

# Enhancing access to reparatory justice for women: the role of African human rights bodies

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**ABSTRACT:** The rights of women in Africa continue to be violated due to the systemic and structural power relations grounded in discriminatory social norms, laws and practices. In most African communities, women are marginalised and considered inferior to their male counterparts, which has significantly hindered their full empowerment and continues to impact their health, education, socio-economic opportunities and overall well-being. Patriarchal systems that were in part influenced by colonialism are deeply entrenched in most African societies and are exacerbating the harm faced by women, especially those in vulnerable situations, including women in conflict and post-conflict situations. The article observes that colonial laws and regulations, which informed many African countries' laws and regulations, restricted women's access to resources such as land and property, resulting in their systemic exclusion. The article also reflects on the role colonisation played in the displacement of women from their traditional roles in society, limiting them to passive beneficiaries of support. Considering that the African human rights bodies have a mandate to protect the rights of women, this article argues for a substantive role of these bodies in enhancing access to reparatory justice for women in Africa. Moreover, the article shows how the jurisprudence built by these bodies on women's rights can be leveraged to reform discriminatory family laws in African countries.

## TITRE ET RÉSUMÉ EN FRANÇAIS

### Renforcer l'accès des femmes à la justice réparatrice: le rôle des organes africains des droits de l'homme

**RÉSUMÉ:** Les droits des femmes en Afrique continuent d'être gravement compromis en raison de rapports de pouvoir systémiques et structurels ancrés dans des normes sociales, des lois et des pratiques discriminatoires. Dans de nombreuses communautés africaines, les femmes demeurent marginalisées et perçues comme inférieures aux hommes, ce qui entrave de manière significative leur pleine autonomisation et continue d'affecter leur santé, leur accès à l'éducation, leurs opportunités socio-économiques ainsi que leur bien-être général. Les systèmes patriarcaux, en partie façonnés par l'héritage colonial, sont profondément enracinés dans la plupart des sociétés africaines et contribuent à aggraver les préjudices subis par les femmes, en particulier celles se trouvant en situation de vulnérabilité, notamment dans les contextes de conflit et d'après-conflit. La contribution relève que les lois et réglementations coloniales, qui ont inspiré une grande partie des cadres juridiques nationaux africains, ont restreint l'accès des femmes à des ressources essentielles telles que la terre et la propriété, entraînant leur exclusion systémique. Il met également en lumière le rôle joué par la colonisation dans la dépossession des femmes de leurs fonctions traditionnelles au sein de la société, les reléguant au rang de bénéficiaires passives de mécanismes de soutien. Partant du constat que les

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organes africains des droits de l'homme sont investis d'un mandat de protection des droits des femmes, l'article plaide en faveur d'un rôle substantiel et renforcé de ces organes dans l'amélioration de l'accès des femmes à la justice réparatrice en Afrique. Il démontre en outre comment la jurisprudence développée par ces organes en matière de droits des femmes peut être mobilisée comme levier de réforme des législations familiales discriminatoires dans les États africains.

## TÍTULO E RESUMO EM PORTUGUÊS

### **Reforçar o acesso à justiça reparatória para as mulheres: o papel das entidades africanas de direitos humanos**

**RESUMO:** Os direitos das mulheres em África continuam a ser violados devido às relações de poder sistémicas e estruturais fundamentadas em normas, leis e práticas sociais discriminatórias. Na maioria das comunidades africanas, as mulheres são marginalizadas e consideradas inferiores aos seus homólogos masculinos, o que prejudicou significativamente o seu pleno empoderamento e continua a impactar a sua saúde, educação, oportunidades socioeconómicas e bem-estar geral. Sistemas patriarcais que foram parcialmente influenciados pelo colonialismo estão profundamente enraizados na maioria das sociedades africanas e agravam os danos enfrentados pelas mulheres, especialmente aquelas em situações vulneráveis, incluindo mulheres em conflito e pós-conflito. O artigo observa que as leis e regulamentos coloniais, que informaram as leis e regulamentos de muitos países africanos, restringiam o acesso das mulheres a recursos como terra e propriedade, resultando na sua exclusão sistémica. O artigo deruça-se e reflete também sobre o papel que a colonização desempenhou no deslocamento das mulheres dos seus papéis tradicionais na sociedade, limitando-as a beneficiárias passivas de apoio. Considerando que os organismos africanos de direitos humanos têm um mandato para proteger os direitos das mulheres, este artigo defende um papel substancial destes organismos no reforço do acesso à justiça reparatória para as mulheres em África. Além disso, o artigo mostra como a jurisprudência construída por estes organismos sobre os direitos das mulheres pode ser aproveitada para reformar as leis discriminatórias da família nos países africanos.

**KEY WORDS:** African human rights bodies; reparatory justice; women's rights; gender inequalities; effectiveness; access to justice; African Women's Protocol

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## **1 INTRODUCTION**

All victims of human rights violations, including women, have a right to an effective remedy for the harm caused by the violations. The right is elaborated in international human rights legal frameworks,<sup>1</sup> including article 8 of the Universal Declaration of Human Rights (Universal

1 United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guide-lines-right-remedy-and-reparation> (accessed 21 May 2025).

Declaration);<sup>2</sup> article 2(3)(a) of the International Covenant on Civil and Political Rights (ICCPR);<sup>3</sup> article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD);<sup>4</sup> article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);<sup>5</sup> article 39 of the Convention on the Rights of the Child (CRC);<sup>6</sup> and regional human rights treaties such as article 7 of the African Charter on Human and Peoples' Rights (African Charter);<sup>7</sup> and article 27(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol).<sup>8</sup> Premised on these provisions, regional human rights mechanisms such as the African Court on Human and Peoples' Rights (African Court) have adopted detailed guidelines on filing reparation claims by applicants.

The African human rights bodies – the African Commission on Human and Peoples' Rights (African Commission), the African Court and the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) – are organs of the African Union (AU) that are mandated to promote and protect human and peoples' rights, including the rights of women and girls in Africa. Established in 1987 by the African Charter, the African Commission is the main AU organ mandated to promote and protect human and peoples' rights in Africa, including ensuring the implementation of the African Charter by state parties. As part of its protection mandate, the African Commission 'accepts complaints (communications) from individuals, group of individuals, non-governmental organisations (NGOs), and states concerning alleged violations of the rights enshrined in the Banjul Charter'.<sup>9</sup> The mandate of African Commission is complemented and reinforced by the African Court – established in 2006 pursuant of article 1 of the Court Protocol – to ensure the protection of human and

2 UN General Assembly Resolution 217A (III); Universal Declaration of Human Rights A/RES/217(III) (10 December 1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed 21 May 2025).

3 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

4 International Convention on the Elimination of All Forms of Racial Discrimination (CERD) GA Res 2106 (XX), 21 December 1965.

5 UN General Assembly Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, Treaty Series vol 1465 10 December 1984 85.

6 Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) GA Res 44/25 (1989), UN Doc A/RES/44/25 (1989).

7 African Charter on Human and Peoples' Rights OAU Doc CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982) (African Charter).

8 African Union Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted 10 June 1998, entered into force 25 January 2004) (African Court Protocol).

9 International Justice Resource Centre 'African human rights system', <https://ijrcenter.org/regional/african/> (accessed 19 May 2025).

peoples' rights in Africa'.<sup>10</sup> As a quasi-judicial body, the African Commission monitors the implementation of the African Charter, while the African Court strengthens the human rights protection system in Africa by ensuring compliance of state parties to the African Charter and other international human rights instruments through binding judicial decisions.<sup>11</sup> The African Court is specifically mandated to receive cases filed by state parties to the Court Protocol, African intergovernmental organisations, the African Commission as well as to hear complaints by an individual against a state, provided that the latter has accepted the Court's jurisdiction to receive cases from its nationals and NGOs that have observer status with the AU, a mechanism provided under article 34(6) of the African Court Protocol.<sup>12</sup> On the other hand, the African Children's Committee was established in 2002 by the African Charter on the Rights and Welfare of the Child (African Children's Charter) to monitor the implementation of the rights embodied in the Charter and receive and consider communications alleging violations of the Charter pursuant to article 44. The African Children's Committee may receive communications from any person, group or NGO recognised by the Organisation of African Unity (OAU) (now the AU), by a member state or the United Nations (UN) relating to any matter covered by this Charter.<sup>13</sup>

In the context of human rights, access to justice is a fundamental right and a cornerstone of the rule of law. In the African context, the African Charter provides that 'every individual shall be equal before the law and shall be entitled to equal protection'.<sup>14</sup> Article 8 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) reinforces the protection of this right and guarantees the enjoyment of women's rights to access to justice. The African Women's Protocol provides that 'women and men are equal before the law and shall have the right to equal protection and benefit of the law'.<sup>15</sup> Women's access to justice, their equal standing before the law and their right to equal protection of the

10 African Court 'Establishment of the Court', <https://www.african-court.org/wpafc/establishment-of-the-court/#:~:text=In%20fact%2C%20the%20African%20Charter,and%20Peoples'%20Rights%20was%20created> (accessed 19 May 2025).

11 Basic Information 'The African Court in brief', <https://www.african-court.org/wpafc/basic-information/#mandate> (accessed 27 October 2025).

12 SH Adjolohoun & P Nantulya 'Why the African Court on Human and Peoples' Rights matters' 8 July 2024 (updated 10 February 2025), <https://africacenter.org/spotlight/african-court-on-human-and-peoplesrights/#:~:text=The%20African%20Court%20can%20receive%20cases%20filed,for%20interpret%20and%20applying%20the%20African%20Charter.&text=The%20African%20Court%20receives%20about%2025%20cases%20a%20year%20on%20average> (accessed 21 May 2025).

13 African Charter on the Rights and Welfare of the Child CAB/LEG/24.9/49 (1990) art 44 (African Children's Charter).

14 Art 3 African Charter.

15 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 11 July 2003, CAB/LEG/66.6 art 8 (African Women's Protocol).

law are critical parts of safeguarding any and all of their human rights.<sup>16</sup> The African Women's Protocol specifically obliges state parties to undertake effective measures to, among others, ensure women's access to judicial and legal services; support local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid; and reform existing discriminatory laws and practices in order to promote and protect the rights of women.<sup>17</sup> Effective access to justice optimises the emancipatory and transformative potential of the law aimed at enhancing the protection of women's rights against all forms of discrimination with a view to empowering them as individuals and as rights holders.

Women in Africa currently constitute 50 per cent of the total population,<sup>18</sup> yet they continue to face significant discrimination and exclusion from effective access to justice. Most legal systems, including regional human rights mechanisms, have failed to adequately address women's concerns and needs due to several obstacles and restrictions that are impeding women from realising their rights to access to justice, including reparations. According to the UN Committee on the Elimination of Discrimination against Women:<sup>19</sup>

[T]hese obstacles occur in a structural context of discrimination and inequality owing to factors such as gender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally accessible to all women.

This article explores the right to reparations and the mandate of the African human rights bodies to protect human and peoples' rights, including the rights of women to access justice. Specifically, part 2 of the article digs deeper into the right to reparations in the African human rights system, considering women's lived realities of inequality exacerbated by discriminatory social norms, practices and laws. It spotlights selected cases filed at the African Court that have provided transformative jurisprudence on women's rights and corresponding reparations. Compared to other regional human rights mechanisms, the African human rights bodies have concluded a relatively small number of communications or cases related to issues on women's rights, including the rights of girls, but this does not undermine the fact that their transformative jurisprudence is growing. The African human rights bodies have over the years considered cases and communications and issued judgments and decisions on human rights violations, including violations of women's rights. However, in comparison to other allegations of human rights violations, there are very few

16 A Rudman 'Access to justice and equal protection before the law' in A Rudman and others (eds) *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: a commentary* (2023) 179.

17 Art 8 African Women's Protocol.

18 <http://countrymeters.info/en/Africa> (accessed 24 May 2025).

19 UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation 33 on women's access to justice, 23 July 2025, CEDAW/C/GC/33 (CEDAW Committee General Recommendation 33) para 3.

women's rights cases that have been filed, considered and concluded among the African human rights bodies.

The third part of the article interrogates the effectiveness of African human rights bodies in facilitating women's access to reparatory justice. Specifically, the part examines some of the reasons that have led to the underutilisation of the African human rights bodies in addressing violations of women's rights, which has a direct correlation to women's access to reparatory justice. In conclusion, the article provides some general conclusions and recommendations on how women's access to reparatory justice can be enhanced through the African human rights bodies.

## 2 RIGHT TO REPARATION IN THE AFRICAN HUMAN RIGHTS SYSTEM

The right to reparation is a well-established and basic human right that is enshrined in global and regional human rights treaties.<sup>20</sup> Given the multifaceted issues that affect women and girls, including systemic gender and representation inequalities,<sup>21</sup> 'women and girls have a right to remedy and reparation under international law'.<sup>22</sup> For instance, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that was adopted by the UN in 1979 requires state parties to provide reparations to victims of gender-based violence, including indigenous women and girls,<sup>23</sup> while article 25 of the African Women's Protocol provides for the granting of appropriate remedies to any woman whose rights or freedoms have been violated.<sup>24</sup> The right to reparations requires states to provide effective remedies for human rights violations and ensure that victims obtain full and adequate reparations.<sup>25</sup> However, when states fail to afford reparation, regional and international human rights complaints mechanisms can help to strengthen the application of the right to reparation at national level by awarding adequate reparation where they find a state responsible for human rights violations.<sup>26</sup>

20 International Criminal Court (ICC) *The Prosecutor v Thomas Lubanga Dyilo*, Decision establishing the principles and procedures to be applied to reparations ICC-01/04-01/06, 7 August 2012 para 185.

21 C Broccolini and others 'Chapter 1: Revisiting trends in gender equality' in International Monetary Fund *Gender equality and economic development in sub-Saharan Africa* (2024) 13, <https://doi.org/10.5089/9798400246968.071.CH001> (accessed 30 October 2025).

22 Nairobi declaration on women and girls' rights to a remedy and reparation (Nairobi Declaration), Nairobi, March 2007, [https://www.fidh.org/IMG/pdf/NAIROBI\\_DECLARATIONeng.pdf](https://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf) (accessed 24 May 2025).

23 UN Convention on the Elimination of All Forms of Violence against Women (CEDAW) General Assembly Resolution 34/180, 18 December 1979.

24 Art 27 African Women's Protocol.

25 Art 1(c) UN Basic Principles and Guidelines (n 1).

26 REDRESS 'Reaching for justice: the right to reparation in the African human rights system' October 2013, <https://www.refworld.org/reference/research/redress/2013/en/98078> (accessed 24 May 2025).

By virtue of their mandates, the African human rights bodies – the African Commission, the African Court and the African Children’s Committee – are strategically positioned to offer redress to victims of human rights violations, including women, in circumstances ‘where domestic justice systems are not available, effective or sufficient’.<sup>27</sup> The bodies are mandated to ensure that the rights enshrined in regional human rights instruments – the African Charter, the African Women’s Protocol and the African Children’s Charter – are protected by ensuring prevention and adequately redressing violations, including ordering effective remedies and reparations. However, the African and African Children’s Charters do not include an express provision on the right to reparation for victims of violations of the rights set out in these charters. This has led to varied jurisprudence from the African Commission and the African Children’s Committee on reparations and the few decisions that have been issued with reparations have been ‘largely contingent on whether claimants specifically request reparation, and the nature and detail of such requests’.<sup>28</sup>

In contrast to these bodies, the African Court possesses the authority to order reparations where appropriate,<sup>29</sup> and considers the issue of reparations as a permanent feature for the quest for justice in Africa. Currently and, as noted earlier, the African Court is the only body among the three African human rights bodies that has elaborated guidelines for applicants to file reparation claims. Even so, ‘applicants seeking reparations ought to provide the Court with adequate information to enable it to make a proper determination on the reparation due/not due’.<sup>30</sup> According to the African Court:<sup>31</sup>

Reparations render justice by removing or minimising the consequences of the wrongful act and by preventing and deterring violations. In practice, the obligation translates to specific actions: (1) to take appropriate measures to prevent violations; (2) to investigate violations effectively, promptly, thoroughly and impartially and take action against the perpetrators; (3) to provide effective justice to victims of human rights violations; and reparation includes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. The overarching goal of these forms of reparation is to provide healing for victims of human rights violations.

Violations of women’s rights in Africa are grounded in systemic discriminatory social norms and laws reinforced by cultural beliefs and practices that legitimise women’s inequality, threaten women’s health through violence and hinder economic empowerment through land ownership disparities.<sup>32</sup> Despite commendable progress being made

27 As above.

28 As above.

29 Art 27(1) African Court Protocol (n 8).

30 African Court on Human and Peoples’ Rights ‘Factsheet on filing reparation claims’, <https://www.african-court.org/wpafc/wp-content/uploads/2020/10/FACT-SHEET-ON-FILING-REPARATION-CLAIMS-Revised-October-2020.pdf> (accessed 20 May 2025).

31 As above.

32 Social Inclusion and Gender Index 2021 Regional Report for Africa, OECD, <https://doi.org/10.1787/a6d95d90-en> (accessed 30 October 2025).

towards addressing gender inequality in Africa, including increased girls' school enrolment, greater women's participation in the paid workforce and a rise in the perception of female leadership,<sup>33</sup> women continue to experience social, economic and political inequalities. While it is true that human rights violations are committed against men as well as women, their impact and nature differ markedly for men and women.<sup>34</sup> Most violations and abuses against women exhibit traits of patriarchal and unequal power relations that often render women subordinates to men. As such, cases or communications filed before domestic, regional, sub-regional and national judicial and quasi-judicial mechanisms on women's rights violations and abuses require thorough consideration to avoid marginalisation and exclusion of women from accessing reparatory justice. This is premised on the fact that 'even when women are subjected to the same violations as men, their pre-existing socio-economic and legal status may imply that the consequences will be different'.<sup>35</sup>

## 2.1 Redressing systemic inequalities against women in Africa

Systemic inequalities against women in Africa are grounded in the continued existence of discriminatory social and cultural norms, practices and laws that over the years have perpetuated economic exclusion, political underrepresentation and gender-based violence against women. These inequalities have been exacerbated by factors such as limited access to healthcare services, education and resources, deprivation from ownership of land and property inheritance, as well as exclusion from meaningful participation in economic and political decision-making processes. To address the entrenched nature of inequalities against women in Africa, the AU adopted the African Women's Protocol, a progressive binding framework that seeks to advance the promotion and protection of women's rights in African. The Women's Protocol enjoins AU member states to take legislative and other measures to ensure the full realisation of the rights of women in Africa, including providing budgetary and other resources for the full and effective implementation of the rights enshrined in the Protocol.<sup>36</sup> The African Commission is mandated to monitor the implementation of the African Women's Protocol through period reports and

33 Africa Gender Index 2023 Analytical Report: African women in times of crisis (2024), <https://www.afdb.org/en/documents/africa-gender-index-2023-analytical-report> (accessed 30 October 2025).

34 R Nieves 'Gender-based violence: a human rights issue' 1997, Serie Mujer Y Desarrollo 16, <https://repositorio.cepal.org/server/api/core/bitstreams/ad963a4d-1ed1-4a5c-80b5-283a76f73044/content#:~:text=While%20it%20is%20true%20that,in%20women%20and%20domestic%20violence> (accessed 30 October 2025).

35 R Rubio-Marín 'What happened to the women? Gender and reparations for human rights violations' (2006) Advancing Transitional Justice Series 1, International Center for Transitional Justice, Social Science Research Council, New York.

36 Art 26 African Women's Protocol.



communications, while the African Court has the mandate to handle matters of interpretation arising from the application or implementation of the Women's Protocol.<sup>37</sup> It is thus through these mandates that the African human rights bodies have functioned as mechanisms for redressing violations and abuses of women's rights that perpetuate social, economic and political inequalities against women in Africa, as elaborated below.

### 2.1.1 Social inequalities

In the social sphere, African women continue to be subjected to several forms of violations and discrimination because of their gender. They are often subjected to domination by their spouses, as mentioned in article 444 of the Congo Family Code: 'The husband is the head of the household. He owes protection to his wife; his wife owes obedience to her husband.'<sup>38</sup> This makes marriage one of the most discriminatory institutions against women.<sup>39</sup> In most AU member states, the registration of civil marriages is a legal requirement governed by specific laws formalising marriage, and women in customary and religious marriages are often discriminated against and do not have the same legal protection as people in civil marriages.<sup>40</sup> Polygamy is legally permitted in Cameroon, Egypt, Kenya, Senegal and South Sudan, with men allowed four wives in Sudan and Senegal. This is compounded by widow inheritance and surrogate marriage, which treats women as property.<sup>41</sup> Most family codes in Africa have remnants of colonial legacies. For instance:<sup>42</sup>

British colonial administrators brought their own preconceived stereotypes about African societies, imagining male 'chiefs' ruling 'tribes' who they assumed were linguistically, culturally and religiously homogenous. Their belief in the 'natural' separation of sexes confined women to domestic roles and led them to dismiss the possibility of female authority, especially in Africa, which they deemed inferior.

As such, the African Women's Protocol commits state parties to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural

37 Art 27 African Women's Protocol.

38 Democratic Republic of the Congo Family Code, Book 3, title 1, ch 5, sec 2, art 444, <https://www.leganet.cd/Legislation/Code%20de%20la%20famille/CDF.2017.pdf> (accessed 24 May 2025).

39 L Jousse 'Discrimination and gender inequalities in Africa: what about equality between women and men?' (2021) *Gender in Geopolitics Institute* [https://iggeo.org/en/2021/05/31/discrimination-and-gender-inequalities-in-africa-what-about-equality-between-women-and-men/#\\_ftn2](https://iggeo.org/en/2021/05/31/discrimination-and-gender-inequalities-in-africa-what-about-equality-between-women-and-men/#_ftn2) (accessed 24 May 2025).

40 'Women in Africa face widespread discrimination in family laws' (2024), <https://capitalethiopia.com/2024/05/16/women-in-africa-face-widespread-discrimination-in-family-laws/> (accessed 30 October 2025).

41 As above.

42 B Paulien 'Unmasking the impact of colonialism on gender equality in African legal history' 2025, <https://www.lhlt.mpg.de/4587189/notice-25-01-20#:~:text=British%20colonial%20administrators%20brought%20their,over%20their%20people%20and%20lands> (accessed 30 October 2025).

and traditional practices and all other practices that are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.<sup>43</sup> The African Women's Protocol also emphasises equal parental rights,<sup>44</sup> including with respect to the nationality of children and marital property rights. This reflects a concern to overcome the legacy of the alchemy of customary norms and colonial laws that encoded automatic-father preference and the subsuming of a wife's legal personality into that of her husband. During the creation of the post-colonial public sphere, women were excluded from the social and cultural spheres based on their biology as the new public sphere was created just for men.<sup>45</sup> Women never had their voices and perspectives reflected in customary laws, most of which were premised on colonial residual repugnancy clauses, some of which continue to be applied by post-independence courts guided by exemption clauses within the equality and non-discrimination constitutional provisions.<sup>46</sup>

Although colonial residual repugnancy clauses are still present in some retained colonial statutes of general application, they have been amended to suit the contemporary justice needs and interests of Africans.<sup>47</sup> A key achievement on the African continent as far as women's rights and welfare are concerned has been the African Women's Protocol, which has provided African courts with context-specific application of women's rights on the African continent, over and above those of CEDAW.<sup>48</sup> Unfortunately, even with the existence of such progressive normative frameworks, violations of women's rights persist in Africa due to weak enforcement mechanisms. For instance, despite the African Women's Protocol and the African Children's Charter setting the minimum age of marriage to be 18 years,<sup>49</sup> most family codes and laws in Africa do not fulfil this obligation. In West Africa, 44 per cent of women aged 20 to 24 years were married before the age of 15 years.<sup>50</sup> According to the United Nations Children's Fund (UNICEF), Africa is home to 130 million child brides and nearly 140 million girls and women who have undergone female genital mutilation (FGM), while over 40 million girls and women in Africa have experienced both harmful practices.<sup>51</sup>

43 Art 2(2) African Women's Protocol.

44 Art 6(h) African Women's Protocol.

45 O Yëwù mí 'The invention of women: making an African sense of Western gender discourses' 1997, Minneapolis: University of Minnesota Press, [https://transreads.org/wp-content/uploads/2023/11/2023-11-25\\_6562750d9655d\\_TheInventionofWomenMakinganAfricanSenseofWesternGenderDiscoursesbyOyeronkeOyewumi-z-lib.org\\_.pdf](https://transreads.org/wp-content/uploads/2023/11/2023-11-25_6562750d9655d_TheInventionofWomenMakinganAfricanSenseofWesternGenderDiscoursesbyOyeronkeOyewumi-z-lib.org_.pdf) (accessed 30 October 2025).

46 M Gayoye 'The coloniality and evolution of African customary law' (2025), <https://opo.iisj.net/index.php/osls/article/view/1976/2434> (accessed 26 May 2025).

47 As above.

48 F Banda 'Blazing a trail: the African Protocol on Women's Rights comes into force' (2006) 50 *Journal of African Law* 72-84, cited in M Gayoye *The coloniality and evolution of African customary law* (2025).

49 Art 6(b) African Women's Protocol; art 21(2) African Children's Charter.

50 O Natacha 'Poverty and inequality of rights in Africa: a "gendered" perspective' (2005) 129 *Mondes en Développement* 93-106.

51 <https://data.unicef.org/resources/harmful-practices-in-africa/> (accessed 24 May 2025)

In addition, violence against women and girls (VAWG) remains a widespread issue and continues to manifest itself in many forms, including physical, sexual, psychological or economic violence by an intimate partner; (FGM); early child and forced marriage where girls below 18 years are forced into marriage; sexual violence in conflict and humanitarian settings which includes rape, sexual assault with violent physical assault, kidnapping, sexual slavery and forced prostitution in conflict situations.<sup>52</sup> To curb the scourge of VAGW in Africa, in February 2025 the AU Heads of State and Government adopted the AU Convention on Ending Violence Against Women and Girls (AU-CEVAWG). AU-CEVAWG is a comprehensive, legally binding framework for the prevention and elimination of, and effective response to, all forms of violence against women and girls, across Africa, by addressing the root causes and drivers of such violence, strengthening legal and institutional mechanisms, and promoting a culture of respect for human rights, gender equality and the dignity of women and girls.<sup>53</sup> The implementation clause of AU-CEVAWG requires

States Parties to include in their periodic reports to ACHPR, as required under Article 62 of the Banjul Charter, the legislative and other measures undertaken to end all forms of violence against women and girls; mandates ACHPR to interpret the provisions of the Convention in accordance with the African Charter on Human and Peoples' Rights and to refer matters of interpretation and enforcement on any dispute arising from the application or implementation of the Convention to the African Court; and where applicable, hear disputes arising from the application or implementation of the Convention.<sup>54</sup>

It remains to be seen how AU-CEVAWG will be leveraged to redress and sustainably prevent and end VAWG in Africa.

### **2.1.2 Economic inequalities**

Economically, most African women remain disempowered and continue to face obstacles to equal participation in economic activities and enjoyment of the same benefits and opportunities as men.<sup>55</sup> The glaring disparities between men and women regarding access to financial and economic resources continue to disenfranchise women and exclude them from enjoying their rights to the fullest. For instance, inequalities in women's access to education, especially at primary and secondary levels, has a direct correlation to their meaningful participation in economic activities and political decision-making processes in their adulthood.<sup>56</sup> Although women represent 70 per cent of the active population in the agricultural sector, they remain at the

52 <https://au.int/en/aucewag> (accessed 30 October 2025).

53 As above.

54 AU-CEVAWG, 2025 art 14, [https://au.int/sites/default/files/newsevents/workingdocuments/44174-wd-EN\\_AU\\_Convention\\_on\\_Ending\\_Violence\\_Against\\_Women\\_and\\_Girls\\_CEVAWG\\_27.05.2025.pdf](https://au.int/sites/default/files/newsevents/workingdocuments/44174-wd-EN_AU_Convention_on_Ending_Violence_Against_Women_and_Girls_CEVAWG_27.05.2025.pdf) (accessed 30 October 2025).

55 Jousse (n 39).

56 As above.

bottom of the ladder in this area and work in difficult conditions, with a wide wage gap compared to their male counterparts.<sup>57</sup> In comparison to men, women are disproportionately represented in the informal sector and face precarious working conditions, including lack of social protection, inadequate safety and health standards and exposure to various hazards.<sup>58</sup> Despite the elaboration of state parties' obligations to guarantee women's equal opportunities in work and career advancement and other economic opportunities,<sup>59</sup> disparities remain in women's access to decent work, economic empowerment and enjoyment of their right to participate in economic decision-making processes. These challenges are more nuanced in the case of marginalised women, including poor and underprivileged women.

In Africa, women continue to earn less than men as they have historically been clustered into lower-paying fields such as caregiving, education and service industries, while men have dominated higher-paying sectors such as technology and finance.<sup>60</sup> The gender pay gap is deeply ingrained in cultural norms and gender stereotypes, which shape educational choices, career aspirations and workplace behaviour, reinforcing gender-based wage disparities.<sup>61</sup> According to UN Women:

Women in sub-Saharan Africa spend 3.1 times more on unpaid care work than men including fetching water, collecting firewood, doing laundry, preparing food, and caring for children, sick, older persons, and people with disability. It limits their time, choices and opportunities for decent paid work, education, public life and leisure. It crowds millions of women into low-paid and insecure jobs, leaving them more likely to toil in poverty without social protection across their lifetime.

Care is a universal right and an essential public good, but despite its importance to society and the economy, care work is often not recognised as skilled work or a public issue.<sup>63</sup> In an effort to recognise, reduce, redistribute, reward and represent care work, the AU has over the years adopted policy and normative instruments with commitments on care. These have included the AU Strategy for Gender Equality and Women's Empowerment (2018-2028) which aims to mitigate constraints such as the disproportionate burden of unpaid care work that hinders women's full participation in economic

57 As above.

58 As above.

59 Art 8 African Women's Protocol.

60 UN Women 'The Gender Pay Gap Report' 2023, [https://africa.unwomen.org/en/what-we-do/womens-economic-empowerment/the-gender-pay-gap-report#:~:text=Gender%20pay%20gap%20is%20a,stereotypes%20underpin%20the%20pay%20gap.\(accessed 30 October 2025\).](https://africa.unwomen.org/en/what-we-do/womens-economic-empowerment/the-gender-pay-gap-report#:~:text=Gender%20pay%20gap%20is%20a,stereotypes%20underpin%20the%20pay%20gap.(accessed%2030%20October%202025).)

61 As above.

62 UN Women 'Transforming care systems in West and Central Africa', [https://africa.unwomen.org/en/recognizing-reducing-and-redistributing-unpaid-care-work \(accessed 30 October 2025\).](https://africa.unwomen.org/en/recognizing-reducing-and-redistributing-unpaid-care-work(accessed%2030%20October%202025).)

63 LK Lisa and others 'Chapter 17: Gender inequality and care work: valuing and investing in care' (2024), [https://www.elibrary.imf.org/display/book/9798400246968/CH017.xml#:~:text=The%20unequal%20distribution%20of%20care,care%20policies%20in%20the%20region.\(accessed 30 October 2025\).](https://www.elibrary.imf.org/display/book/9798400246968/CH017.xml#:~:text=The%20unequal%20distribution%20of%20care,care%20policies%20in%20the%20region.(accessed%2030%20October%202025).)

activities. The strategy aligns with Aspiration 6 of Agenda 2063, which calls for ‘an Africa where development is people driven ... especially its women and youth and caring for children’.<sup>64</sup> The African Women’s Protocol calls for the recognition of women’s work in the home and mandates state parties to take the necessary measures to recognise the economic value of the work of women in the home.<sup>65</sup> It also calls for measures to help women balance their caregiving responsibilities with their professional lives and promotes a shared responsibility for child upbringing.<sup>66</sup> The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Citizens to Social Protection and Social Security covers contingencies such as maternity protection and benefits for old age, sickness and disability, all of which involve significant care responsibilities.<sup>67</sup> It calls on state parties to develop policies and legislation that ensure coverage for the population, including vulnerable groups such as children, older persons and persons with disabilities, reducing the burden of care.<sup>68</sup> The AU emphasises addressing a high burden of disease, inadequate health care and gender inequality, all of which are linked to the demand for and provision of care work. These commitments notwithstanding, the continent still has a long way to go in addressing the disproportionate burden of care work on women.

### 2.1.3 Political inequalities

The historical marginalisation of women in politics and political decision-making processes in Africa continues to curtail women’s voices, visibility and leadership in the public sphere.<sup>69</sup> Women’s participation in political and public life is a matter of justice and a foundation of democracy, short of which the goals of equality, development and peace cannot be achieved.<sup>70</sup> Although commendable progress has been made in countries such as Rwanda where women constitute the majority in Parliament, with 63.75 per cent of the seats in the Chamber of Deputies held by women,<sup>71</sup> women remain ‘largely underrepresented in ministries and other legislative and executive

64 Agenda 2063: The Africa we want, <https://au.int/en/agenda2063/overview> (accessed 30 October 2025).

65 Art 13(h) African Women’s Protocol.

66 Art 13(l) African Women’s Protocol.

67 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Citizens to Social Protection and Social Security art 1(1)(s), [https://au.int/sites/default/files/treaties/42736-treaty-PROTOCOL\\_TO\\_THE\\_AFCPR\\_ON\\_THE\\_RIGHTS\\_ON\\_CITIZEN\\_TO\\_SOCIAL\\_PROTECTION\\_AND\\_SECURITY\\_E.pdf](https://au.int/sites/default/files/treaties/42736-treaty-PROTOCOL_TO_THE_AFCPR_ON_THE_RIGHTS_ON_CITIZEN_TO_SOCIAL_PROTECTION_AND_SECURITY_E.pdf) (accessed 30 October 2025).

68 Art 28 Protocol (n 67).

69 I Taylor ‘Women in African politics’ *African politics: a very short introduction* (2018), <https://doi.org/10.1093/actrade/9780198806578.003.0005> (accessed 30 October 2025).

70 UN-Women (United Nations Entity for Gender Equality and the Empowerment of Women) ‘Women’s rights in review 30 years after Beijing’ *New York: UN-Women* (2025), <https://www.unwomen.org/sites/default/files/2025-03/womens-rights-in-review-30-years-after-beijing-en.pdf> (accessed 25 May 2025).

71 <https://www.parliament.gov.rw/women-representation> (accessed 25 May 2025).

bodies'.<sup>72</sup> This is true in countries such as Nigeria with only 3,9 per cent of women in Parliament.<sup>73</sup> Oluyemi explains that the under-representation of women in political participation gained root due to the patriarchal practice inherent in Nigerian society, much of which was obvious from the pre-colonial era to date.<sup>74</sup>

The low representation and participation of women in politics and political decision-making processes is also prevalent at sub-national and local government levels where political positions and decision-making processes are dominated by men.<sup>75</sup> Lack of political will, restrictive electoral frameworks and deeply entrenched patriarchy continue to make it more difficult for women to run for political offices.<sup>76</sup> Also, the growing backlash on gender equality coupled with attacks, including digital violence perpetrated on women politicians and women in leadership or public spheres, has hampered women from meaningfully participating in politics and political decision-making processes. It is noted that 'while mindsets are changing, frameworks are not changing as fast. Political instability in some African countries has also prevented women from participating in politics while electoral systems need to actively look at the historical disadvantages of women's political participation.'<sup>77</sup>

To address political inequalities against women, the African Charter on Democracy, Elections and Governance (African Democracy Charter) enjoins AU member states to create the necessary conditions for the full and active participation of women in democracy and governance processes.<sup>78</sup> It seeks to promote gender balance and equality in governance and development processes, and calls for the elimination of all forms of discrimination including those based on political opinion and gender.<sup>79</sup> As it was reaffirmed by the African Court in *Actions pour la Protection des Droits de l'Homme (APDH) v Côte d'Ivoire*, the African Democracy Charter can be invoked in a court of law to hold AU member states accountable for their commitments to democracy, human rights and the rule of law.<sup>80</sup>

72 Jousse (n 39).

73 <https://data.ipu.org/parliament/NG/NG-LC01/data-on-women/> (accessed 25 May 2025).

74 O Oluyemi 'Monitoring participation of women in politics in Nigeria', [https://unstats.un.org/unsd/gender/finland\\_oct2016/documents/nigeria\\_paper.pdf](https://unstats.un.org/unsd/gender/finland_oct2016/documents/nigeria_paper.pdf) (accessed 25 May 2025)

75 As above.

76 S Dube 'Enhancing women's political participation in Africa' (2022), <https://www.idea.int/news/enhancing-womens-political-participation-africa> (accessed 25 May 2025).

77 As above.

78 Arts 3(7), 8(2) & 29 African Democracy Charter.

79 Art 8(1) African Democracy Charter.

80 *Association Pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v Mali* (Merits) (2018) 2 AfCLR 380 (*APDF & IHRDA v Mali*); see also K Ben 'The African Charter on Democracy, Elections and Governance as a justiciable instrument' (2019) 63 *Journal of African Law* 39, [https://www.cambridge.org/core/services/aop-cambridge-core/content/view/D2D3393CFDCA743ACBF2E431B04A71F/S0021855319000044a.pdf/african\\_charter\\_on\\_democracy\\_elections\\_and\\_governance\\_as\\_a\\_justiciable\\_instrument.pdf#:~:text=the%20justiciability%20of%20the%20ACDEG%20and%20its,and%20the%20rule%20of%20law%20in%20Africa](https://www.cambridge.org/core/services/aop-cambridge-core/content/view/D2D3393CFDCA743ACBF2E431B04A71F/S0021855319000044a.pdf/african_charter_on_democracy_elections_and_governance_as_a_justiciable_instrument.pdf#:~:text=the%20justiciability%20of%20the%20ACDEG%20and%20its,and%20the%20rule%20of%20law%20in%20Africa). (accessed 30 October 2025).

### 3 THE EFFECTIVENESS OF AFRICAN HUMAN RIGHTS BODIES AND WOMEN'S ACCESS TO REPARATORY JUSTICE

To address discriminatory social norms, practices and laws, in *APDF and IHRDA v Mali*, the applicants challenged the Mali Family Code for being in contravention of several international and regional obligations stipulated in CEDAW, the African Women's Protocol and the African Children's Charter. This included article 6(b) of the Women's Protocol and articles 2 and 21(2) of the African Children's Charter on the minimum age of marriage for girls. The Mali Family Code that was adopted by the National Assembly of Mali on 3 August 2009 'set the age of marriage for boys at 18 and 16 for girls'.<sup>81</sup> In its judgment, the African Court held that Mali violated article 6(b) of the African Women's Protocol and articles 2 and 21 of the African children's Charter on the minimum age for marriage. In addition, the African Court granted the applicants' application for reparations and ordered Mali to amend the impugned law, harmonise its laws with applicable international instruments and take appropriate measures to bring an end to the violations established.<sup>82</sup> The Court also declared that the finding of the violations established constituted in itself a form of reparation for the applicants<sup>83</sup> and, by extension, the Malian women and girls. This ruling not only provides an unprecedented landmark judgment on the rights of women and girls in Africa, but also contributes to the development of the jurisprudence on the minimum age of marriage and sets possible reparations for women and girls subjected to harmful practices including child and early marriages.

Through the advisory proceedings, the African Court considered a Request for Advisory Opinion that was filed by the Pan-African Lawyers Union (PALU) on the compatibility of vagrancy laws – laws that which criminalise the status of individuals as being poor, homeless or unemployed – with the African Charter and other human rights instruments applicable to Africa. In its opinion, the African Court noted that 'vagrancy laws, effectively, punish the poor and underprivileged, including but not limited to the homeless, the disabled, the gender-nonconforming, sex workers, hawkers, street vendors, and individuals who otherwise use public spaces to earn a living',<sup>84</sup> and most of them are women. The Court further noted that individuals under such difficult circumstances are already challenged in enjoying their other rights including, more specifically, their socio-economic rights, and subjecting them to these laws further deprives them of their right to be

81 CN Musembi 'Marriage' in Rudman and others (n 16) 140.

82 *APDF v Mali* (n 81) para 135(x).

83 As above.

84 Pan-African Lawyers Union (PALU), Request 1/2018, Advisory Opinion on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Other Human Rights Instruments Applicable in Africa (2020) para 70, <https://www.africancourt.org/cpmt/storage/app/uploads/public/5fd/oc6/49b/5fdoc649b6658574074462.pdf> (accessed 25 May 2025).

treated equally before the law.<sup>85</sup> It was also noted that women are particularly vulnerable to arrests based on vagrancy laws because they often spend longer time in pre-trial detention due to their inability to pay fines, bail or legal representation. As such, the African Court was requested to advise on whether vagrancy laws violate article 24 of the African Women's Protocol.<sup>86</sup>

The African Court thus held that vagrancy laws violated article 24 of the African Women's Protocol, which creates a composite obligation for states to ensure the protection of poor women, women heads of families and other women from marginalised groups.<sup>87</sup> The Court also held that vagrancy laws are incompatible with article 24 of the African Women's Protocol for permitting the arrest without a warrant of women where they are deemed to have 'no means of subsistence and cannot give a satisfactory account' of themselves,<sup>88</sup> perpetrating multiple violations of the rights of poor and marginalised women, including women's right to dignity, non-discrimination and equality.<sup>89</sup> Article 24 of the Women's Protocol, requiring special protection of poor women and women heads of families, including those from marginalised groups, and the provision of an environment suitable to their needs and condition, is also relevant, considering that elderly [women] face continuous marginalisation and poverty, and many of them head their households.<sup>90</sup> Although in this decision the African Court did not explicitly mention reparations for violations perpetrated by vagrancy laws, especially on women, it reaffirmed state parties' obligations to repeal or amend their vagrancy (and related) laws to comply with the African Charter, the African Children's Charter and the African Women's Protocol within reasonable time, but in the shortest possible time, and to bring them in conformity with the African Charter, the African Women's protocol and the African Children's Charter.<sup>91</sup>

Also of relevance is *APDF and IHRDA v Mali*, in which the African Court found the application of religious and customary law that grants a woman half of the inheritance a man receives to violate the right to an equitable share in the inheritance of property in article 21(2) of the African Women's Protocol.<sup>92</sup> This ruling is key in advancing the protection of women's right to property, a key enabler for women's access to financial and economic resources, including access to bank loans among other productions.

Since its establishment, the African Court has received several cases related to violations allegedly occasioned to women with claims before the Court related to extension of reparation coverage, equal protection

85 As above.

86 PALU (n 85) para 192.

87 PALU (n 85) para 137.

88 PALU (n 85) para 140.

89 PALU (n 85) para 138.

90 L Chenwi 'Special protection of elderly women' in Rudman and others (n 16) 466.

91 PALU (n 85) para 155(vi).

92 *APDF & IHRDA v Mali* (n 81) para 108, as cited by Chenwi (n 91) 465.



of the law, access to Court to litigate and seek reparations for human rights violations, participation in political processes in the country and rights to liberty and security. Although some of these cases were found to be inadmissible, a few are still pending before the Court, including cases specifically relating to women's participation in political processes. As such, there currently is no publicly available judgment or decision by the African Court that provides reparations intended to address political inequalities that are grossly affecting women's rights to participate in political and decision-making processes. Despite the existence of global, regional and national normative instruments and policy frameworks as well as landmark African Court judgments and decisions that seek to promote and protect women's rights in Africa, 'women are facing human rights abuses unparalleled elsewhere in the world'.<sup>93</sup> Yet, compared to the overall case and communications load of the African human rights bodies since their inception, the number of cases filed by women or relating to women's rights, including rights of girls, are relatively low. For instance, out of 360 cases received by the African Court so far,<sup>94</sup> there is only one case that has resulted into a landmark decision on safeguarding women's rights.<sup>95</sup> In this decision, the African Court ordered Mali to reform discriminatory family laws and set a regional jurisprudence that challenged such laws based on religious and cultural practices as well as ordered for legislative change among other reparations. The Court used this case to reaffirm the importance of safeguarding the rights of women and children and the need to abolish or reform obsolete religious and socio-cultural practices that discriminate against women and children.<sup>96</sup> For the African Children's Committee, out of 28 communications received to date,<sup>97</sup> only three are focused on girls' rights, of which only one has been finalised.<sup>98</sup>

Similarly, out of over 500 communications received by the African Commission since its establishment in 1987,<sup>99</sup> very few communications have touched upon women's rights issues,<sup>100</sup> with no

93 K Birdwell Wester 'Violated: women's human rights in sub-Saharan Africa' (2009) 9(1) *Human Rights and Human Welfare*, <https://digitalcommons.du.edu/hrhw/vol9/iss1/54> (accessed 25 May 2025).

94 <https://www.african-court.org/cpmt/> (accessed 25 May 2025).

95 *APDF & IHRDA v Mali* (n 81).

96 As above.

97 <https://www.acerwc.africa/en/communications/table?page=0> (accessed 25 May 2025).

98 Communication No: 0012/Com/001/2019, *Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v United Republic of Tanzania* (ACERWC 2022)

99 R Murray 'Confidentiality and the implementation of the decisions of the African Commission on Human and Peoples' Rights' (2019) *African Human Rights Law Journal*, [https://scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1996-20962019000100002#:~:text=Since%20its%20establishment%20in%201987,the%20end%20of%20the%20decision](https://scielo.org.za/scielo.php?script=sci_arttext&pid=S1996-20962019000100002#:~:text=Since%20its%20establishment%20in%201987,the%20end%20of%20the%20decision) (accessed 19 December 2025).

100 A Rudman 'Women's access to regional justice as a fundamental element of the rule of law: the effect of the absence of a women's rights committee on the enforcement of the African Women's Protocol' (2018) 18 *African Human Rights Law Journal* 319-345.

notable reparation measures cited. In six communications the African Commission had been confronted with violations of women's rights in terms of rape and sexual violence during conflict,<sup>101</sup> while three communications were on human dignity during detention, in relation to corporal punishment and immigration policies,<sup>102</sup> and one communication concerned gender-based and sexual violence and discrimination against women.<sup>103</sup> Several reasons have been advanced for the underutilisation of the African human rights bodies to redress violations of women's rights, which continue to impact women's access to justice and reparations. Some of these reasons are institutional and internally driven, while others are beyond the control of these bodies stretching to the political, economic and social spheres. This part examines these reasons while relating them to the realities of the African human rights bodies.

One of the reasons is the capacity of the African human rights bodies to effectively consider women's rights, including girls' rights cases and communications. It is not disputable that all members of the African Commission, the African Children's Committee and judges of the African Court are competent in the field of human and peoples' rights,<sup>104</sup> including the rights and welfare of the child, and that their specific expertise in subject matters over which the bodies exercise their jurisdiction has greatly contributed to their effectiveness. However, what is in question is the competencies of the members and judges on gender equality and women's rights, including the rights of girls. As noted earlier, the African human rights bodies have the mandate to protect all rights enshrined in the African Charter, the African Women's Protocol and the African Children's Charter, among other regional human rights treaties, and to receive communications and cases on any violations of the rights enshrined in these instruments as per their respective rules of procedure. However, it is important to note that despite almost close to 1 000 communications and cases that have so far been received across the three bodies, and the existence of special mechanisms such as the African Commission Special Rapporteur on the Rights of Women in Africa, very few judgments and decisions have demonstrated the bodies' ability to apply a gender lens

101 *Interights (on behalf of Pan-African Movement & Others) v Eritrea and Ethiopia* (2003) AHRLR 74 (ACHPR 2003); *Malawi African Association & Others v Mauritania* (2000) AHRLR 149 (ACHPR 2000); *Democratic Republic of the Congo v Burundi, Rwanda and Uganda* (2004) AHRLR 19 (ACHPR 2003); *African Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea) v Guinea* (2004) AHRLR 57 (ACHPR 2004); *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006); *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v Sudan* (2009) AHRLR 153 (ACHPR 2009).

102 *Organisation Mondiale Contre la Torture & Others v Rwanda* (2000) AHRLR 282 (ACHPR 1996); *Institute for Human Rights and Development in Africa v Angola* (2008) AHRLR 43 (ACHPR 2008); *Doebbler v Sudan* (2003) AHRLR 153 (ACHPR 2003).

103 Communication 323/2006 (2011) *Egyptian Initiative for Personal Rights (EIPR) and Interights v Egypt (EIPR)* (2006).

104 Art 31 African Charter; art 33 African Children's Charter; art 11 African Court Protocol.

or gender transformative approach to the issues being considered. This has not only limited the bodies' ability to address the unique ways in which gender impacts human rights violations, but also limited the way in which they address the inequalities and human rights violations that disproportionately affect women – particularly women in vulnerable situations, indigenous women, young women and women from marginalised communities.

Another reason is the accessibility of the African human rights bodies by women and applicants or complainants on women's rights violations. As cited earlier, the African Commission can receive communications from individuals, groups of individuals, NGOs and states. However, the African Commission can only deal with matters submitted to it after ensuring that all local remedies, if they exist, have been exhausted unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.<sup>105</sup> In accordance with article 44 of the African Children's Charter and the Revised Guidelines for Consideration of Communications and Monitoring Implementation of Decisions by the African Children's Committee, the following persons are entitled to submit communications to Children's Committee either on their behalf or on behalf of third parties:<sup>106</sup>

Any individual or group of natural or legal person including children; any State Party to the African Children's Charter; any intergovernmental or non-governmental organisation legally recognised in either one or more of the member states of the African Union, a State Party to the African Children's Charter or the United Nations; any intergovernmental or non-governmental organisation legally recognised in either one or more of the Member States of the African Union; the African Union, or the United Nations, or specialised organs/agencies of the AU or the UN; any specialised organ or agency of the African Union and United Nations; and national human rights institutions.

Pursuant to the provisions of articles 5(1) and (3) of the African Court Protocol, the following are entitled to submit cases to the Court:<sup>107</sup>

- (a) the Commission;
- (b) the state party which has lodged an application to the Commission;
- (c) the state party against which an application has been lodged at the Commission;
- (d) the state party whose citizen is a victim of a human rights violation;
- (e) an African intergovernmental organisation; and

105 Art 50 African Charter.

106 Revised Guidelines for Consideration of Communications and Monitoring Implementation of Decisions by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC Guidelines) sec I, <https://www.acerwc.africa/sites/default/files/2022-06/Guidelines-for-Consideration-of-Communications-and-Monitoring-Implementation-of-Decisions-by-the-African-Committee-of-Experts-on-the-Rights-and-Welfare-of-the-Child-English.pdf> (accessed 26 May 2025).

107 Rules of Court Rule 39, <https://www.african-court.org/wpafc/wp-content/uploads/2021/04/Rules-Final-Revised-adopted-Rules-eng-April-2021.pdf> (accessed 26 May 2025).

- (f) an individual or a non-governmental organisation which has observer status before the Commission provided the requirements of article 34(6) of the Protocol are met.

As in the case of the African Commission and, as a general rule, communications and cases should be filed at the African Children's Committee and African Court respectively after the exhaustion of local remedies, if any, unless it is obvious that this procedure is unduly prolonged or ineffective.<sup>108</sup> Peculiar to the African Court, however, is the condition for the Court to receive applications from individuals and NGOs only if their states have made a declaration accepting the competence of the Court to receive cases under article 5(3) of the African Court Protocol.<sup>109</sup> To date, only 12 states have submitted this declaration to the Court but, unfortunately, five of these states have already withdrawn their declaration.<sup>110</sup> This situation has been compounded by the failure of 21 AU member states to ratify the African Court Protocol, which implies that the African Court cannot receive cases from these countries.<sup>111</sup> Further, the now 27 states that have not submitted their declaration as per article 34(6) of the African Court Protocol continue to limit individuals' access to the Court, making it difficult for Africans, including women, to access justice for human rights violations. Relatedly, the shrinking civic space and domestic avenues for justice in African states, especially those undergoing political transition such as Tunisia, coupled with its recent withdrawal of its declaration for individuals and NGOs to file cases before the African Court, is not only 'a blatant assault to justice',<sup>112</sup> but a deliberate and systemic curtailment of individuals' access to justice for human rights violations, including women's rights through regional mechanisms.

In addition, several studies have found that the few landmark judgments and decisions as well as General Comments, guiding principles and recommendations that have been issued by the African human rights bodies on human rights, including the rights of women and girls, have not achieved the desired impact due to their inadequate implementation and non-compliance by the respondent state or AU member states. For instance, as per the African Children's Committee's

108 Rules of Court (n 100) Rule 50(e); Guidelines (n 99) sec IX(1)(d).

109 Art 34(6) African Court Protocol.

110 The 7 countries whose declarations are still standing are Burkina Faso, Malawi, Mali, Ghana, The Gambia, Niger and Guinea Bissau, while countries that withdrew their declaration are Benin, Côte d'Ivoire, Rwanda, Tanzania and Tunisia, <https://www.african-court.org/wpafc/declarations/> (accessed 26 May 2025).

111 <https://www.african-court.org/wpafc/jurisdiction/> (accessed 26 May 2025).

112 B Jamali & I Uzoma '#TunisiaExit – unpacking Tunisia's restriction on citizens' access to the African Court' (2025), <https://rfkhumanrights.org/our-voices/tunisiaexit-unpacking-tunisia-restriction-on-citizens-access-to-the-african-court/#:~:text=On%20March%207%2C%202025%2C%20Tunisia,on%20Human%20and%20Peoples'%20Rights> (accessed 26 May 2025).

study on implementation decisions, some of the challenges of non-compliance include<sup>113</sup>

the politicisation of the post-adjudication phase; the absence of sanctions against defaulting states and the non-existence of a judicial enforcement mechanism which are not a bug but a feature of international law; and the lack of participation of domestic courts in the enforcement of international tribunal's judgments and the misuse of the notion of sovereignty on judicial issues.

Despite ongoing efforts to fast-track the implementation of the judgments, decisions and soft laws by the African human rights bodies, the lack of effective mechanisms to monitor this implementation continues to affect the effectiveness of the directives of these bodies, especially regarding women's rights. This has been exacerbated by a general perception that issues related to rights of women and girls are socio-cultural issues that have no space in the judicial or quasi-judicial dispute resolution mechanisms. As a result, women's rights remain inadequately protected and remedied in case of violations. This continues to affect women's access to reparatory justice, especially for violations and abuses perpetuated by systemic discriminatory social norms, practices and laws.

Another reason is the lack of public awareness about the rights of women and girls and related violations, coupled with weak grassroots movements and a lack of strategic cross-sectoral coalition partnerships and alliances that is impacting women's pursuit for justice. The Democratic Republic of the Congo (DRC), in its report to the African Commission on implementation of the African Charter, pointed out some of the challenges to women's access to justice, including the non-popularisation of laws and mechanisms established to promote access by women to justice and the poor knowledge on the part of the magistrates, lawyers, court clerks and prison personnel about international and regional legal instruments on the rights of women and gender.<sup>114</sup> In *APDF v Mali* the African Court requested the respondent state to comply to its obligation under article 25 of the Banjul Charter 'to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as the corresponding obligations and duties are understood'.<sup>115</sup>

Rudman notes that this obligation concerns 'everyone', indicating the broader society, a populace or a large group, in addition to key actors, such as the police, judges and prosecutors, and goes beyond mere sensitisation and resocialisation to 'equipping' relevant actors to

113 Study on Implementation of Decisions of ACERWC (2023), <https://www.acerwc.africa/sites/default/files/202504/Study%20on%20Implementation%20of%20Decisions.pdf> (accessed 26 May 2025).

114 DRC Report to the African Commission on Human and Peoples' Rights on the Implementation of the African Charter on Human and Peoples' Rights from 2008 to 2015 (11th, 12th and 13th periodic reports) and of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women from 2005 to 2015 (initial report and 1st, 2nd and 3rd periodic reports) para 126.

115 *APDF v Mali* (n 81) paras 131 & 135(xii)

effectively interpret and enforce gender equality rights.<sup>116</sup> It is thus the responsibility of all concerned to ensure that human rights education, including the promotion of women's legal rights, is prioritised given its close connection to women's ability to claim and access justice and reparations for rights violations and abuses.

Relatedly, the dwindling funding for programmes by grassroots women's rights organisations, coupled with the growing push-back on human rights and gender equality, is exacerbating women's lack of awareness about legal rights and the potential benefits of seeking justice for violations and abuses perpetrated against them. This is more pronounced especially among marginalised and underprivileged women. The limited financial and technical capacities of women's rights networks and organisations also continued to curtail women from accessing redress mechanisms at the African human rights bodies. In the absence of institutionalised legal aid support and funds that women victims of violations of human rights can leverage at the African human rights bodies, even if women have exhausted local remedies and wish to pursue ultimate justice through these bodies, they are often constrained to submit their cases and communications due to the costs related and the time it takes to litigate a case before these bodies. Further, even when resources have been availed for human rights litigation, including women's rights cases and communications, the lack of understanding of the type of gender-specific reparations that can be requested for and the generalisation of remedies ordered without tailoring them to suit the specific context of women continue to undermine women's access to reparatory justice.

## 4 CONCLUSION AND RECOMMENDATIONS

The right to women's access to justice and to receive reparations for violations of their rights is key to ensuring that women's rights are protected, and their dignity is respected. The enjoyment of this right lies in the ability of states and human rights mechanisms, including African human rights bodies, to put in place measures that would ensure the protection and fulfilment of this right. To guarantee this right, states need to undertake measures to reform all discriminatory laws, including harmonising national laws and policies to regional and international standards on women's rights to access to justice and reparations. The obligation of state parties to the African Charter and the African Women's Protocol to create awareness among women and girls about their legal rights and access to justices and remedies should be a collective responsibility of all stakeholders, including national human rights institutions, civil society and NGOs, religious, traditional and community leaders, to ensure that all women in their diversity enjoy their rights to the fullest. As African human rights bodies continue to build their jurisprudence on the rights of women and girls, much still needs to be done to ensure that reparations in human rights cases and communications, especially those on women's rights

116 Rudman (n 16) 193.

violations, are more nuanced and aligned to international and regional normative underpinnings on women's rights to access to justice. The popularisation of the human rights protection mandate for the African human rights bodies should be harmonised to, among others, create public awareness about the existing redress mechanisms at the regional level and the type of cases that can be submitted before these bodies.

Although the role of the African human rights bodies in enhancing women's access to reparatory justice is not questionable, efforts should be undertaken to improve access to these bodies by women or applicants in women's rights violation cases. This should include the establishment and operationalisation of the legal aid fund of the human rights organs of the AU as provided for in the statute on the establishment of the fund.<sup>117</sup> Another way would be to strengthen the intersectionality of women's and girls' rights across the special mechanisms of the African Commission and the African Children's Committee as well as the work of the African Court. Applying a gender lens to the protection mandate of these bodies will go a long way towards creating avenues for gender-specific reparations and reparations tailored to the specific context of women, especially marginalised and underserved women. Therefore,<sup>118</sup>

structural and administrative obstacles which impede or deny women's and girls' access to effective and enforceable remedies must be addressed to ensure gender-just reparations. Reparation processes must allow women and girls to come forward when they are ready and should not be excluded if they fail to do so within a prescribed [time]. Support structures are needed to assist women and girls in the process of speaking out and claiming reparation.

Also, as noted by Adjolohoun and Nantulya, 'there is a great need for bottom-up engagement from African civil society ... to defend the African Court and hold governments to their commitments'.<sup>119</sup> This would include intentional strategies of sustainable engagements and dialogues between states and civil society organisations, including women's organisations and networks, as well as lawyers and lawyers' associations on citizens', including women's access to the African human rights bodies. Finally, it is pertinent that the African human rights bodies invest in technical capacities to ensure that 'reparation must go above and beyond the immediate reasons and consequences of the crimes and violations; they must aim to address the political and structural inequalities that negatively shape women's and girls' lives'.<sup>120</sup>

117 [https://au.int/sites/default/files/treaties/36399-treaty-0054\\_-\\_african\\_legal\\_aid\\_fund\\_e.pdf](https://au.int/sites/default/files/treaties/36399-treaty-0054_-_african_legal_aid_fund_e.pdf) (accessed 26 May 2025).

118 Nairobi Declaration (n 22).

119 Adjolohoun & Nantulya (n 12).

120 Nairobi Declaration (n 22).