



Gender Transformation & Empowerment

A SIMPLIFIED VERSION OF THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA

THE MAPUTO PROTOCOL A NEW ERA FOR WOMEN'S RIGHTS IN AFRICA



Ministry of Gender, Labour and Social
Development (MGLSD)



October 2011

Uganda Women's Network

VISION: A Ugandan society free of all forms of gender based discrimination.

MISSION: To coordinate collective action among members and other stakeholders through networking, capacity building, resource mobilization, policy research and advocacy for the attainment of gender equality in Uganda.

Strategic Priority Areas

1. Policy advocacy
2. Networking
3. Information Management
4. Institutional Strengthening and Capacity Building

CORE VALUES:

- ❖ Mutual Respect
- ❖ Activitism
- ❖ Volunteerism
- ❖ Accountability
- ❖ Transparency
- ❖ Honesty
- ❖ God Fearing
- ❖ Justice

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FOREWARD

Uganda Women's Network (UWONET) is an advocacy and lobbying network of national women's Non Governmental Organisations (NGOs) and individuals, operating in Uganda. UWONET's membership comprises of National Women's organizations and individuals and is a registered NGO with a Secretariat in Kampala - Uganda.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, better known as the Maputo Protocol, which came into force in November 2005, guarantees comprehensive rights to women including the right to take part in the political process, to social and political equality with men, to control of their reproductive health, and an end to female genital mutilation. As the name suggests, it was adopted by the African Union in the form of a protocol to the African Charter on Human and Peoples' Rights.

The Maputo Protocol emphasizes the crucial role of women in the preservation of African values, based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy as well the recognition of the essential role of women in development.

The Protocol is a very important framework whose intention is to support the realization of human rights of women in Africa by promoting equality for women and men. It reaffirms the universality, indivisibility and interdependency of all internationally recognized human rights of women guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights (UHDR), the International Covenant on Civil and political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol, the African Charter on the Rights and Welfare of the Child and other international and regional conventions and covenants.

This simplified version of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa provides a summary of the provisions in the Protocol and is a quick reference on women's rights. This version also presents a link between the Protocol and other international, regional as well as national legal framework on the rights of women and is intended to popularise and summarise the provisions of the Protocol using simplified and reader friendly language.

Rita Aciro Lakor
Executive Director

UWONET

WHY THE MAPUTO PROTOCOL

Following on from recognition that women's rights were often marginalized in the context of human rights, a regional instrument, the Protocol on the Rights of Women was derived from the African Charter on Human Rights and Peoples Rights (The Charter) adopted in 1981.

The African Charter on Human and Peoples Rights is a human rights instrument specifically designed to respond to 'African concerns, traditions and conditions'. It does not only upholds internationally recognized individual rights, but also proclaims collective rights and duties. Though the African Charter does impose obligations on State Parties to eliminate discrimination against women and to ensure the protection of internationally recognized women's human rights (see articles 2, 3 and 18), it does not explicitly address the fact that many customary practices are often in contravention of basic rights and freedom for women. In recognition of these flaws in the Charter, it became necessary to elaborate a Protocol that would transform the African human rights discourse to reflect women's experiences in the continent. This was made possible by the provision of Article 66 of the Charter that provides for the adoption of special protocols or agreements, if necessary, to supplement the provisions of the Charter.

While recognizing that women in Africa still continue to be victims of discrimination and harmful practices, the Maputo Protocol was developed to provide a more comprehensive framework and specific guarantees for the protection of women's rights.

The OAU assembly of heads of states and government meeting held in June 1995 at the thirty – first ordinary (31st) session in Addis Ababa endorsed the resolution AHG/Res.240 (XXXI) of the recommendation of the African Commission on Human and Peoples Rights to elaborate a Protocol on the rights of women in Africa. This was closely followed by a decision to nominate a Special Rapporteur on Women's Human Rights to the African Commission whose terms of reference included among others the elaboration of the Protocol on women's rights to the African Charter.

In 1995, a series of preparatory meetings towards elaborating the Protocol on the rights of women began, which included a seminar in Lome and further preparatory meetings were held between 1998 to 1999 in Banjul, Dakar and Kigali respectively.

In November 2001, the first ministerial conference and meeting of experts was held in Addis Ababa where the draft Protocol was presented for deliberations. The second experts and ministerial conference was held in March 2003 where the draft Protocol was the subject of intense debate and negotiations.

Africa heads of states met in Maputo in July 2003 during their annual summit and took an important decision to adopt the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

The Protocol entered into force on 25 November 2005 after the minimum 15 of the 53 African Union member countries ratified it. Uganda became party to the Protocol on 22 July 2010 and has made some efforts to domesticate the Protocol's provisions.

THE MAPUTO PROTOCOL AND INTERNATIONAL, REGIONAL AND NATIONAL LEGISLATION

The international community formally recognized the principle of gender equality since the United Nations was founded back in 1945. It is enshrined in the Charter of the United Nations. The UN's Universal Declaration of Human Rights of 1948 also contains the principle that no distinction shall be made "on account of sex". The two human rights covenants that were adopted in 1966, which incorporated a ban on discrimination, made gender equality a legally binding principle for signatory states. This provision on freedom, equality in dignity and rights of every human being are reiterated in the Maputo Protocol.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), takes an important place in bringing women's rights into focus of human rights concerns. The Convention spells out the meaning of equality, how it can be achieved and in so doing, it establishes not only an international Bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights.

The UN Security Council Resolution 1820 adopted in June 2008 reinforces the Protocol's provisions in article 11 on the protection of women in armed conflict. The Resolution addresses the issue of widespread sexual violence against women and girls in situations of conflict. Sexual violence is recognized as a matter of international peace and security. Rape and other forms of sexual violence are identified as war crimes, crimes against humanity or a constitutive act with respect to genocide". The Resolution calls on UN Member States to meet their obligations to prosecute those who commit such crimes and it also permits sanctions to be imposed on countries in which sexual violence occurs during armed conflicts.

The African Charter on Human and People's Rights which enshrines the principle of non-discrimination under articles 2 and article 18 calls on all State Parties to eliminate every discrimination against women and to ensure the protection of rights of women as stipulated in international declarations and conventions. These provisions are further emphasized in articles 1 and 2 of Maputo Protocol which provides an elaborate definition of discrimination against women and elimination of discrimination against women.

The 1995 Constitution of the Republic of Uganda elaborates the principle of equality under article 21(3). Discrimination is defined to include differentiation of treatment based on sex, and is largely gender insensitive. The Constitution sets the tone for equality and non discrimination for all and includes anti-discriminatory provisions and condemns any custom that contradicts human rights. The government of Uganda has enacted laws to improve the situation of women, but their implementation has been obstructed by some reticent communities. Discrimination against women is still rife and the situation of Ugandan women is further aggravated by deeply rooted traditions, patriarchal attitudes and years of armed conflict in some areas.

Uganda's Equal Opportunities Act, 2007 has also incorporated provisions of the Protocol and other international and regional instruments. The Act defines discrimination broadly to include any act, omission, policy, law, rule, practice, distinction, condition, situation, exclusion or preference which, 'directly or indirectly, has the effect of nullifying or impairing equal opportunities or marginalizing a section of society or resulting in unequal treatment of persons in employment or in the enjoyment of rights and freedoms on the basis of sex among other factors

Article 5 of the Protocol has been incorporated in Uganda's Female Genital Mutilation (FGM) Act, 2009 which provides for legislation necessary for criminalising the practice of FGM, prosecution of offenders and protection of survivors.

There is also on-going legislative reform geared towards protection of women's rights through several Bills such as the Marriage and Divorce Bill.

Although the Maputo Protocol reiterates several provisions of international and regional instruments on women's rights, it gives specific legal claims for the protection of women and girls in Africa taking into consideration socio-cultural factors.

What is in the Protocol?

The Protocol is divided into the following three sections:

Figure 2: Section of the Protocol



- 1. Civil and Political Rights
- 2. Economic Social and Cultural Rights
- 3. The Right to Development and Peace
- 4. Reproduction and sexual rights

The rights affirmed can broadly be categorized into four:

- ❖ Article 1: Definitions
- ❖ Article 2: Elimination of Discrimination Against Women
- ❖ Article 3: Right to Dignity
- ❖ Article 4: The Rights to Life, Integrity and Security of the Person
- ❖ Article 5: Elimination of Harmful Practices (female genital mutilation and other traditional practices that are harmful to women).
- ❖ Article 6: Marriage
- ❖ Article 7: Separation, Divorce and Annulment of Marriage
- ❖ Article 8: Access to Justice and Equal Protection before the Law
- ❖ Article 9: Right to Participation in the Political and Decision-Making Process
- ❖ Article 10: Right to Peace
- ❖ Article 11: Protection of Women in Armed Conflicts
- ❖ Article 12: Right to Education and Training
- ❖ Article 13: Economic and Social Welfare Rights
- ❖ Article 14: Health and Reproductive Rights

- ❖ Article 15: Right to Food Security
- ❖ Article 16: Right to Adequate Housing
- ❖ Article 17: Right to Positive Cultural Context
- ❖ Article 18: Right to a Healthy and Sustainable Environment
- ❖ Article 19: Right to Sustainable Development
- ❖ Article 20: Widows' Rights
- ❖ Article 21: Right to Inheritance
- ❖ Article 22: Special Protection of Elderly Women
- ❖ Article 23: Special Protection of Women with Disabilities
- ❖ Article 24: Special Protection of Women in Distress
- ❖ Article 25: Remedies

ARTICLE 1: Definitions

This article deals with definition of various terms used in the Protocol. The Protocol provides an elaborate description of discrimination against women, harmful practices and Violence Against Women (VAW) among others.

ARTICLE 2: Elimination of Discrimination Against Women

This article calls upon State Parties to:

- a) Take concrete steps to ensure that in their constitutions and all other laws the principle of equality between women and men is included and its effective application is guaranteed;
- b) Enact and effectively implement appropriate laws or regulations that prohibit and punish harmful practices which endanger the health and general well being of women;
- c) Integrate a gender perspective in policy decision, legislation, development plans, programmes and all activities;
- d) Take corrective action where discrimination against women in law and in fact continues to exist;
- e) Support efforts aimed at eliminating all forms of discrimination against women.

State Parties are also called upon to change the social and cultural patterns of behavior of women and men through public education, information and communication policies aimed at reducing harmful cultural and traditional practices founded on inferiority or the superiority of either of the sexes.

ARTICLE 3: Right to Dignity

This article recognizes the right of every woman to be treated with dignity, the right to development of her personality and protection from exploitation, degradation and forms of violence in particular sexual and verbal violence.

ARTICLE 4: The Right to life, Integrity and Security of the Person

Every woman is entitled to respect for her life, integrity and security of her person under this article.

To ensure that women enjoy this right State Parties shall;

- a) Enact and enforce laws to prohibit all forms of violence against women in private or public;
- b) Adopt necessary measures to ensure prevention, punishment and eradication of all forms of violence against women;
- c) Identify causes and consequences of VAW and take measures to prevent and eliminate such violence;
- d) Promote peace education to eradicate elements in traditional and cultural beliefs, practices and stereotypes, which legitimize the persistence and tolerance of VAW;
- e) Punish perpetrators of VAW and put in place programmes for rehabilitation of women victims;
- f) Establish mechanisms and accessible services for information, rehabilitation and compensation for victims of VAW;
- g) Prevent and condemn trafficking in women, prosecute the perpetrators and protect those women most at risk;
- h) Prohibit all medical or scientific experiments on women without their informed consent;
- i) Provide adequate budgetary resources for the implementation and monitoring of the actions aimed at preventing and eradicating VAW;
- j) Ensure that death sentences in countries where the death penalty still exists are not carried out on pregnant or nursing mothers;
- k) Ensure women and men enjoy equal rights in terms of access to refugee status determination procedures and guaranteed protection as well as benefits under international refugee law.

ARTICLE 5: Elimination of Harmful Practices

Under this article State Parties shall prohibit and condemn all forms of harmful practices, which negatively affect the human rights of women, and which are contrary to recognized international standards.

State Parties are called upon to create public awareness on harmful practices; legislate and implement laws against all forms of Female Genital Mutilation (FGM) and other harmful practices; provide legal, medical, psychological and emotional support to survivors of harmful practice; and protect women at risk of being subjected to harmful practices or all other forms of violence.

ARTICLE 6: Marriage

This article confers equal rights to women and men in a marriage. States Parties are required to enact laws that guarantee marriage with free and full consent of both parties with the minimum age of marriage for women being 18 years. The rights of women in polygamous marriages are protected under this article. Marriage must be recorded in writing and registered as provided in the law.

Equal rights are granted to the husband and wife to choose the form of marriage and place where they will live. A married woman has the right to retain her maiden name and nationality or to acquire the nationality of her husband. Both parties are accorded equal rights in respect to nationality of their children.

This article further places equal responsibility on both parties to safeguard the interests of the family, to protect and educate their children and women are granted rights to acquire their own property and to control and manage it freely.

ARTICLE 7: Separation, Divorce and Annulment of Marriage

Both women and men are given the same rights to seek separation, divorce or annulment of a marriage which shall be effected by the judicial order after which both parties shall have joint rights and responsibilities towards their children including the rights to fair sharing of the joint property acquired from the marriage.

ARTICLE 8: Access to Justice and Equal Protection before the Law

It recognizes that women and men are equal before the law and shall have the right to equal protection, and benefit of the law. In so doing State Parties shall ensure: effective access by women to judicial and legal aid services and support initiatives directed at providing women access to legal aid services, as well as establishment of educational and appropriate structures to sensitize on women's rights.

It also provides that law enforcement organs are equipped to interpret and enforce gender equality and that women are equally represented in the judiciary and law enforcement organs. This article also provides for changing discriminatory laws and practices in order to promote and protect the rights of women.

ARTICLE 9: Right to Participation in the Political and Decision-Making Process

This article upholds the right of women to participate actively and effectively in the electoral and other decision – making processes in the political arena, it calls upon States to ensure equal participation and representation of women at all levels of decision-making.

ARTICLE 10: Right to Peace

Women have the right to peaceful existence and the right to participate in the promotion and maintenance of peace and that State Parties shall ensure participation of women in programmes of education for peace and in conflict resolution, post conflict reconstruction and rehabilitation processes. Protection is also accorded to asylum seekers, refugees, returnees and displaced person in particular women.

State Parties are particularly required to reduce military expenditure in favor of social development and protection of women.

ARTICLE 11: Protection of Women in Armed Conflicts

This article recognizes the vulnerable position that women and children especially girls find themselves in situations of armed conflict and calls upon State Parties to protect civilians, asylum seeking women, refugees, returnees and internally displaced persons against all forms of violence. It provides that such acts are considered war crimes against humanity and that their perpetrators must be brought to justice before a competent criminal jurisdiction. The State must also ensure that no child especially girls under 18 years of age, take direct part in hostilities and that no child is recruited as a soldier.

ARTICLE 12: Right to Education and Training

It calls upon State Parties to take appropriate measures to eliminate all forms of discrimination against women and to guarantee equal opportunities and access in education and training. It confers protection of the girl-child from all forms of abuse including sexual harassment and provides for prosecution of perpetrators of such practices.

Access to counseling and rehabilitation for women who suffer abuses and sexual harassment is also provided for.

Similarly it calls for integration of gender sensitization and human rights education at all levels of education including teacher training while eliminating stereotypes in textbooks, syllabuses and the media that perpetuate gender discrimination. Promotion of literacy among women through education and training at all levels especially in the field of science and technology and enrolment and retention of girls throughout the education system including those who leave school prematurely is also guaranteed.



ARTICLE 13: Economic and Social Welfare Rights

This article requires the State to guarantee women equal opportunities to work. This includes promoting equal access to employment, the right to equal remuneration, allowances and entitlements for jobs of the equal value to men and women and transparency in recruitment, promotion and dismissal. Women are also guaranteed freedom on choice of the nature of work and protection from exploitation by their employers.

States are also required to promote and support work and economic activities of women within the informal sector through the establishment of a system of protection and social insurance.

Introduction of a minimum age for work is stressed as well as the prohibition of employment of children below age and punishing all forms of exploitation of children especially the girl-child. Recognition of the economic value of the work of women in the home, provision of adequate pre and post maternity leave and equal application of taxation laws to women and men.

It provides both parents with the main duty of upbringing and developing of their children including ensuring prevention of exploitation and misuse of women in advertising and pornography.

ARTICLE 14: Health and Reproductive Rights

This article upholds women's rights to control their fertility, decide whether or not to have children, the number of children and spacing of children and the method of contraception to use. It further recognizes the right of women to self-protection and to be protected against sexually transmitted infections including HIV/AIDS. The Protocol specifies the right of women to know their health status and that of her partner and the right to family planning education.

States must ensure that women enjoy the right to health by providing adequate, affordable, and accessible health services while strengthening existing pre-natal health and nutritional services for women during pregnancy and while they are breast-feeding.

In addition, it calls for protection of reproductive rights of women by authorizing abortion in cases of sexual assault, rape, incest and when the continued pregnancy threatens the life of the mother and unborn baby.

ARTICLE 15: Right to Food Security

It is the responsibility of the State to ensure women have nutritious and adequate food. The government is called upon to provide women with access to clean drinking water, sources of domestic fuel, land and the means of producing nutritious food and establishing adequate systems of supply and storage to ensure food security.

ARTICLE 16: Right to Adequate Housing

This article up holds women's rights to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right States shall grant to women, irrespective of their marital status, access to adequate housing.

ARTICLE 17: Right to Positive Cultural Context

Women shall have the right to live in a positive cultural environment and to contribute in the determination of cultural policies. States shall take appropriate measures to improve the involvement of women in the design of cultural policies at all levels.

ARTICLE 18: Right to a Healthy and Sustainable Environment

This article recognizes women's right to live in a healthy and sustainable environment. States must ensure participation of women in the planning, management and preservation of the environment. Research and investment in new and renewable energy sources that facilitate women's access to and participation in their control.

It calls upon the government to protect and enable development of women's local information systems, regulating management, processing, storage and disposal of household waste and ensuring proper standards for storage, transportation and disposal of poisonous waste are followed.

Article 19: Right to Sustainable Development

This article recognizes the right of women to enjoy their right to sustainable development. In so doing States shall introduce a gender perspective in national development planning procedures and ensure participation of women in policy and programme formulation.

The government shall promote women's access to and control over resources such as land and guarantee their right to property as well as access to credit, training, skills development and extension services. The State will also take positive measures of targeting and ensuring the participation of women in poverty eradication programmes while minimizing the negative effects of globalization and any adverse effects of the implementation of trade and economic policies to ensure they do not impoverish women further.



ARTICLE 20: Widows' Rights

Widows' rights shall be guaranteed to ensure they are not subjected to inhuman, humiliating or degrading treatment; a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children. A widow is also granted the right to remarry a person of her choice.

ARTICLE 21: Right to Inheritance

A widow shall have the right to a fair share in the inheritance of property of her husband and to continue living in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it. Similarly women and men shall have the right to inherit, in fair shares, their parents' property.

ARTICLE 22: Special Protections Elderly Women

The State has a responsibility to provide elderly women protection and ensuring their physical, economical, social needs as well as access to employment and professional trainings are met while upholding their dignity and protecting them from violence including sexual abuse and discrimination based on age.

ARTICLE 23: Special Protection of Women with Disabilities

It requires the States to uphold the right to dignity and protection of women with disabilities. In so doing the State has to ensure their physical, economic, social needs are met including facilitating their access to employment, professional and vocational training as well as their participation in decision - making.

It further provides for the protection of women with disabilities from violence, including sexual abuse and discrimination based on disability.

ARTICLE 24: Special Protection of Women in Distress

This article recognizes the need to protect rights of pregnant and nursing women, women in detention, poor women, female heads of households and women from marginalized communities and seeks to protect their right to be treated with dignity.

ARTICLE 25: Remedies

States Parties shall ensure suitable remedies to women whose rights or freedoms have been violated and such remedies shall be determined by competent judicial, administrative and legislative systems.

ARTICLE 26: Implementation and monitoring

In order to achieve the full realization of rights enshrined in the Protocol, States shall ensure the implementation of the Protocol at the national level and provide periodic reports on progress towards its realization. It calls upon States to undertake budgetary allocations and other resources for the full and effective implementation of rights under the Protocol.

ARTICLE 27: Interpretation

The African Court on Human and Peoples Rights shall have the jurisdiction over matters of interpretation arising from the application or implementation of this Protocol.

ARTICLE 28: Signature, Ratification and Accession

This Protocol shall be open for signature, ratification and accession by the States Parties. Once ratified or acceded to, the instrument shall be deposited with the Chairperson of Commission of the AU.

ARTICLE 29: Entry into Force

The Protocol entered into force on 25 November 2005 after the deposit of the fifteenth (15th) instrument of ratification. Those countries that will ratify after its coming into force, the Protocol for their purpose comes into force on the date of deposit of the instrument of accession.

ARTICLE 30: Amendment and Revision

Any State Party wishing to submit proposals for amendment or revision of the Protocol shall do so in writing to the Chairperson of the Commission of the AU who shall transmit the same to the States Parties within thirty (30) days of receipt thereof.

The Assembly on advice of the African Commission shall examine the proposal(s) for amendment or revision within a period of one (1) and either adopt or reject them by a simple majority vote.

Amendments enter into force thirty (30) days upon receipt of the notice of acceptance by the Chairperson of the Commission of the AU.

ARTICLE 31: Status of the present protocol

None of the provisions of the Protocol shall affect more favorable provisions for the realization of women's rights in national, regional, continental or international legislation.

International Bill of Human Rights and instruments related to rights of women

- ❖ Universal Declaration of Human Rights, 1948
- ❖ International Covenant on Economic, Social and Cultural Rights, 1966
- ❖ International Covenant on Civil and Political Rights, 1966
- ❖ Optional Protocol to the International Covenant on Civil and Political Rights
- ❖ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
- ❖ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- ❖ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP)
- ❖ Declaration on the Protection of Women and Children in Emergency and Armed Conflict
- ❖ Declaration on the Elimination of Violence against Women

Regional Instruments on the rights of women

- ❖ African Charter on Human and Peoples' Rights, 1981
- ❖ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- ❖ Solemn Declaration on Gender Equality in Africa
- ❖ Declaration on Gender and Development
- ❖ The Prevention and Eradication of Violence Against Women and Children
- ❖ Declaration on the Fight Against Trafficking in Persons

Uganda's legislation on the rights of women

- ❖ The 1995 Constitution of the Republic of Uganda
- ❖ Equal Opportunities Act, 2007
- ❖ Female Genital Mutilation (FGM) Act, 2009
- ❖ Domestic violence Act 2010

The background of the top two-thirds of the page is a dark blue field filled with a pattern of lighter blue circles of varying sizes. A diagonal line, composed of a series of overlapping, slightly irregular squares, runs from the top left towards the bottom right, creating a sense of depth and movement.

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