Ghana. 1993. 'The Criminal Code (Amendment) Act, 1993.'

Maputo Protocol. Nevertheless, several policies have been formulated that take into account provisions of the Maputo Protocol even if the latter has not been expressly mentioned in them. As indicated by Garr and Danso (2016),⁴⁶ since the Maputo Protocol came into force, it has given direction to institutional, policy and program development in Ghana.

For instance, the National Human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) and Sexually transmitted infections (STI) Policy of Ghana mentions the African Charter.⁴⁷ Relevant to the Maputo Protocol, the policy seeks to promote the wellbeing of people, prevent discrimination on the grounds health or HIV status, reduce mother to child transmission of HIV, and guarantees the rights of affected people.

The policies that implicitly take account of the Maputo Protocol include Ghana's Medium-term Plans. These are the Ghana Poverty Reduction Strategy (2002-2005), the Growth and Poverty Reduction Strategy (2006-2009), Ghana Shared Growth and Development Agenda (GSGDA) I (2010-2013) and the GSGDA II (2014-2017) and the 'Agenda for Jobs, Creating Prosperity and Equal Opportunity for all' (2018 to 2021).

In the current (2018-2021) Medium-term Development Plan, key policies that implicitly respond to the Maputo Protocol include the policy of free education for all Ghanaian children up to senior high school and redefining basic education to include secondary education which has made it possible for more girls to access education. These

girls' education would have been truncated for financial or cultural reasons. This reflects article 12(1)(a) and 12(2) of the Maputo Protocol on the right to education and training. The National Health Insurance Scheme (NHIS) has been restructured to improve women's access to health services particularly pregnant women and nursing mothers who can now walk into any public health centre and access health care services for free. The plan also seeks to introduce a quota system of at least 30 per cent active participation of women in public appointments and this responds to article 9 of the Maputo Protocol on the promotion of women's participation in political and decision-making positions.

There is also the Child and Family Welfare Policy, which was issued by the Ministry of Gender, Children and Social Protection in February 2015. The primary objective of the Policy is to help formulate child and family welfare programmes and activities which can prevent and protect children from all forms of violence, abuse, neglect and exploitation.⁴⁸ This policy responds to articles 2 (elimination of discrimination against women), 3 (right to dignity), 4 (right to life, integrity and security), 5 (elimination of harmful practices) and 12 (right to education and training) of the Maputo Protocol.

The Ghana's National Action Plan (2020-2025) for the implementation of UN Security Council Resolution 1325 (2000) on Women, Peace and Security, does not expressly mention the Maputo Protocol or the African Charter, but it is in response to UN Resolution and other international protocols and agreements.

46 Garr & Danso (n 31).

47 Government of Ghana. National HIV and AIDS, STI Policy (2013) 5.

48 Ministry of Gender Children and Social Protection 'Child and Family Welfare Policy' (February 2015).

It addresses some provisions in the Maputo Protocol, namely article 4 on the right to life, integrity and security of person, article 10 on right to peace, and article 11 on the protection of women in armed conflicts.

The Ministry of Gender, Children and Social Protection (MoGCSP) also released Ghana's National Gender Policy titled 'Mainstreaming Gender Equality and Women's Empowerment into Ghana's Development Efforts' in May 2015. The policy is driven by five objectives, namely, women's empowerment and livelihood, women's rights and access to justice, women's leadership and accountable governance, economic opportunities for women, and gender roles and relations.⁴⁹ Similarly, this policy responds to many articles of the Maputo Protocol (2, 3, 4, 9, 12 and 13).

Additionally, both the Social Protection Policy and the Justice for Children Policy were issued by the MoGCSP in November 2015. The Social Protection Policy seeks to mainstream gender and disability issues in social protection in keeping with the policy objectives of the National Gender Policy.⁵⁰ The Justice for Children Policy seeks to 'establish a well-structured and coordinated Justice for Children system that promotes the well-being of children, prevents violence exploitation and abuse, protects children from harm and promotes justice for children'.⁵¹ These address articles 5 and 8 of the Maputo Protocol.

The National Health Policy (NHP), revised in January 2020, has five policy objectives:⁵²

- (i) To strengthen the healthcare delivery system to be resilient;
- (ii) To encourage the adoption of healthy lifestyles;
- (iii) To improve the physical environment;
- (iv) To improve the socio-economic status of the population; and
- (v) To ensure sustainable financing for health.

This implicitly gives effect, to a large extent, to article 14(2)(a) of the Maputo Protocol, which calls upon states to provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas.

7 Impact on the judiciary

Generally, international human rights treaties such as the Maputo Protocol are not referred to in courts in Ghana. However, as noted by Nyarko,⁵³ there have been instances where the courts have had to resort to the African Charter. He cites three cases: (1) *New Patriotic Party v Inspector General of Police*, in which, the Supreme Court upheld the application of the plaintiff based on provisions including the African Charter; (2) In the case of *Ocansey and Others v The Electoral Commission of Ghana and Another*, although, the Court did not find a violation of the African Charter, it commented on it; and (3) In *Asare and Others v Ga West District Assembly & Another*, similarly, the court made refer-

49 MoGCSP 'National Gender Policy' (May 2015) viii.

50 MoGCSP 'Ghana National Social Protection Policy' (November 2015) 27.

51 MoGCSP 'Justice for Children Policy' (November 2015) 17.

52 Ghana's Ministry of Health 'National Health Policy' (January 2020) 8.

53 Nyarko (n 22).

ences to articles in the African Charter in its ruling.⁵⁴

Also, a major case relating to women's spousal rights, *Mensah v Mensah*, was decided by the Supreme Court in 2012 based on the equality principle.⁵⁵ However, despite mentioning the CEDAW, there was no mention of the Maputo Protocol.

In the *Commissioner, Commission on Human Rights and Administrative Justice (CHRAJ) & 2 Ors v Ghana National Fire Service & Attorney General*, decided by the Human Rights Division of the High Court of Accra,⁵⁶ it is worth noting that the Maputo Protocol was mentioned by CHRAJ in its statement of case as first Applicant. In this case, two women were fired by the Ghana National Fire Service (GNFS) because they got pregnant prior to having served for three years.⁵⁷ CHRAJ filed the case on behalf of these women as part of its mandate as enshrined in section 9 of the Commission on Human Rights and Administrative Justice Act of 1993 (Act 456). In making its argument for the case, CHRAJ cited international human rights instruments Ghana had ratified, including articles 2(c) and (d) of the

Maputo Protocol.⁵⁸ In the judgment, the Judge noted the following:⁵⁹

... this appears to be the first time the issue of discrimination on the ground of gender has come up for determination by this Human Rights Division of the High Court. Accordingly, resort to international human rights jurisprudence and that of other democratic jurisdictions will be necessary, and hopefully, helpful in the circumstances.

In its ruling, the Court cited key human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR), CEDAW, and article 17 of Ghana's 1992 Constitution in which equality before the law and protection from discrimination are assured as fundamental human rights or freedoms. The Court ruled in favour of the first Applicant, stating that Regulation 33(6) of the Conditions of Service of the GNFS is discriminatory in effect, unjustifiable, illegitimate and illegal. The Court also ordered that the two women be reinstated by the GNFS, and that the latter pay the women a compensation in the sum of 50 000 Ghana Cedis (about USD 8260 at the time of the ruling).

The outcome of this landmark case constitutes a milestone for the promotion of women's rights in Ghana, in terms of domestic case law and awareness creation within the judiciary on the elimination of all forms of discrimination against women. It also calls for a

54 See Nyarko (n 22) at 104 and 105 for the full details of the cases.

55 *Mensah v Mensah*, S.Ct, Civil Appeal No J4/20/2011.

56 Judgment of the High Court, Accra, Human Rights Division, in Suit No HR 0063/2017 delivered on 23 April 2018.

57 Statement of Claim, para 2.12, in *The Commissioner, CHRAJ & 2 Ors v Ghana National Fire Service & Attorney General* Suit No HR 0063/2017.

58 Article 2(c) of the Maputo Protocol calls upon states to 'integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life'; and art 2(d) invites states to 'take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist'.

59 (sgd.) AK Yeboah, JA, Justice of the Court of Appeal – Judgment of the High Court, Accra, Human Rights Division, in Suit No HR 0063/2017 delivered on 23 April 2018.

review of internal policies of government and private institutions, most of which are discriminatory against women, especially when it comes to women's reproductive health rights.

8 Awareness and use by civil society

Drawing on the rights and freedoms guaranteed in the 1992 Constitution, the civil society space in Ghana is very liberal and has been conducive for rights-based activism and policy advocacy. As a result, the country has a vibrant and relatively balanced civil society organisations (CSOs) landscape. The CSOs have in various ways also championed the realisation of the rights and freedoms in the Constitution. For instance, the inspiration for the passage of the Domestic Violence Act came from the work of a coalition of women's rights organisations in 2005 who initiated national level public discussion on the problem of domestic violence.⁶⁰

CSO engagement on the Maputo Protocol in Ghana seems robust, although this is being spearheaded by only few organisations. In 2020, the Women in Law and Development Africa (WiLDAF) embarked on a consultation with stakeholders, including government institutions in a bid to produce a report for Ghana on the Maputo Protocol by 2021. WiLDAF had previously coordinated the preparation of the Shadow Report to sixth and seventh Periodic Report of Ghana on CEDAW, which was submitted to the UN Committee on the Elimination of

Discrimination Against Woman in October 2014.⁶¹

The Institute for Democratic Governance (IDEG) in 2014 conducted a study to audit and monitor compliance of the Government of Ghana to 16 policy frameworks of the AU in order to establish the extent of compliance and facilitate a dialogue on addressing challenges to implementation.⁶² These 16 instruments included the Maputo Protocol. The study observed that citizens need to be informed about the treaties and the contribution of such treaties to their well-being in order to hold their government accountable for implementation of the treaties. It concluded that most citizens did not know about the protocols and there was the need for public education. It later disseminated the report and engaged the Ministry of Foreign Affairs to popularise the AU protocols, accordingly.

In the assessment of compliance to the Maputo Protocol, the study found that Ghana's effort was geared towards combating the marginalisation of women, ensuring equal access to property jointly owned by married couples through the introduction of the Property Rights of Spouses Bill and the Intestate Succession Amendment Law, elimination of violence against women as well as the elimination of harmful cultural practices. The study concluded that much was being done to address the various provisions of the Maputo Proto-

61 WiLDAF 'NGO Shadow Report to 6th & 7th Periodic Report of Ghana on CEDAW' https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GHA/INT_CEDAW_NGO_GHA_18396_E.pdf (accessed 30 October 2020).

62 IDEG Study to Audit and Monitor Compliance and Implementation of Protocols, Conventions and Decisions of the African Union Member States: Ghana (2014).

col, but more could be done by way of enforcing the existing laws and also, resourcing relevant ministries to implement the policies meant to realise the objectives of the Maputo Protocol.⁶³

Another CSO engagement on the Maputo Protocol is a scorecard on the Maputo Protocol published by the Gender Centre for Empowering Development (GenCED) in January 2019. In the scorecard, GenCED states that the document was produced with the collaboration and inputs of the MoGCSP and the Gender Department of the Ministry as well as the CHRAJ.⁶⁴ The scorecard examined Ghana's implementation of two articles of the Maputo Protocol, namely, article 4 on the rights to life, integrity and security of the person and article 13 on economic and social welfare rights.⁶⁵ The scorecard found that Ghana has the necessary laws and institutional framework in place as required by the Maputo Protocol and is implementing and realising most of the objectives of the same. However, much needs to be done by way of enforcing the current laws, resourcing the institutions to implement policies and speeding up the passage of new laws that would ensure the full realisation of the rights in the Maputo Protocol.

To a large extent, although CSOs have the capacity to champion advocacy for awareness creation and accountability of government in the implementation of the Maputo Protocol, the majority of CSOs in Ghana hardly focus on promoting the implementation of the Maputo Protocol at national and sub-

national levels. This is also because funding for the CSO sector in Ghana is on the decline for many reasons. First, the sector is largely dependent on donor funding for its activities and secondly the country has attained a lower middle-income status because it has huge oil resource exploration potential and has experienced relative political stability. In addition, one of the key messages of Ghana's President, His Excellency Nana Addo Dankwa Akufo-Addo has been 'Ghana Beyond Aid'. Coupled with these factors, most CSOs in Ghana do not have core-funding. Instead, they have limited project-based funding which does not give them the scope to carry out such advocacy consistently.

9 Awareness and use by lawyers and judicial officers

As rightly noted by Nyarko,⁶⁶ various law schools in Ghana teach international law and as such some lawyers will have knowledge of the Maputo Protocol. Secondly, human rights lawyers and women lawyers in women's rights advocacy organisations have over the years demonstrated knowledge of the Maputo Protocol in their advocacy for policy and legal reforms. However, as to the explicit application of the Maputo Protocol in their cases in law courts, very little is known. The Ghana Legal Information Institute has a website with a repository of cases from the Supreme Court, the Court of Appeal and the High Court of Ghana. However, none of the cases mention the Maputo Protocol. Also, as discussed above, Nyarko⁶⁷ finds that so far only three cases in the courts have referred to the African Charter. These point to a generally low, or even inexistent, application of the

63 As above.

64 GenCED 'Ghana scorecard on the Maputo Protocol' (2019) 19 <http://www.genced.org/wp-content/uploads/2019/02/ghana-scorecard-on-the-maputo-protocol.pdf> (accessed 29 September 2020).

65 As above.

66 Nyarko (n 22).

67 As above.

Maputo Protocol in Ghana's court cases system.

The above development is disturbing since, as far back as 2007 and 2008, AfriMap, Open Society Initiatives for West Africa and IDEG⁶⁸ and Justice of the Supreme Court⁶⁹ have attributed the lack application of the Maputo Protocol and other international laws to limited knowledge by judges on international laws and have advocated for such training and capacity building.

10 Higher education and academic writing

Almost all the traditional public universities offer degree courses in law. These universities include the University of Ghana, Legon, the University of Science and Technology (KNUST), University of Cape Coast, the Ghana Institute of Management and Public Administration (GIMPA). Many private universities also offer law courses. These include Central University, Mountcrest University College, Zenith University College and Kings University College.

While most of these universities teach international law, which includes the Maputo Protocol, it is important to note that in some of the universities the course on international law is not compulsory.⁷⁰ Therefore, some law students may not have knowledge of international human rights.

The University of Ghana, Legon, which is the nation's first and largest university, officially inaugurated its Centre for Gender Studies and Advocacy (CEGENSA) in March 2006, with the aim of ensuring mainstreaming of gender equity 'in all aspects of the institutional culture of the university and Ghanaian society through high-quality research, teaching, learning and advocacy'.⁷¹ In achieving its objectives, CEGENSA developed an Affirmative Action Policy, a Gender Policy and a Sexual Harassment Policy for the University, and offers two gender courses, namely 'Gender Issues in Africa's development' and 'Gender and Culture in Africa Studies Program'. These courses are taught at the undergraduate level, and only provide basic information on key gender concepts, and not on international human rights instruments.⁷²

The establishment of gender units and gender centres in some universities in Ghana is a laudable initiative for two reasons. First, it provides a platform for the introduction of courses on women's rights instruments, including the Maputo Protocol. Second, it promotes gender mainstreaming in the culture of universities and educational institutions, especially in relation to the drafting of gender policies including policies on rape and sexual harassment. This is in line with article 12(1)(c) of the Maputo Protocol which calls upon states parties to 'protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices'.

68 AfriMap, Open Society Initiatives for West Africa (OSIWA) and The Institute for Democratic Governance (IDEG) 'Ghana: Justice sector and rule of law' (2007) 4; see Nyarko (n 22).

69 E Hanson 'Judges asked to sharpen skills in human rights matters' Ghanaweb 31 March 2008 http://www.ghanaweb.com/public_agenda/article.php?ID=9713 (accessed 30 September 2015); see Nyarko (n 22).

70 Nyarko (n 22).

71 CEGENSA 'A centre for change' www.cegensa.ug.edu.gh. (accessed 30 October 2020).

72 As above.

Furthermore, academic research on the Maputo Protocol is low, if not absent, in law faculties and other university departments. For instance, out of 10,765 research articles available on the University of Ghana digital collections website as of October 2020, only one article made mention of the Maputo Protocol. Out of 6,143 doctoral and masters' theses available on the same website, only two masters theses submitted by students of the Legon Centre for International Affairs and Diplomacy (LECIAD)⁷³ was based on the Maputo Protocol.

11 Impact on independent human rights institutions

The CHRAJ was established in 1993 to protect human rights and to promote good governance. The human rights mandate empowers CHRAJ to protect the human rights enshrined in the 1992 Constitution.⁷⁴ Article 218 of the Constitution of 1992 gives the CHRAJ the mandate to investigate complaints of violations of fundamental human rights and freedoms. CHRAJ was also granted Affiliate Status during the 56th Ordinary Session of the African Commission in 2015.

The CHRAJ's human rights mandate enjoins it to monitor the implementation of international human conventions, such as the Maputo Protocol, that have been ratified by Ghana. CHRAJ has submitted its initial report to the African Commission, covering

2015 to 2017.⁷⁵ As part of its public education and outreach engagements, it focused on women's rights and gender discrimination covering the right to inheritance by women and children, dehumanising and harmful widowhood rites and domestic violence.⁷⁶

Accordingly, CHRAJ applies the African Charter and Maputo Protocol in its programmes and engagements. In its reports, CHRAJ refers to some of the obligations of Ghana in terms of the African Charter and Maputo Protocol and follows up on decisions of the African Commission and makes recommendations to government based on its obligations.⁷⁷

The National Commission for Civic Education (NCCE) is another independent state institution established to promote democracy and good citizenship through educating citizens on their rights and obligations.⁷⁸ The Research Department of the NCCE has carried research focusing on women, some of which includes research on witchcraft and human rights of women in Ghana published on September 2010, and a study on the role of women in traditional governance in Ghana, published in November 2011.⁷⁹

12 State reporting

The Ministry of Foreign Affairs is responsible for reporting on Ghana's obligations and implementation of international treaties ratified by the country, including on the Maputo Protocol. The

73 The two studies are: Faisal Mutari, 'The Declaration on the Elimination of Violence Against Women and Women's Right in Ghana: a study of the implementation of the 2007 Domestic Violence Act' July 2018 and Ruth Minikuubu Kaburi, 'States and the protection of women in Africa: the perceptions of women survivors of domestic violence in Ghana July 2018'.

74 The 1993 CHRAJ Act 456.

75 CHRAJ 'Initial Report to the African Commission on Human and Peoples' Rights' (2018) 2.

76 As above.

77 Nyarko (n 22).

78 Art 231 of the Constitution.

79 NCCE 'Research Reports' available at <https://www.nccegh.org/publications/research-reports> (accessed 30 October 2020).

Attorney General and the Ministry of Justice and the sector Ministry, the MoGCSP play key roles in the development of the report. Information is not readily available on the process of preparing state reports to the African Commission. However, the discussion could draw on the experience of Ghana's report to the CEDAW Committee, as suggested by Nyarko.⁸⁰

... the process commences with a consultative meeting of Ministries, Departments and Agencies (MDAs) and Civil Society Organisations (CSOs). A Drafters Committee is then constituted after which a request is made to various human rights institutions and the judiciary to provide information on their sectors. A Lead Consultant is then engaged to compile the report. The draft report is submitted to a validation workshop to enable MDAs, CSOs and development partners to discuss and comment on the draft report before it is finalised.

Ghana has so far submitted two reports to the African Commission on the implementation of the African Charter. The first report was submitted in 1993 for the period 1990 to 1992. The second report was submitted in 2001 for the period 1993 to 2000. Since then, no report has been submitted.

The AG was alerted of Ghana's outstanding reports in 2008. Various committees including inter-ministerial committees were put in place to ensure timely reporting, but they have been unsuccessful due to several challenges, namely: lack of funds and logistical support for the coordination of the Committee, the need for technical support in terms of capacity building for personnel of the AG's Department in drafting of state reports and poor coordination.

80 Nyarko (n 22) 109.

Despite this bleak outlook as concerns the status of Ghana's reporting obligations on the Maputo Protocol and the African Charter, the country has submitted three reports as part of the Universal Periodic Review (UPR) of the UN Human Rights Council (HRC). These reports were reviewed by the Human Rights Council during the first cycle in 2008, the second cycle in 2012 and the third cycle in 2017. Ghana also has, through its MoGCSP, submitted its report On Beijing+25 covering a five-year period (2014 to 2019).⁸¹ From this, one can conclude that Ghana seems to perform better when it comes to meeting its reporting obligation for global human rights instruments, but records significant drawbacks as pertains the fulfilment of its reporting obligation for regional human rights instruments, such as the African Charter and the Maputo Protocol.

13 Communications

The African Commission has received six communications against Ghana.⁸² None of the communications alleged violations of the Maputo Protocol. The AG, which is in charge of relating to the African Commission and ensuring that Ghana fulfils its reporting obligation, is the mechanism responsible for follow-up of communications and implementation of recommendations.

81 The report is available here https://www.uneca.org/sites/default/files/uploaded-documents/Beijing25/ghana-beijing25_report.pdf (accessed 30 October 2020).

82 *Dr Kodji Kofi v Ghana* Communication 6/88; *Coordinating Secretary of the Free Citizens Convention v Ghana* Communication 4/88; *International PEN v Ghana* Communication 93/93; *Abubakar v Ghana* (2000) AHRLR 124 (African Commission 1996); *Alfred B Cudjoe v Ghana* Communication 221/98; *Tsatsu Tsikata v Ghana* Communication 322/06.

14 Special mechanisms and promotional visits of the African Commission

The African Commission held one of its sessions in Accra, Ghana in 2008, a year after Ghana had ratified the Maputo Protocol. According to sources at the AG, no other promotional visits have been embarked upon by special mechanisms of the African Commission. Ghana has also had a commissioner on the African Commission called Professor Emmanuel Victor Oware Dankwa for 12 years (1993 to 2005) who was Vice-Chair, Chair and Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa.

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

Several hurdles prevent Ghana from maximising the opportunities available to strengthen the impact of the Maputo Protocol. The following are some of the critical factors that are impeding the impact of the Maputo Protocol in Ghana.

15.1 Awareness in key sectors

African regional instruments seem not to enjoy high levels of visibility and awareness in several sectors of the country, including within government institutions, as compared to other global human rights instruments. As a result, there is a lack of knowledge about the Maputo Protocol. An example of this is the judiciary, where judges have cited other human rights instruments in determining cases, but not the Maputo Protocol.

15.2 Civil society engagement

CSOs in Ghana, just like government institutions, seem more active on global spaces rather than African spaces when it comes to human rights instruments. However, CSOs that work at the international level with either the UN or AU are aware of the Maputo Protocol and use it in their advocacy efforts. CSOs that have very little interaction with these international platforms are unable to use the Maputo Protocol in their work to influence the promotion of women's rights in the country.

15.3 Capacity building

Government officials occupying key positions require capacity building to participate in activities of the African Commission including meeting reporting obligations. Such capacity-building efforts must be sustained, considering periodic change in government which usually implies that new officers are appointed to head government institutions. Change in government also leads to change in priorities for government sectors.

15.4 Clarity on reporting obligation

There is lack of clarity among government institutions on the state's channel of communication with the African Commission and the specific institution in charge of meeting Ghana's reporting obligations. Such lack of clarity impacts negatively on the capacity of state institutions to collaborate among themselves, and also the capacity of CSOs to engage state institutions. The AG ought to provide the much-needed clarity on this issue, so as to ensure synergy in its efforts and the activities of CSOs and other government institutions geared

towards the implementation of the Maputo Protocol.

15.5 Funding

Lack of funding constitutes a major challenge when it comes to building the capacity of the government and CSOs to take active roles in engaging with the Maputo Protocol. The meagre budget allocation to the MoGCSP constitutes a major challenge in terms of the Ministry's ability to tackle head on, gender issues which require urgent attention. Similarly, the AG's Department is unable to fulfil its mandate on regional human rights instruments due to lack of resources. Further, most donor funding is linked to activities of the UN and other global instruments. This situation creates discrepancies which are evident in how often the state meets its reporting obligations towards international instruments versus the complete lack or delay in meeting reporting obligations towards the Maputo Protocol and the African Charter. Basically, engaging in processes for regional instruments loses its appeal when funds are non-existent.

15.6 The role of the media

Many Ghanaian media practitioners do not make reference to the Maputo Protocol and regional human rights instruments when writing or reporting on women's issues, a situation which might be a reflection of the low level of engagement, advocacy and use of such instruments by CSOs. The Ghana Journalists Association (GJA) yearly awards has a category for 'Human Rights Reporting, Women and Children', which could provide an opportunity within the media landscape to sensitise journalists on reporting women's rights from a human rights perspective, with the inclusion of provisions of the Mapu-

to Protocol. It is necessary to educate the media about the Maputo Protocol since they need to understand the latter before being able to use it in their work.

16 Conclusion

Although Ghana has made some progress when it comes to women's rights, the implementation of the Maputo Protocol has not been effective. The full and effective implementation of the Maputo Protocol has been impeded by several factors mentioned above, including the lack of domestication and failure of the legal system to use the Maputo Protocol in deciding cases relating to the violation of women's rights. State officials within government institutions, lawyers, judges and CSOs who are supposed to use the Maputo Protocol, have very little and often no knowledge of the same. In addition, due to the lack of clarity within government Ministries as to who is the main institution responsible for reporting, Ghana has defaulted in its reporting obligations on the African Charter and the Maputo Protocol to the African Commission. The Maputo Protocol is an important instrument that should be domesticated, implemented more explicitly and placed at the forefront of advocacy on women's rights in Ghana. If Ghana is to excel in the development of women and the protection of their rights, there must be allocation of both human and financial resources for this purpose.