The African Union and Women's Rights since its Inception

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19 August, 2022

The Constitutive Act of the African Union (AU) was adopted on 11 July 2000 and came into force on 26 May 2001. The document has been described as 'the turning of a page in the history of the African continent' as it represented the beginning of a new era for the 'political, judicial, and economic organisation for Africa.' The Constitutive Act recognises gender equality as one of its principles. In its Preamble, it states that the adoption of the instrument was guided by the common vision to construct a 'united and strong Africa' and by 'the need to build a partnership between governments and all segments of civil society organisations, in particular, women [...].' Recognising that women face vulnerabilities, Article 4(l) of the Constitutive Act of the African Union (AU) ensures the 'promotion of gender equality" as one of the principles according to which the AU should function. This implies that at the time of the establishment of the AU, African countries acknowledged that men and women are treated differently across the continent and that the regional human rights system should give attention to the phenomenon of gender inequality. This article is demonstrative of the fact that the AU has committed to combating

discrimination that occurs against women 'on a routine and systematic basis.'

As a concrete step to ensure that African women are afforded the protection they are entitled to, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) was adopted in 2003. The latter reaffirmed 'the principle of promoting gender equality as enshrined in the Constitutive Act of the African Union [...].'

There was a need for the Maputo Protocol since there was little consideration given to existing women's human rights standards on the continent despite the African Charter on Human and Peoples' Rights (African Charter) providing for women's rights in its articles 2 and 18(3). The Maputo Protocol contains ground-breaking provisions such as the criminalisation of child marriage and female genital mutilation; the definition of key terms such as harmful practices and violence against women (including in the domestic sphere), which were not defined in treaties before; the inclusion of steps to protect women from violence and ensure that women survivors of violence have access to remedies; the recognition of the rights of vulnerable women such as widows, older women and women living with disabilities; the requirement for states to allocate budgetary resources to realise women's rights; and the right to sexual and reproductive health rights, including termination of pregnancies in certain instances.

Before the adoption of the Maputo Protocol, soft law drew attention to the discrimination that women face across Africa. For instance, the Kigali Declaration of 2003 noted with 'great concern that the rights of women and children, in spite of the progress achieved, remain insufficiently protected in many African countries' and welcomed the progress in terms of the draft of the Maputo Protocol. Hence, although discussions around the Maputo Protocol started before the institutionalisation of the AU, the fact that it was adopted only a year later is indicative of the fact that the adoption was in line with the AU Constitutive Act's vision of an Africa that is better for women.

Since the adoption of the Maputo Protocol, several soft laws in the guise of general comments, resolutions, declarations, concluding observations and guidelines have been adopted to ensure that women's rights are better protected. Some of them are the Solemn Declaration on Gender Equality in

Africa of 2004 and the AU's Gender Strategy for Gender Equality and Women's Empowerment 2018¬¬–2028. Nevertheless, despite this progress in norm developments in women's rights following the inception of the African Union, women's rights continue to be violated on a daily basis, with gender inequality being entrenched at all levels of society due to the patriarchal nature of the continent. Such violations occur even within the AU. For instance, within the AU Commission, there have been allegations of sexual harassment against women. These violations lead to the non-implementation of treaties and soft laws related to women's rights. The question that arises is how can the AU ensure the better realisation of women's rights, one that is in line with its Constitutive Act?

For the purposes of this article, while recognising that women's rights are not the sole responsibility of the AU but also of all relevant stakeholders, I make four propositions as follows that the AU could adopt towards a better realisation of women's rights:

(1) Monitoring the Implementation of Norms

At the moment, the African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights (African Court) are responsible for monitoring the implementation of the norms related to women's rights. My argument is that since the African Commission has a broad mandate, it might not have the required resources to ensure that these norms are implemented. Moreover, access to the African Court can be limited if countries do not make a declaration under Article 34(6) of the African Court Protocol. Hence, I propose that the AU creates another monitoring body for women's rights, similar to the African Committee of Experts on the Rights and Welfare of the Child, whose main focus is children's rights.

(2) Norm Development

While the Maputo Protocol and its soft laws can be considered as ground-breaking for women's rights protection and realisation, it is not without shortcomings in terms of, for example, queer women, commercial sex workers, women living in prisons and termination of pregnancies upon choice even if it does allow for the same in some circumstances. The AU, through its different human rights bodies, is recommended to ensure that there is norm

development concerning the shortcomings of the Maputo Protocol. Moreover, there are discussions for a new treaty on violence against women and girls. It is recommended that the AU fast-track the finalisation and adoption of this treaty.

(3) Ratification of Instruments related to Women's Rights

At the moment, only 42 out of 55 African countries have ratified the Maputo Protocol. The AU needs to be more proactive in reminding states to ratify the Maputo Protocol and other human rights instruments, such as the Protocol to the African Charter on the Rights of Persons with Disabilities in Africa and the Protocol to the African Charter on the Rights of Older Persons in Africa so that states can be held accountable in the event of non-realisation of women's rights.

(4) Women, Gender and Youth Directorate

The Women, Gender and Youth Directorate needs to be strengthened with a sufficient allocation of resources to ensure that the AU Strategy for Gender Equality and Women's Empowerment is implemented.

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