



FACILITATOR'S TRAINING MANUAL ON THE RATIFICATION AND DOMESTICATION OF HUMAN RIGHTS INSTRUMENTS RELATED TO ENDING VIOLENCE AGAINST WOMEN AND GIRLS (EVAWG)



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FOREWORD



The adoption and implementation of Human Rights instruments are key to promoting tangible benefits for women and girls. There have been significant improvements in the ratification, domestication, and implementation of Human Rights instruments and policies by African Union (AU) Member States. The Member States have ratified a wide range of continental and international human rights treaties including, among others, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo protocol on Women's Rights), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the African Charter on the Rights and Welfare of the Child (ACRWC), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC).

Despite the notable improvements in the adoption of global and regional Human Rights instruments and policies, progress remains limited due to the lack of capacities and resources needed to translate legislation and policies into action and substantial benefits for women and girls. It is important to create an enabling environment for both regional partners and Member States to effectively prevent and respond to Violence Against Women and Girls (VAWG) including Harmful Practices in Africa. Strengthening the capacity of regional partners including the African Union Commission (AUC), Regional Economic Communities (RECs), Regional Parliament, and CSOs is vital to influence and hold Member States accountable in the realization of their commitments to ending violence against women and girls (EVAWG), particularly to accelerate the ratification, domestication, enforcement, and reporting on Human Rights.

As a result, the AUC in partnership with UNDP and Equality Now, within the framework of the Spotlight Initiative Africa Regional Programme (SIARP), have developed this Facilitators' Training Manual on the Ratification and Domestication of Human Rights Instruments on EVAWG. The Facilitators' Training Manual will equip regional partners and CSOs in Africa with the knowledge and understanding of human rights instruments and practical skills to effectively draft and review laws and policies related to EVAWG and Sexual and Reproductive Health and Reproductive Rights (SRH&RR).

It, therefore, gives me great pleasure to introduce the Facilitators' Training Manual on the Ratification and Domestication of Human Rights Instruments on EVAWG.

The Manual is a practical and comprehensive resource guide for regional partners and CSOs to influence Member States that are at different levels of ratification, domestication, and implementation of the Human Rights instruments. It comprises three modules: an overview of international law and the international and African regional human rights systems; laws and policies related to SRH&RR; and ratification, domestication, and implementation of international and regional instruments. To develop relevant knowledge and skills, a series of dynamic and engaging learning experiences have been developed to provide opportunities for participants to practice the skills developed in this initiative.

I believe that the full implementation of this capacity-building initiative will enhance the knowledge and skills of regional partners and CSOs to better advocate and influence Member States to accelerate ratification, domestication, and implementation of existing global and continental commitments related to ending all forms of Violence Against Women and Girls.

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Table of Contents

LIST OF ACRONYMS	3
BACKGROUND	6
MODULE I. INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAWS AND POLICIES AND VIOLENCE AGAINST WOMEN AND GIRLS	8
A. Introductory Note on the Nature of International Law and the Rights of Women	10
a) Overview	10
b) Declarations, Instruments, Conventions and Protocols	11
c) Hard or Soft Law?	11
d) The Human Rights-Based Approach	12
e) Gender-Responsive Budgeting	13
B. The Nature, Terms and Types of Violence Against Women and Girls	14
C. International and Regional Human Rights Laws and Policies on Ending Violence against Women and Girls	17
a) Provisions of Major International Human Rights Instruments on EVAWG	17
b) Provisions of Major African Human Rights Instruments on EVAWG	21
QUESTIONS FOR MODULE I	27
MODULE II. INTERNATIONAL AND REGIONAL LAWS AND POLICIES ON SEXUAL AND REPRODUCTIVE HEALTH AND REPRODUCTIVE RIGHTS (SRH&RR)	28
A. Background to Sexual and Reproductive Health and Reproductive Rights (SRH&RR)	29
a) International and Regional Obligations on Sexual and Reproductive Health and Reproductive Rights	30
b) Human Rights are Key to Sexual and Reproductive Health and Reproductive Rights	30
c) Maputo Protocol Article 14: Health and Reproductive Rights	32
B. Important Terminology from International Human Rights Laws and Policies Relevant to SRH&RR	33
a) The Right to Life	33
b) Equality and Non-discrimination	33
c) Accessibility, Accountability, and Services	34
d) Autonomy	35
e) Abortion	35

	f) Men and Sexual and Reproductive Health & Reproductive Rights	36
	g) Beijing Platform for Action (BPfA)	36
	h) International Conference on Population and Development (ICPD) For Action	37
C.	African Union - Policy Commitments	38
	a) The 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs)	38
	b) The Maputo Protocol	39
	c) The Maputo Plan of Action for the Operationalization of the Sexual and Reproductive Health and Rights Continental Policy Framework	40
	d) The Addis Ababa Declaration on Population and Development in Africa Beyond 2014	40
	e) The Africa Union Roadmap on Harnessing the Demographic Dividend	41
	QUESTIONS FOR MODULE II	41

MODULE III. RATIFICATION, DOMESTICATION, AND IMPLEMENTATION OF INTERNATIONAL AND REGIONAL INSTRUMENTS ON EVAWG AND SRH&RR 42

A.	States' Duties under International and Regional Human Rights Instruments - Duties to Respect, Protect and Fulfill	44
B.	Ratification	45
C.	Domesticating Human Rights Instruments	46
	a) The Nature and Rationale of Domesticating Human Rights Instruments	47
	b) Modes of Domesticating Human Rights Instruments - An Overview of Monist and Dualist Approaches	48
D.	Legislative Drafting and Review to Ensure EVAWG And SRH&RR	49
	a) Introduction	49
	b) Sources of Obligations for Legislative Enactment and Review	50
	c) Checklist for Legislative Review and Drafting	51
	d) Strategies for Domestication	55
E.	Implementation and Monitoring of International Human Rights Instruments	61
I.	Implementation and Monitoring of International and Regional Human Rights Instruments on Ending Violence against Women and Girls (EVAWG)	61
II.	Implementation and Monitoring of International and Regional Human Rights Instruments on Sexual and Reproductive Health and Reproductive Rights (SRH&RR)	67
III.	Advocacy by Stakeholders on the Implementation	69

REVIEW QUESTIONS AND EXERCISE – CASE STUDY OF DOMESTIC LAWS ON EVAWG AND SRH&RR 71

Annex: Additional Resources for Each Module 72

LIST OF ACRONYMS

AfCHPR	African Court on Human and Peoples' Rights
ACHPR	African Commission on Human and Peoples' Rights
AU	African Union
AUC	African Union Commission
CEDAW	Committee on the Elimination of Discrimination against Women
CESCR	Commission on Economic Social and Cultural Rights
COMESA	Common Market for Eastern and Southern Africa
COVAW	Coalition on Violence against Women
CSO	Civil society organization
CSW	Commission on the Status of Women
DEVAW	Declaration on the Elimination of Violence against Women
EAC	East African Community
ECOWAS	Economic Community of West African States
EVAWG	Ending violence against women and girls
FGM/C	Female genital mutilation/cutting
GBV	Gender-based Violence
GRB	Gender responsive budgeting
GVRC	Gender Violence Recovery Centre
HIV	Human Immunodeficiency Virus
HRBA	Human Rights Based Approach
ICERD	International Convention on the Elimination of all forms of Racial Discrimination
ICPD	International Conference on Population and Development
IHRL	International Human Rights Law
MPSI	Maputo Protocol Scorecard and Index
NGOs	Non-Governmental Organizations
OHCHR	Office of the United Nations High Commissioner for Human Rights
OP	Optional Protocol

PWD	Persons with disabilities
REC	Regional Economic Community
RMNCAH	Reproductive, Maternal, Newborn, Child and Adolescent Health
RUNO	Recipients United Nations Organization
SADC	Southern African Development Community
SGBV	Sexual and Gender Based Violence
SIARP	Spotlight Initiative Africa Regional Programme
SOAWR	Solidarity for African Women's Rights
SRH&RR	Sexual and reproductive health and reproductive rights
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
VAWG	Violence Against Women and Girls
WHO	World Health Organization

BACKGROUND

The Facilitator's Training Manual on the Ratification and Domestication of Human Rights Instruments related to Ending Violence Against Women and Girls (EVAWG) including Sexual and Reproductive Health and Reproductive Rights (SRH&RR) is developed by the United Nations Development Programme (UNDP) in partnership with the African Union Commission (AUC) and Equality Now (SOAWR) under the Spotlight Initiative Africa Regional Programme (SIARP).

While there have been significant improvements in the adoption of human rights (HR) instruments and policies both at the continental and regional level by Member States¹, but progress remains limited due to the lack of capacities and resources needed to translate legislation and policies into action and tangible benefits for women and girls. To date, all 55 African countries have ratified the Convention on the Rights of the Child (CRC), 52 countries have ratified the Committee on the Elimination of Discrimination against Women (CEDAW); 54 countries have ratified the African Charter on Human and Peoples' Rights; and 49 countries have ratified the African Charter on the Rights and Welfare of the Child. However, only 43 have ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol); only 39 countries have ratified the African Youth Charter; and only. This shows there is still a lot of work and advocacy to be done to ensure there is universal ratification of the key international and regional human rights instruments. The other major challenge is the implementation and enforcement of the instruments, only 9 countries submitted their report on the Maputo Protocol to the African Commission on Human and Peoples' Rights (ACHPR) and 18 countries submitted their report on Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to the CEDAW Committee.

The development of this Facilitator's Training Manual is part of the Spotlight Initiative Africa Regional Programme (SIARP), a multi-year partnership between the European Union (EU) and the United Nations (UN) to eliminate all forms of violence against women and girls (VAWG). The SIARP aims to address regional bottlenecks and support regional commitments towards EVAWG including strengthening existing strategies and initiatives, such as the AU Gender Strategy, the Gender Observatory, the AU campaigns to end child marriage and the African Union Saleema Initiative on the elimination of female genital mutilation.² This specific intervention is within the framework of the Spotlight Initiative Africa Regional Programme that will address the multiple obstacles faced with regards to ratification, domestication and enforcement of regional laws and policies by strengthening the capacity of regional partners to engage and influence Member States to ratify, domesticate, and enforce on international and regional human rights instruments.

1 One World Center, <https://oneworldcenter.eu/violence-against-women-in-africa/>

2 See Indicator 1.1.5 "Number of AUC staff, Parliamentarians and staff of human rights institutions with strengthened capacities to advocate for, draft new and/or strengthen existing legislation and/or policies on ending VAWG and/or gender equality"

Who is it for?

The Manual primarily targets the AUC, Regional Economic Communities (RECs), the Pan African Parliament, the Network of African Parliamentarians, and Regional Civil Society Organizations (CSOs) to better understand the processes of ratification and domestication of international and regional laws and policies on EAWG and SRH&RR in order to effectively advocate and influence member states for the ratification and implementation of international and regional instruments. The Manual has been developed based on the input from relevant stakeholders gathered through an online survey, a virtual regional consultation, a peer review process and a regional validation workshop.

While the Manual does deal with legal topics, it is not intended to be overly technical and legalistic. Rather, it is intended to provide non-lawyers with an understanding of the nature of international and regional human rights-related laws and policies, as well as the domestication of international instruments. However, lawyers may use the material to refresh their knowledge of international and regional human rights laws and policies. For both lawyers and non-lawyers, the Manual is also useful in gaining an overview of the treaty-making and domestication process as well as tools to ensure that domestic legal instruments are effective in ending violence against women and girls and realizing sexual and reproductive health and reproductive rights.

What is the key objective?

The key objective of this manual is to enhance the capacity of regional partners including AUC, RECs, the Pan African Parliament, the Network of African Parliamentarians, and CSOs in drafting and reviewing laws and policies related to EAWG and SRH&RR in order to effectively advocate for the ratification, domestication and implementation of international and regional instruments on EAWG and SRH&RR.

How is it structured?

The Manual consists of three modules. The first module provides an overview of international law and the international and African regional human rights systems. This module begins with a brief discussion of the nature of international law and reviews some fundamental concepts surrounding the law of instruments. It also presents an overview of the international and regional laws and policies on human rights related to EAWG. The second module focuses on laws and policies related to SRH&RR, including the international and regional legal framework dealing with SRH&RR. In the third module, ratification, domestication, and implementation of international and regional instruments is addressed. This module begins with an overview of ratification and the responsibilities of States to domesticate human rights instruments, discusses the modalities of domestication and provides a normative checklist to help deepen the domestication of instruments dealing with EAWG and SRH&RR. It also addresses the critical issue of implementation.

At the end of the Manual, there is a list of additional readings and resources. Practical exercises are included and intended to help the end-users to internalize and use the knowledge and resources of the Manual.

MODULE I. **INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAWS AND POLICIES AND VIOLENCE AGAINST WOMEN AND GIRLS**





Aim of the Module

To introduce participants to the ways in which international and regional human rights laws and policies can be used to address violence against women and girls in Africa.



Learning objectives

1. Participants will gain a deeper understanding of the substantive and procedural contents of the rights of women and girls to be free from any form of violence under international and regional human rights systems.
2. Participants will have enhanced knowledge of the nature of the duties of States in ensuring the rights of women and girls to be free from violence and the different mechanisms of monitoring the performance of States and of holding States accountable to their commitments.



Outline of the Module

1. Reviews international and regional legal and policy frameworks on EAWG
2. Discusses the rights of women and girls to be free from any form of violence and the nature of the different obligations of States to protect these rights



Duration of Module: 90 minutes³



Guide for Facilitators

1. Make sure there is enough time for the participants to read the module before beginning the session.
2. Ask participants to bring any domestic laws on EAWG that they are aware of. Do they know anything about its drafting history? Did national advocacy by women's groups play a role and if so, how? What are the limitations of the law?
3. If they do not have any examples, ask them to review the checklists for what goes into a good law in order to make suggestions.
4. Ask them to discuss the links between a national action plan (NAP) on EAWG and a legislative agenda. Where possible, link it to the regional action plan (RAP) if the participants have reviewed a copy.

³ The duration of the module is an estimate. The length of the sessions will vary depending on the number of participants, the exercises used in the training, and the previous experience and knowledge of the trainees.

A. Introductory Note on the Nature of International Law and the Rights of Women

a) Overview

International human rights law recognizes women's rights to be free from any form of violence and to sexual and reproductive health and reproductive rights. Since international human rights law is part of international law, it is appropriate to note a few points about the nature of the latter. International law is the law that governs the behavior of, and the relationships among, States. Two important points need to be emphasized about the nature of international law. The first is that international law primarily governs the relationship between States. The second is that international law is put into effect by individual State Parties. The State can agree to the rules of international law explicitly by entering into agreements with other States. This is a subject that will be reviewed in more detail below.

There are some major differences between international law and national laws. The international law is mainly concerned with regulating the behavior of, and the relationships among, States. International organizations, such as the United Nations or the African Union, for example, are also subjects of international law. More importantly for the purpose of this Manual, developments in international humanitarian and human rights laws, and more recently, in international criminal law, have expanded the scope of international law to apply to individuals too.

It is helpful for all users, from parliamentarians and lawyers to advocates and women's rights activists, to demystify the instruments and mechanisms available in the international and regional human rights system so that advocates can make informed choices about when to incorporate international standards into strategies that focus on domestic or national laws. This may range from using the law or the instruments themselves by applying them in a legal sense, to using the existence of these agreed standards for lobbying or advocacy campaigns.

The promotion and protection of human rights was a fundamental priority of the United Nations in 1945 when the UN's founding nations resolved that the atrocities of the Second World War should never be repeated. Three years later, the UN General Assembly adopted in the Universal Declaration of Human Rights the principle that respect for human rights and human dignity "is the foundation of freedom, justice, and peace in the world." Any signatory to a human rights treaty or convention commits the State to respect international human rights obligations. There are two kinds of obligations: 1) negative ones that prohibit government action from violating specified rights, and 2) positive obligations that require governments to take proactive steps to ensure and protect the enjoyment of human rights.

b) Declarations, Instruments, Conventions and Protocols

A treaty, or for the purposes of this Manual we will use the term ‘instrument’ (also used interchangeably with ‘convention’ or ‘covenant’) is a formal agreement between states that defines their mutual duties and obligations. When the UN General Assembly adopts conventions, it creates legally binding international obligations for signatory member States. When a national government ratifies instruments, they become part of that nation’s legal obligations as a member of the global community.

‘Ratification’ is the formal procedure by which a State becomes bound to a treaty after signing it. In order to have legal status, an international instrument must have been adopted by a majority vote of the UN General Assembly. It must also have been ratified by a certain number of States in order to be activated.

The main legal instruments are defined as:

- 1. Declaration:** This is passed by the UN to affirm and recognize principles and rights. Declarations are not treaties; they are not ratified and do not have legal effect.
- 2. Covenant or Convention:** They have an executive nature; they are instruments that can be seen as treaties. By ratifying or acceding to these conventions, a State commits to adopting laws and measures to implement the rights that are stated in the convention. A UN committee is the treaty body mandated to monitor, receive and assess reports from States on their progress in implementing the treaty. Often, a protocol will be attached to a covenant or convention to provide for complaint procedures.
- 3. Protocols:** These enable a State, a group, or a person to file a complaint under the terms of the related treaty. Protocols constitute a means to exercise pressure internationally to oblige States to implement the rights specified in the instruments, covenants, or conventions. When each State must individually show acceptance by signing the protocol, the term “optional protocol” is used.

Some of the major international human rights instruments that constitute the normative framework of the international human rights system are the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Rights of the Child (CRC); and the Convention on the Rights of Persons with Disabilities (CRPD). For the purposes of this Manual, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), often called ‘The Women’s Convention’ will be reviewed in detail.

c) Hard or Soft Law?

The terms ‘hard’ and ‘soft’ law are often used when discussing international human rights law. In international law, hard law includes self-executing instruments or international

agreements, as well as customary laws. These instruments result in legally enforceable commitments for countries (States) and other international subjects. Soft law is non-binding but may indicate the objectives and principles that States are willing to support publicly. Examples often come from the economic, environmental, social, and human rights areas and may include General Assembly resolutions, declarations (e.g., the Universal Declaration of Human Rights), codes of conduct, guidelines, programmes of action, and documents resulting from international conferences.

It is a fundamental principle that by becoming parties to international instruments, States assume obligations and duties under international law to respect, protect, and fulfill human rights. Within a universal and global human rights framework, individual human beings are the named rights holders and governments are considered the principal duty bearers.

1. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights.
2. The obligation to protect requires States to protect individuals and groups against human rights abuses.
3. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.

d) **The Human Rights-Based Approach**

Policy analysis based on this understanding of responsibilities of duty bearer is commonly known as a ‘human rights-based approach’ (HRBA). The human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.⁴

Despite the fact that most States have ratified and domesticated key international and regional legislation protecting women’s human rights and fundamental freedoms, the use of custom, culture, and religion to justify discriminatory, harmful, and violent practices against women are still rampant in much of the world.⁵ In many countries, the ratification and implementation of these laws and policies protecting women presuppose the existence of an impartial judiciary; a legislature that is dynamic and responsive in changing regressive or discriminatory laws; the ability of the courts to pass and enforce progressive rulings without prejudice; and fairness and equality in law enforcement at all levels.

4 UNSDG, ‘Human Rights-Based Approach’ (United Nations), accessed 9 July 2022, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>. u

5 International Justice Resource Centre ‘African Union: Despite Progress Women Still Lack Equality, Basic Rights’. <https://ijrcenter.org/2017/03/13/african-union-despite-progress-women-still-lack-equality-basic-rights/>

e) Gender-Responsive Budgeting

It is important to state at the outset that States should allocate resources to laws and policies to ensure there is a foundation for a coordinated and comprehensive approach to significantly contribute to efforts on EVAWG and SRH&RR. Despite the fact that there are now many laws and policies against violence that are now in place, these laws may not address all forms of violence, and implementation can be delayed due to a lack of resources, both financial and human. Without adequate resources, laws cannot be drafted, instruments will not be ratified, implementation will not be carried out, and any commitment on the part of a State cannot be realized.

Gender-responsive budgeting is one step that African States can take toward providing sufficient resources to realize women's human rights.⁶

As a concrete step to ensure that women are afforded the protection that 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. This protocol, described as a "pioneering and legally binding instrument", marked a new beginning in the promotion and protection of women's human rights on the African continent. It can be considered an expression of the AU's commitment to putting women's human rights at the forefront.

Proper implementation of the Maputo Protocol at the domestic level necessitates 'strategies to engage with resource mobilization, allocation, and tracking.'⁷ The Maputo Protocol enshrines provisions expressly providing for duties for resource allocation and even budgetary arrangement

Articles 4(2)(i), 10(3) and 26(2) of the Protocol impose an obligation on States to provide sufficient budgetary resources to realize women's human rights. Despite the fact that several African countries have ratified the Maputo Protocol, there is still insufficient budgetary allocation to realize women's human rights.

The recent 2022 UNDP report, 'Regional Evidence Based Mapping and Assessment on the Status of Domestication and Enforcement of Laws and Policies, and National Action Plans in Line with Global and Regional Human Rights Commitments on Ending Violence against Women and Girls', outlines some relevant recommendations, including resource allocation.⁸ For instance, to address the obstacles that impede the ratification,

6 Australia was the first country to introduce GRB in 1984, even before the Fourth World Conference on Women, and each Government ministry was tasked with analyzing the effect of the yearly budget on women. Canada followed in 1993 and South Africa in 1995.

7 Rusimbi, M., 'Financing the Protocol: Considerations for Influencing Budgets from Experiences in Tanzania', *Breathing Life into The African Union Protocol on Women's Rights in Africa*, R Musa, FJ Mohammed and FM Manji (eds), (Nairobi, Solidarity for African Women's Rights/African Boks Collective, 2006). p. 38. a,

8 UNDP, 'Regional Evidence Based Mapping and Assessment on the Status of Domestication and Enforcement of Laws and Policies, and National Action Plans in Line with Global and Regional Human Rights Commitments on Ending Violence against Women and Girls' (2022), p. 10

domestication, and implementation of global and regional commitments on EVAWG by AU Member States, several measures must be undertaken:

1. Member States must commit to greater investment and funding for EVAWG.
2. A multi-sectoral approach is needed to ensure that adequate funds are allocated and to capture EVAWG in national budgeting processes.
3. National laws, policies, and other measures that safeguard women and girls from violence must be adopted, and domestic standards should meet the minimum requirement expected in international law.
4. At a regional level, RECs need to play a role in coordinating mechanisms for reporting on EVAWG. This will help to fill the gap in staffing, resourcing, and financing for regional activities.

B. The Nature, Terms and Types of Violence Against Women and Girls

Gender-based violence (GBV)

'Gender-based violence' (GBV) refers to harmful acts directed at an individual or a group of individuals based on their gender.⁹ It is rooted in gender inequality, the abuse of power, and harmful norms. The term is primarily used to underscore the fact that structural, gender-based power differentials place women and girls at risk for multiple forms of violence. While women and girls suffer disproportionately from GBV committed by men and boys, men and boys can also be targeted.

Types of Gender-Based Violence

Violence against women takes different forms. UN Women identifies the following forms of violence against women.¹⁰

Femicide

'Femicide' refers to the intentional murder of women because they are women, but may be defined more broadly to include any killings of women or girls.¹¹

Domestic Violence/ Intimate Partner Violence

'Domestic violence', also called domestic abuse or intimate partner violence, is any pattern of behavior that is used to gain or maintain power and control over an intimate

9 WHO, "Fact Sheet: 'Violence against women'" (9 March 2021), <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

10 Modified from: UN Women, "Frequently asked questions: Types of violence against women and girls," <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>.

11 Ibid.

partner.¹² It encompasses all physical, sexual, emotional, economic, and psychological actions or threats of actions that influence another person. This is one of the most common forms of violence experienced by women globally. It has also been referred to as ‘family violence’, or violence committed against family members, women, men, or children. However, here it is most often used to refer to VAWG.

Sexual Assault / Sexual Violence/ Rape

‘Sexual violence’ is any sexual act committed against the will of another person, either when this person does not give consent or when consent cannot be given because the person is a child, has a mental or physical disability, or is severely intoxicated or unconscious as a result of alcohol or drugs. Sexual violence includes rape as any non-consensual vaginal, anal or oral penetration of another person with any body part or object. This can be by any person known or unknown to the survivor, within marriage and relationships, and during armed conflict. It is rooted in patriarchy and fueled by persistent gender inequalities and biases about gender. The national legal definition of rape will differ depending on the legislation and the particular laws of a State.

Sexual Violence in Conflict

As a tactic during conflict and war, sexual violence is used to destroy families and communities by targeting women and girls. Sexual violence can also be an effective tool to break up communities and subjugate women through fear and stigma.¹³ Under international law, conflict-related acts of sexual violence are characterized as war crimes and crimes against humanity. Moreover, sexual violence as a tactic of war reinforces gender inequalities and normalizes sexual violence, even after a conflict has ended.

Sexual Harassment

‘Sexual harassment’ encompasses non-consensual physical contact, like grabbing, pinching, slapping, or sexually rubbing against another person. It also includes non-physical forms, such as catcalls, sexual comments about a person’s body or appearance, demands for sexual favors, sexually suggestive staring, stalking, and exposing one’s sex organs. It is particularly egregious in the workplace.

Sex Trafficking of Women and Girls

Human sex trafficking is the acquisition and exploitation of people, through means such as force, fraud, coercion, or deception. This crime ensnares millions of women and girls worldwide, many of whom are trafficked for sexual exploitation.

Harmful Practices (General)

There are particular forms of VAWG that are defended on the basis of tradition, culture, religion, or superstition by some community members. These are often known as ‘harmful traditional practices’ and can include acid violence, breast flattening, cosmetic mutilation, dowry and bride price, early/forced marriage and marriage by abduction/

¹² Ibid.

¹³ Ibid.

rape, female genital mutilation/cutting (FGM/C), ‘honour crimes’, corrective rape, female infanticide, ritual sexual slavery, virginity testing, practices related to initiations into womanhood or menstruation, some widowhood rituals, and accusations of witchcraft, which are most often aimed at older women.

Forced and Child Marriage

‘Child marriage’ refers to any marriage where one or both of the spouses are below the age of 18. Girls are more likely to be forced into child marriages, drop out of school, and experience other forms of violence. A forced marriage is where one or both people do not or cannot consent to the marriage, and pressure or abuse is used to force them into marriage.¹⁴

Female Genital Mutilation/Cutting

‘Female genital mutilation’ (FGM/C) includes procedures that intentionally alter or cause injury to the female genital organs for non-medical reasons.¹⁵

Abuse of Widows

Widows often face mistreatment that includes domestic violence, sexual assault, forced marriage, trafficking, property grabbing, conversion of property, and forced evictions, as well as discrimination against women regarding re-marriage, dissolution and divorce, property and land rights, children, and inheritance.¹⁶

Abuse of Women’s Property Rights

The ‘abuse of women’s property rights’ can take many forms.¹⁷ One of the most common is that when men die, widows’ in-laws often evict them from their lands and homes and take other property, such as livestock and household goods. In some areas, widows are forced to engage in risky traditional practices involving unprotected sex in order to keep their property. These practices include wife inheritance, whereby a widow is ‘inherited’ as a wife by a male relative of her deceased husband, and ritual ‘cleansing’, which involves sex with a social outcast, usually without a condom.

Online Violence

There are various types of online violence, e.g. cyberbullying, online grooming, sexting, webcam sex tourism/ online sex trafficking, online sexual harassment, and exploitation.¹⁸ For detailed explanations of these please see a training manual from Gender Violence Recovery Centre on ‘Online Child Sexual Abuse and Sexual Exploitation’.¹⁹

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ UN Women, ‘Definition and forms of maltreatment of widows’ (last edited October 29 2010), <https://www.endvawnow.org/en/articles/75-definition-and-forms-of-maltreatment-of-widows.html>

¹⁷ Human Rights Watch, ‘Q&A: Women’s Property Rights in Sub-Saharan Africa’, <https://www.hrw.org/legacy/campaigns/women/property/qna.htm>.

¹⁸ UN Women, ‘Frequently asked questions: Types of violence against women and girls’, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>

¹⁹ Gender Violence Recovery Center, Life Skills Training Manual: On Online Child Sexual Abuse and Exploitation Manual (2018), <https://gvrc.or.ke/wp-content/uploads/2018/10/Plan-COP-Lifeskills-Manual.pdf>.

Disability and SGBV/VAWG

The Coalition on Violence Against Women (COVAW), an advocacy non-governmental organization (NGO) based in Kenya, has highlighted one example of discrimination against people with disabilities (PWD). They want the government to repeal a section of the constitution that violates the rights of persons with mental disabilities. Section 146 of the Kenyan Penal Code refers to mentally challenged victims of sexual violence as ‘imbeciles’ and ‘idiots’.²⁰ COVAW also want the Government to harmonize the Penal Code with the Sexual Offences Act because of a loophole in the law that can be used to deny access to justice to persons with mental disabilities. For example, if a perpetrator of rape is charged with breaking Section 146 of the Penal Code, it is usually treated as defilement and carries a lighter sentence. However, if the same perpetrator is charged with breaking the Sexual Offences Act, they get a harsher sentence as the charge is treated as rape. “In addition, those PWD who are accused of committing SGBV must also get sensitive treatment. Similar reforms are also needed in the police force and at hospitals to increase sensitivity in the handling of all cases of sexual violence involving PWD.

C. International and Regional Human Rights Laws and Policies on Ending Violence against Women and Girls

a) Provisions of Major International Human Rights Instruments on EVAWG

International and regional human rights instruments provide direction to States Parties on how to meet their obligations to develop and implement legislation on ending violence against women and girls. While these have been covered in Module I, the following are a few of the key sections of these instruments, declarations, and policy statements that are important to review again. This covers both hard and soft laws.

1. The International Covenant on Civil and Political Rights (ICCPR)

Article 2 of the ICCPR (1966) prohibits discrimination on the basis of sex, and obligates States Parties to “...ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” Article 26 states that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, or another status. The ICCPR created the Human Rights Committee (Article 28) to which all States Parties must report.

²⁰ The clause reads: “Any person who, knowing a person to be an idiot or imbecile, has or attempts to have unlawful carnal connection with him or her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the person was an idiot or imbecile, is guilty of a felony and is liable to imprisonment with hard labour for 14 years.”

2. The International Covenant on Economic, Cultural, and Social Rights (ICESCR)

The ICESCR was adopted by the United Nations General Assembly (Resolution 2200 A (XXI)) on 16 December 1966. As one of two international instruments that make the 'International Bill of Human Rights' (along with the Universal Declaration of Human Rights), the ICESCR provides the legal framework to protect and preserve the most basic economic, social and cultural rights, including rights relating to work in just and favorable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education and to the enjoyment of the benefits of cultural freedom and scientific progress. All of these can apply to EVAWG.

3. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The international community has established important normative frameworks on gender equality and non-discrimination. The most important one is the CEDAW.²¹ Though violence against women was not explicitly mentioned in CEDAW, the CEDAW Committee has made it clear that violence against women is a human rights violation and a severe form of discrimination against women that is prohibited under international law. It rightly stresses that discrimination against women can be multi-layered due to their experience of multiple forms of discrimination based on race, migration status, disability, and other factors. CEDAW has proven to be resilient and relevant to the fight to end violence against women, including addressing sexual and gender-based violence during times of conflict.

4. CEDAW Optional Protocol (2000)

The CEDAW OP allows individuals to bring complaints or inquiries to the independent experts of the Committee on the Elimination of Discrimination against Women when there has been an alleged violation of CEDAW. It is this legal practice that contributed to the evolution of the prohibition of GBV against women into a principle of international customary law.

5. CEDAW General Recommendation No. 12

In General Recommendation 12, the CEDAW Committee recommended that States in their periodic reports to the Committee should include information about existing laws that protect women against violence, other measures that have been implemented to eradicate violence against women and girls (VAWG), and information about support services for victims. States Parties also were asked to send the Committee statistical data about VAWG.

²¹ United Nations, 'Using the international and regional legal framework to stop all forms of violence against women and girls', (International Women's Day, Strasbourg, Geneva, 8 March 2022), <https://www.ohchr.org/en/statements/2022/03/using-international-and-regional-legal-framework-stop-all-forms-violence-against>.

6. CEDAW General Recommendation No. 19

In General Recommendation 19, paragraph 6, the CEDAW Committee defined the term ‘discrimination’ used in CEDAW as “...violence that is directed against a woman because she is a woman or that affects women disproportionately.” It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty. GBV may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

7. The Convention on the Rights of Persons with Disabilities (CRPD)

The CRPD recognizes that women and girls with disabilities are often at greater risk of violence, injury, and abuse and that disability adds another layer of discrimination and deprivation. Disability and gender-based discrimination can lead to a greater likelihood of poverty, limited access to protective services and resources, and a heightened risk of violence and abuse over a lifetime. States Parties are obligated under Article 16 to put in place effective legislation and policies, including gender and child-focused legislation and policies, to ensure that instances of exploitation, violence, and abuse against persons with disabilities, are identified, investigated, and, where appropriate, prosecuted. This is complemented by other provisions under the CRPD (for example, Article 19 – the right to freedom from violence).

8. The Convention on the Elimination of Racial Discrimination (CERD)

Certain forms of racial discrimination may be directed towards women specifically because of their gender.²² This can be sexual violence committed against women members of a particular racial or ethnic group during armed conflict; the coerced sterilization of indigenous women; abuse of women workers in the informal sector or domestic workers employed abroad by their employers.

9. The Beijing Declaration and Platform for Action (BPfA) 1995

Violence against women is well known now to be an obstacle to the achievement of the objectives of equality, development, and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed. Knowledge about its causes and consequences, as well as its incidence and measures to combat it, have been greatly expanded since the 1985 Nairobi Conference. In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual, and psychological abuse that cuts across lines of income, class, and culture. The low social and economic status of women can be both a cause and a consequence of violence against women.

²² See for example the 2017 report to CERD on the discrimination against indigenous and racialized women in Canada. Native Women's Association of Canada, 'Committee on the Elimination of Racial Discrimination 21st - 23rd Reports of Canada', alternative report, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_NGO_CAN_28242_

10. The Sustainable Development Goals (SDGs)

SDG Goal 5 – Achieve gender equality and empower all women and girls

Women's equality and empowerment is one of the 17 SDGs, and they are integral to all dimensions of inclusive and sustainable development. All the SDGs depend on the achievement of Goal 5. Women and girls, everywhere, must have equal rights and opportunities, and be able to live free of violence and discrimination. The Agenda 2030 for Sustainable Development also calls for the elimination of “all forms of violence against all women and girls in the public and private spheres.”

11. Other Instruments

> *United Nations Declaration on the Elimination of Violence against Women (DEVAW)*

The DEVAW (1993) acknowledged that the root cause of violence against women is the subordinate status of women in society by stating that “violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”

> *A Suite of UN Security Council Resolutions on Sexual Violence in Conflict*

The UN Security Council has addressed sexual violence against women in conflict situations by enacting a number of specific resolutions:

1. Security Council Resolution 1325 (2000) called on member States to incorporate a “gender perspective” and increase the equal participation of women in the “prevention and resolution of conflicts” and in the “maintenance and promotion of peace and security.” It calls upon parties involved in armed conflict to abide by international laws that protect the rights of civilian women and girls and to incorporate policies and procedures that protect women from gender-based crimes such as rape and sexual assault.
2. Security Council Resolution 1820 (2008) called for an end to the use of brutal acts of sexual violence against women and girls as a tactic of war and an end to the impunity of the perpetrators. It requested the Secretary-General and the UN to provide protection to women and girls in UN-led security endeavors, including refugee camps, and to invite the participation of women in all aspects of the peace process.
3. Security Council Resolution 1889 (2009) reaffirmed Resolution 1325, condemned continuing sexual violence against women in conflict situations, and urged UN Member States and civil society to consider the need for protection and empowerment of women and girls, including those associated with armed groups, in post-conflict programming.

➤ *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*

This protocol requires States to name trafficking as a criminal offense and to offer a broad range of services to victims, including housing, counseling, medical assistance, educational opportunities, and reparations. It also requires States to take measures to alleviate the vulnerability of people, especially women and children, to trafficking and to strengthen measures to reduce the demand which leads to trafficking.

b) Provisions of Major African Human Rights Instruments on EAWG

Over the past few decades, women's movements have called for the adoption of a number of regional conventions to deal explicitly with EAWG and the obligations of States to combat it.

1. The African Charter on Human and Peoples' Rights (ACHPR)

On 28 June 1981, the African Charter on Human and Peoples' Rights (the 'Charter' or ACHPR) was adopted by the Organization of African Unity, the predecessor to the AU, and opened for signature to Member States. Drafted over a two-year process, the Charter provides the normative framework for the African human rights system. It is a legally binding treaty that covers civil, political, economic, social, and cultural rights, as well as the rights of peoples, and²³ has been ratified by every Member State of the AU.

The ACHPR is responsible for overseeing the Charter's implementation and assisting States to achieve this goal, while the African Court on Human and Peoples' Rights complements this work. The Charter is supplemented by the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) and the African Charter on the Rights and Welfare of the Child. State Parties are allowed to submit reservations to the Charter. This means that a Member State may ratify the Charter but also choose to opt-out of certain provisions contained within it. Simply put, the State removes its accountability to the African Commission on Human and Peoples' Rights (and other AU bodies) for the specific provisions identified in the reservation.

2. How does ACHPR address VAWG?

Violence against women is not just an act of violence, but an act of violence that is tied to sustained gender inequality. At its core, violence against women is both a cause and a consequence of gender-based discrimination impacting all women regardless of wealth, race, culture and location. Adopting a human rights perspective is an important part of developing approaches to tackle violence against women, as it obliges States to address the violation as existing in a wider environment of discrimination and inequality.

²³ Center for Women, Peace, and Security, 'African Charter on Human and Peoples' Rights', <https://blogs.lse.ac.uk/vaw/african-commission-on-human-and-peoples-rights/>. Ratification status can be checked at: Solidarity for African Women's Rights, "Protocol Watch," <https://soawr.org/protocol-watch/>.

Guaranteeing women the equal enjoyment of all rights in the Charter is not just part of tackling violence against women, it is necessary for eliminating it.

3. The Maputo Protocol

While this has been covered already earlier in this Module, it is important to reinforce that the most important instrument in Africa for women is the Maputo Protocol. To date (as of July 2021)²⁴ 43 out of the 55 countries in Africa have ratified the Protocol.²⁵ Under the Maputo Protocol, any act of violence that is directed against a woman or girl because of her gender, or violence that affects women disproportionately is considered GBV or VAW. These definitions include acts or threats of violence in both the private and public spheres, in peacetime and during armed conflict. According to the Maputo Protocol, this violence includes physical, sexual, or psychological violence; economic abuse and exploitation; deprivation or neglect. The provisions cover all spheres in which women experience violence in the family, in the community (e.g., at school or work), and at the hands of the State.

4. The African Charter on the Rights and Welfare of the Child (ACRWC)

Children in Africa are affected by many different types of abuse, including economic and sexual exploitation, gender discrimination in education and access to health care, child labour, and their forced involvement in armed conflict. Other factors affecting African children include migration, early marriage, differences between urban and rural areas, child-headed households, living on the street, and poverty.

The ACRWC emphasizes the need to consider African cultural values and experiences when dealing with the rights of the child, with language that goes much farther than anything in the CRC. These provisions include:

1. Challenging traditional African views that often conflict with children's rights, such as those on child marriage, parental rights and obligations towards their children, and children born out of wedlock.
2. Expressly saying that the Children's Charter takes precedence over any custom, tradition, cultural or religious practice that is not in accordance with the rights, duties, and obligations in the Charter.
3. Outright prohibition on the recruitment of children (under 18 years old) in armed conflict, and explicitly addressing the conscription of children into the armed forces.
4. Prohibiting marriages or betrothals involving children.

24 '9 Ways the Maputo Protocol Has Protected and Promoted the Rights of Women and Girls across Africa', (Equality Now, 30 October 2021), https://www.equalitynow.org/news_and_insights/9_ways_maputo_protocol/.

25 African Union, 'Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (date of adoption 1 July 2003), <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>

5. Prohibiting the use of children as beggars.
6. Granting girls the right to return to school after pregnancy.
7. Promoting affirmative action for girls' education.
8. Tackling specific African issues that affect children.
9. Protecting internally displaced and refugee children.
10. Protecting imprisoned expectant mothers and mothers of infants and young children.
11. Providing a way for children themselves to petition the Children's Charter's Committee of Experts regarding infringements of their rights.
12. Including special reference to the care of the child by extended families.
13. Encouraging the State to provide support for parents 'in times of need.'
14. Protecting children who have disabilities.

Table on Status of Ratification of Key African Human Rights Treaties Relevant to EVAW and SRH&RR by RECs

✓ = Ratified S = Signed but not ratified X = Neither signed nor ratified

REC Member States	ACHPR ²⁶	Maputo Protocol ²⁷	ACRWC ²⁸
Arab Maghreb Union (UMA)			
Algeria	✓	✓	✓
Libya	✓	✓	✓
Mauritania	✓	✓	✓
Morocco	✓	X	X
Tunisia	✓	S	S
Common Market for Eastern and Southern Africa (COMESA)			
Burundi	✓	S	✓

²⁶ Source: African Commission on Human and People's Rights, 'Ratification Table', <https://www.achpr.org/ratificationtable?id=49>.

²⁷ Solidarity for African Women's Rights, 'Protocol Watch', <https://soawr.org/protocol-watch/>.

²⁸ African Union, 'List of countries which have signed, ratified/acceded to the African Charter on the Rights and Welfare of the Child', (AU, Ethiopia, 28 June 2019), <https://au.int/sites/default/files/treaties/36804-si-AFRICAN%20CHARTER%20ON%20THE%20RIGHTS%20AND%20WELFARE%20OF%20THE%20CHILD.pdf>.

Comoros	✓	✓	✓
DR Congo	✓	✓	S
Djibouti	✓	✓	✓
Egypt	✓	X	✓
Eritrea	✓	✓	✓
Eswatini	✓	✓	✓
Ethiopia	✓	✓	✓
Kenya	✓	✓	✓
Libya	✓	✓	✓
Madagascar	✓	S	✓
Malawi	✓	✓	✓
Mauritius	✓	✓	✓
Rwanda	✓	✓	✓
Seychelles	✓	✓	✓
South Sudan	✓	S	S
Sudan	✓	S	✓
Uganda	✓	✓	✓
Zambia	✓	✓	✓
Zimbabwe	✓	✓	✓
Community of Sahel–Saharan States (CEN–SAD)			
Benin	✓	✓	✓
Burkina Faso	✓	✓	✓
Cabo Verde	✓	✓	✓
Central African Republic	✓	S	✓
Chad	✓	S	✓
Comoros	✓	✓	✓
Cote d'Ivoire	✓	✓	✓
Djibouti	✓	✓	✓
Egypt	✓	X	✓
Eritrea	✓	S	✓
Gambia	✓	✓	✓
Ghana	✓	✓	✓
Guinea	✓	✓	✓
Guinea Bissau	✓	✓	✓

Kenya	√	√	√
Liberia	√	√	√
Libya	√	√	√
Mali	√	√	√
Mauritania	√	√	√
Morocco	√	X	X
Niger	√	S	√
Nigeria	√	√	√
São Tomé and Príncipe	√	√	√
Senegal	√	√	√
Sierra Leone	√	√	√
Somalia	√	S	S
Sudan	√	S	√
Togo	√	√	√
Tunisia	√	√	S
East African Community (EAC)			
Burundi	√	S	√
Kenya	√	√	√
Uganda	√	√	√
South Sudan	√	S	S
Tanzania	√	√	√
Economic Community of Central African States (ECCAS)			
Angola	√	√	√
Burundi	√	S	√
Cameroon	√	√	√
Central African Republic	√	S	√
Chad	√	S	√
Congo	√	√	√
DR Congo	√	√	√
Equatorial Guinea	√	√	√
Gabon	√	√	√
São Tomé and Príncipe	√	√	√
Economic Community of West African States (ECOWAS)			

Benin			
Burkina Faso	✓	✓	✓
Cabo Verde	✓	✓	✓
Côte d'Ivoire	✓	✓	✓
Gambia	✓	✓	✓
Ghana	✓	✓	✓
Guinea	✓	✓	✓
Guinea Bissau	✓	✓	✓
Liberia	✓	✓	✓
Mali	✓	✓	✓
Niger	✓	S	✓
Nigeria	✓	✓	✓
Senegal	✓	✓	✓
Sierra Leone	✓	✓	✓
Togo	✓	✓	✓
Intergovernmental Authority on Development (IGAD)			
Djibouti	✓	✓	✓
Eritrea	✓	S	✓
Ethiopia	✓	✓	✓
Kenya	✓	✓	✓
Somalia	✓	S	S
South Sudan	✓	S	S
Sudan	✓	S	✓
Uganda	✓	✓	✓
Southern African Development Community (SADC)			
Angola	✓	✓	✓
Botswana	✓	X	✓
DR Congo	✓	✓	✓
Eswatini	✓	✓	✓
Lesotho	✓	✓	✓
Madagascar	✓	S	✓
Malawi	✓	✓	✓
Mauritius	✓	✓	✓

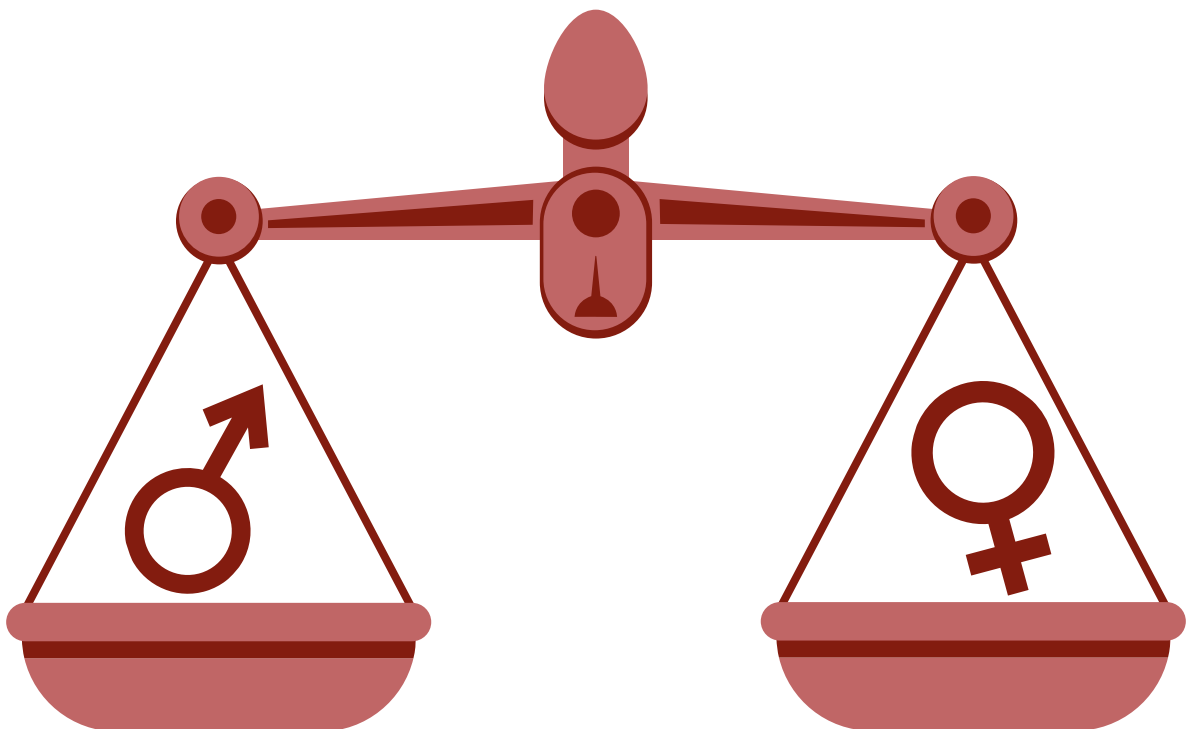
Mozambique	✓	✓	✓
Namibia	✓	✓	✓
Seychelles	✓	✓	✓
South Africa	✓	✓	✓
Eswatini	✓	✓	✓
Tanzania	✓	✓	✓
Zambia	✓	✓	✓
Zimbabwe	✓	✓	✓



QUESTIONS FOR MODULE I

- > What are the various types and definitions of VAWG?
- > What is the reporting process and why is it important?
- > What are shadow reports and how can they be used?
- > How is compliance monitored?
- > Why is the Maputo Protocol so important?
- > What is an Optional Protocol and what can it do?
- > What is SCR 1325?
- > What issues are specific to children?
- > What are five specific issues that face women and girls with disabilities?

MODULE II. **INTERNATIONAL AND REGIONAL LAWS AND POLICIES ON SEXUAL AND REPRODUCTIVE HEALTH AND REPRODUCTIVE RIGHTS (SRH&RR)**





Aim of the Module

To examine the various issues on SRH&RR for ratification, domestication, implementation, monitoring, and reporting on legislation and policy.



Learning objectives

By the end of this Module

1. Participants will gain a deeper understanding of the nature of SRH&RR and States' commitments and duties in implementing these rights.



Outline of the Session

1. Discusses the nature and content of SRH&RR and their relationship with other human rights.
2. Discusses international and regional instruments on SRH&RR and States' obligations under such instruments



Duration of Module: 90 minutes



Guide for Facilitators

Make sure everyone has time to read through the Module before beginning the lecture. Focus the discussion in the whole group on the Maputo Protocol Plan of Action and then divide the group and have them discuss their various opportunities and challenges in drafting laws and policies on SRH&RR.

1. AUC
2. RECs
3. Member States
4. CSOs

Have each group report back to the plenary. If there are no participants from these specific organizations then the whole group can work in plenary or in other small group configurations.

A. Background to Sexual and Reproductive Health and Reproductive Rights (SRH&RR)

Sexual and reproductive health and reproductive rights (SRH&RR) are grounded in a range of human rights guarantees, which are protected in international and regional human rights instruments and national laws and constitutions. In 1994, most States around the world attended the UN International Conference on Population and Development (ICPD) in Cairo and recognized that population, development, and human rights are inextricably linked. Empowering women and meeting people's needs for education and health, including reproductive health, are critical for development. The Sustainable Development Goals (SDGs) have followed by recognizing the importance of reproductive

rights for the realization of poverty reduction, particularly for those persons belonging to groups most vulnerable to poverty. Reproductive rights embrace certain human rights that are already in place.

The following section explores the content of sexual and reproductive health and reproductive rights as provided for in major international and African human rights instruments and other instruments.

a) International and Regional Obligations on Sexual and Reproductive Health and Reproductive Rights

The UN Treaty Monitoring Bodies and other international and regional human rights bodies, including and especially the African Commission on Human and Peoples' Rights (ACHPR), monitor State compliance with these instruments. Other soft laws provide interpretive guidance to States such as General Comments on how to implement their obligations. In addition to the ACHPR, the UN Committee on Economic, Social and Cultural Rights (CESCR) General Comments are important to note.

For example, ACHPR General Comment 2 and the CESCR General Comment 22 underscore the interdependence and indivisibility of rights and that the civil and political rights components of sexual and reproductive health and reproductive rights cannot be separated from the socioeconomic components.

b) Human Rights are Key to Sexual and Reproductive Health and Reproductive Rights

All individuals have reproductive rights, which are grounded in a constellation of fundamental human rights guarantees. These guarantees are found in the oldest and most accepted human rights instruments, as well as in more recently adopted international and regional instruments. A series of documents adopted at UN conferences, most notably the ICPD, have explicitly linked governments' duties under international instruments to their obligations to uphold reproductive rights. As stated in Paragraph 7.3 of the ICPD Programme of Action: "Reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents, and other consensus documents".²⁹ These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health and reproductive rights. It also includes their right to make decisions concerning reproduction free of discrimination, coercion, and violence, as expressed in human rights documents.

²⁹ United Nations, 'Programme of Action of the International Conference on Population and Development' (September 1994), https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.171_13.pdf.

These legal principles have been given added force and depth in a series of interpretations made by UN and regional human rights bodies in groundbreaking cases. In addition, the UN treaty monitoring bodies, which are charged with monitoring government compliance with major human rights instruments, now routinely recommend that governments take action to ensure sexual and reproductive health and reproductive rights for women. Building upon these earlier developments, two important instruments explicitly recognize women's reproductive rights: the CRPD and the Maputo Protocol. The CRPD was the first comprehensive international human rights instrument to specifically identify the right to reproductive and sexual health as a human right.³⁰

The Maputo Protocol articulates women's reproductive rights as human rights, and explicitly guarantees a woman's right to control her fertility. It also provides a detailed guarantee of women's right to reproductive health and family planning services. The Protocol affirms women's right to reproductive choice and autonomy and importantly clarifies African States' duties in relation to women's sexual and reproductive health and reproductive rights. For the end-users of this Training Manual, as noted in Module I and II, the most pertinent human rights mechanism is the Maputo Protocol.

States Parties shall ensure that the right to health of women, including sexual and reproductive health and reproductive rights is respected and promoted. This includes:

1. The right to control their fertility.
2. The right to decide whether to have children, the number of children, and the spacing of children.
3. The right to choose any method of contraception.
4. The right to self-protection and to be protected against sexually transmitted infections, including HIV/ AIDS.
5. The right to be informed on one's health status and the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognized standards and best practices.
6. The right to have family planning education.

States Parties shall take all appropriate measures to:

³⁰ OHCHR, 'Convention on the Rights of Persons with Disabilities', (13 December 2006, resolution A/RES/61/106), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

1. Provide adequate, affordable, and accessible health services, including information, education, and communication programmes to women especially those in rural areas.
2. Establish and/or strengthen existing pre-natal, delivery, and post-natal health and nutritional services for women during and after pregnancy (especially if/ while they are breastfeeding).
3. Protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus.

c) **Maputo Protocol Article 14: Health and Reproductive Rights**

The ACHPR General Comment 2 to the Maputo Protocol does not create any new human rights standards but it draws on existing UN international human rights law and authoritative guidance. The General Comment clarifies obligations of the State that build on existing human rights standards developed under UN instruments such as the ICCPR, CEDAW, and the CESC. It reaffirms the normative content of the right to health as interpreted by the CESC in General Comment 14 to the specific contexts of the rights to fertility control, contraception, family planning education, and abortion that are guaranteed under the Protocol. In this way, the General Comment consolidates international human rights best practices in an African regional context and can be used for advocacy to draft language for domestication.

d) **Convention on the Rights of Persons with Disabilities (CRPD)**

The CRPD in Article 25 stipulates that governments should guarantee access to sexual and reproductive health and reproductive rights to people with disabilities.³¹ Global studies prove that women with disabilities still face a plethora of challenges in accessing sexual and reproductive health services. While there has been some progress, institutionalized discrimination, isolation, and stereotyping of women with disabilities continue. Violations of the sexual and reproductive health and reproductive

31 States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
- b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
- c) Provide these health services as close as possible to people's own communities, including in rural areas;
- d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;
- e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
- f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

rights of women and girls with disabilities have been condoned in developed and developing nations. Governments and development partners, especially in developing countries, should offer affordable and accessible sexual and reproductive health facilities. Women with disabilities are still viewed as people who cannot take part in sexual and reproductive health and reproductive rights activities and have no agency. Negative attitudes towards sexual and reproductive health and reproductive rights of women with disabilities still exist. On the other hand, it is well known that women with disabilities are at risk of violence in many forms: neglect, physical abuse, sexual abuse, psychological abuse, and financial exploitation.

One study shows that women with disabilities in Zimbabwe face numerous challenges in accessing sexual and reproductive health and reproductive rights.³² Cultural belief still regards them as not sexually active. There is a lack of laws and policies that facilitate access to STH&RR services by women with disabilities.

B. Important Terminology from International Human Rights Laws and Policies Relevant to SRH&RR

Various sections of substantive international human rights and policies, both hard and soft law, provide important language to illustrate that these are universally agreed-upon fundamental principles.

a) The Right to Life

The most obvious human right violated by avoidable death in pregnancy or childbirth is a woman's fundamental right to life itself. It is arguable that the core minimum content of governments' obligations under international human rights law is to provide access to affordable quality health services that would prevent maternal mortality. Indeed, discrimination against women is a significant factor in the high number of deaths and complications related to pregnancy and childbirth. Failure to provide maternal health services often reflects the low priority attached to women's special needs in the allocation of resources. Maternal mortality and morbidity can largely be avoided through the provision of reproductive health services, including contraception, safe abortion, and essential and emergency obstetric care.³³

b) Equality and Non-discrimination

The Maputo Protocol was adopted for the specific purpose of promoting gender equality and eliminating discrimination against women in the African region. Its aim

32 Rugoho T, Maphosa F. 'Challenges faced by women with disabilities in accessing sexual and reproductive health in Zimbabwe: The case of Chitungwiza town', (African Journal of Disability, vol. 6, 2017), doi: 10.4102/ajod.v6i0.252.

33 United Nations, 'Rights to Sexual and Reproductive Health - the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women Rights to Sexual and Reproductive Health' (Mumbai, 18 March 1998), <https://www.un.org/womenwatch/daw/csw/shalev.htm>.

is substantive equality, non-discrimination, and human dignity for women and girls. ACHPR's General Comment 2 and CESCR's General Comment 22 call on States to take measures that guarantee equality and non-discrimination in health care. States should take all appropriate measures to eliminate discrimination both in law and in practice. This obligation is subject to immediate application, even in circumstances where States face extreme resource constraints; low-cost, targeted programmes must be adopted in order to protect vulnerable members of society. The General Comments detail the indispensability of sexual and reproductive health and reproductive rights for women to make meaningful and autonomous decisions about their lives and health.

c) Accessibility, Accountability, and Services

Accessibility requires the State to ensure access to health services on a non-discriminatory basis and in ways that are physically accessible, economically accessible, and where information is accessible. Accessibility also requires health facilities, and services be respectful of the culture of individuals, as well as the needs of minorities, and different genders and age-groups, and are designed to respect medical ethics, including confidentiality and informed consent. One key to ensuring this accountability is for a State to have strong mechanisms for budgeting, monitoring, and evaluation and ensuring the participation of affected communities in the development of policies, programmes and services. No laws or policies pertaining to women's bodily autonomy should be drafted without the participation and consultation with women.

The financial and budgetary allocation is critical to the realization of rights and ensuring accountability as recognized by the General Comments. ACHPR's General Comment 2 notes that the State must fulfill its duty by allocating sufficient and available resources for the full implementation of the rights guaranteed in the Maputo Protocol. Access to contraceptive information and services enables individuals and couples to determine whether and when to have children. It also contributes to the achievement of their health and increases their autonomy and well-being. Contraceptive information and services are important in preventing pregnancies, including those resulting from sexual violence, and in preventing sexually transmitted infections and HIV transmission.

Lack of access to quality maternal health care is now recognized as a human right issue in need of enhanced government accountability. Maternal mortality can involve the right to health, the right to life, and to be free from discrimination.

General Comments 2 and 22 and other UN human rights standards require States to have in place comprehensive policies and programmes to reduce their maternal mortality rates, including by ensuring among others, access to birth assistance, prenatal care, emergency obstetric care, and post-abortion care, including for complications resulting from unsafe abortions.

CESCR General Comment 22 notes that States must address the underlying determinants of a healthy pregnancy, including potable water, nutrition, education, sanitation, and

transportation. The CEDAW Committee has made clear that States must take expansive measures to ensure that the life and health of the pregnant woman are prioritized over the protection of the fetus.³⁴

ACHPR's General Comment 2 calls on States Parties to provide complete and accurate information and a range of choices of contraceptive methods, particularly by training healthcare providers to provide information on the risks and benefits of, and alternatives to, various contraceptive methods. It also calls for public information campaigns on contraceptives and to ensure all information on contraceptives is accessible to all women and girls including ensuring that it is available in languages and formats accessible and understandable to women and girls with disabilities.

d) **Autonomy**

Autonomy, in this context, means the right of a woman to make decisions concerning her fertility and sexuality free of coercion and violence. Key to this is the notion of choice. In healthcare contexts, the rights to informed consent and confidentiality are instrumental to ensuring free decision-making by the client.

e) **Abortion**

Abortion is critical to the notion of choice in reproductive rights. While other human rights instruments may infer abortion from broader human rights, The Maputo Protocol is the only international or regional human rights treaty that explicitly articulates the right to abortion in the provisions of a treaty. Under Article 14 (2) (c) of the Maputo Protocol, States Parties are called upon to take all appropriate measures to “protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus.” This provision recognizes the critical benefits that ensuring access to abortion has on women, their families, and communities on a continent burdened by extremely high maternal mortality and morbidity.

Human rights bodies have noted that where abortion is legal, States must ensure that it is available, accessible (including affordable), acceptable, and of good quality. General Comment 2 recognizes that because of the criminalization of abortion and the resulting stigma, many abortion laws on the continent are not being fully implemented, resulting in denying women their right to abortion and risking their health and lives. CESC General Comment 22 is in line with ACHPR General Comment 2 and dictates that States should ensure that women's access to and the availability of abortion and other sexual and reproductive health and reproductive rights services are not hindered by conscientious objection. CESC General Comment 22 notes that States should

³⁴ CEDAW, 'CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health)' (1999, A/54/38/Rev.1), <https://www.refworld.org/docid/453882a73.html>.

monitor the practice and implement mechanisms to ensure that women systematically receive timely referrals to another service provider.

General Comment 2 calls on States to decriminalize abortion, noting: “The right to be free from discrimination also means that women must not be subjected to criminal proceedings and should not incur any legal sanctions for having benefited from health services that are reserved to them such as abortion and post-abortion care. Furthermore, it entails that the health personnel should not fear neither prosecution, nor disciplinary, or others for providing these services, in the cases provided for in the Protocol.”

f) **Men and Sexual and Reproductive Health & Reproductive Rights**

The focus of SRH&RR has rightfully been on protecting the reproductive rights of women, as reproductive rights are part of women’s rights. For biological and social reasons women are more directly affected than men by decisions with respect to reproduction; decisions which in turn are shaped by issues related to gender equality, stereotypical gender roles, and the role of women in society more broadly. But men too should be involved in sexual and reproductive health and reproductive rights programmes and this is often forgotten. Men have a stake in reproductive rights through their multiple roles as sexual partners, husbands, fathers, family, household members, community leaders and gatekeepers to health information and services. Men’s general knowledge and attitudes concerning the ideal family size, gender preference of children, ideal spacing between child births, and contraceptive method use greatly influence women’s preferences and opinions. In addition, all men have needs related to their own SRH&RR. The non-involvement of men and boys in matters related to SRH&RR contributes significantly to the poor preparation of men for adulthood, contraceptive use and safe sex.³⁵ Only in societies where men and women have equal rights and responsibilities will reproductive rights be equally shared by all.³⁶

g) **Beijing Platform for Action (BPfA)**

The BPfA (1995) highlighted 12 key areas where urgent action was needed to ensure greater equality and opportunities for women and men, girls and boys. It also laid out concrete ways for countries to bring about change.

The BPfA States that “the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination, and violence.”³⁷

35 OHCHR and UNFPA, ‘Reproductive Rights are Human Rights: A Handbook for National Human Rights Institutions’ (2014), <https://www.ohchr.org/sites/default/files/Documents/Publications/NHRIHandbook.pdf>.

36 Since no society like this exists, this is merely an aspirational notion.

37 UN Women, “The Beijing Platform for Action: inspiration then and now,” <https://beijing20.unwomen.org/en/about>

Despite its non-binding nature, the BPfA is representative of the important part soft law plays in the international framework for the protection of women and girls.

'Reproductive health' is defined in paragraph 7.2 of the BPfA as "a State of complete physical, mental and social well-being ... in all matters related to the reproductive system", which "implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so." Paragraph 74 notes that curricula and teaching materials remain gender-biased to a large degree, and are rarely sensitive to the specific needs of girls and women. Lack of gender awareness by educators at all levels strengthens existing inequities between males and females by reinforcing discriminatory tendencies and undermining girls' self-esteem. Moreover, the lack of sexual and reproductive health and reproductive rights education has a profound impact on women and men. Paragraph 106(e) notes that "[Governments should] [p]rovide . . . sexual and reproductive health care, which includes family planning information and services."

h) International Conference on Population and Development (ICPD) For Action

In 2014 the High-Level Task Force on the ICPD called for intensified political will and investments to make sexual and reproductive health and reproductive rights a reality for all. These are some key areas of the 'unfinished Cairo agenda' pertinent for this Module that could be combined into a checklist to ensure that SRH&RR are:

Respected, protected, and fulfilled by:

1. Supporting public education campaigns and community mobilization on human rights and laws related to sexual and reproductive health and reproductive rights to foster understanding of human sexuality as a positive aspect of life, and create cultures of acceptance, respect, non-discrimination, and non-violence.
2. Eliminating gender discrimination and violence against women and girls.
3. Engaging men and boys, policy-makers and law enforcers, parliamentarians, educators and health providers, employers, the private sector and journalists, in creating an enabling environment for the equal enjoyment of these rights by all.
4. Amending or enacting laws and policies that respect and protect sexual and reproductive health and reproductive rights and enable all individuals to exercise them without discrimination on any grounds, regardless of age, sex, race, ethnicity, class, caste, religious affiliation, marital status, occupation, disability, HIV status, national origin, immigration status, language, among other factors. This includes:

1. Criminalizing sexual violence and ending impunity for perpetrators;
2. Eliminating early and forced marriage and female genital mutilation/cutting (FGM/C) within a generation;
3. Prohibiting practices that violate the SRH&RR of women and adolescent girls, such as spousal or parental consent requirements to receive health services, forced sterilization and forced abortion, or discrimination in education and employment due to pregnancy and motherhood;
4. Repealing laws that punish women and girls who have undergone illegal abortions, as well as ending their imprisonment, and revising laws and policies to make safe abortion accessible and legal;
5. Protecting the human rights of people living with HIV, and prohibiting all discrimination and violence against them; and
6. Revoking laws and banning practices that criminalize consensual adult sexual behaviors and relationships, including outside of marriage, and in the context of voluntary sex work.

C. African Union – Policy Commitments

Agenda 2063 includes a roadmap that highlights the importance of investing in women and young people, to realize a vision of Africa where development is people-driven and people-centered.³⁸

Other policies that focus on population, development, and sexual and reproductive health and reproductive rights include the Addis Ababa Declaration on Population and Development in Africa Beyond 2014, the Maputo Protocol, the Maputo Plan of Action 2016–2030, and the AU Roadmap on Harnessing the Demographic Dividend Through Investments in Youth.

The African Union has aligned its commitments with the Sustainable Development Goals—specifically Goal 3, Target 3.7—to ensure universal access to sexual and reproductive health care services by 2030.

a) The 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs)

For the field of sexual and reproductive health and reproductive rights (SRH&RR), the SDGs include several relevant goals and targets such as those related to health,

³⁸ African Union, “Agenda 2063,” <https://au.int/en/agenda2063>

education, and gender equality. The goals and targets encompass many key aspects of SRH&RR, including access to sexual and reproductive health and reproductive rights services, comprehensive sexuality education, and the ability to make decisions about one's own health.

b) **The Maputo Protocol**

Here is a summary of key sections of the Maputo Protocol

Article 5: States 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. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

Exercise during training: We will dive deeper into Agenda 2063 and what it provides for in relation to the subject matter. Also, interrogating the nexus between agenda 2063 and SDGs can assist the participants in appreciating the complementarities of international and regional programmatic frameworks.

1. Creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education, and outreach programmes;
2. Prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalization and para-medicalization of female genital mutilation and all other practices in order to eradicate them;
3. Provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counseling as well as vocational training to make them self-supporting; and
4. Protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

General Comment No 2 interprets provisions of Article 14 of the Protocol related to women's rights to control their fertility, contraception, family planning, information and education, and abortion.

Article 14 (1): States Parties shall ensure that the right to health of women, including sexual and reproductive health and reproductive rights is respected and promoted. This includes: c) the right to choose any method of contraception; d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS; e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including

HIV/AIDS, in accordance with internationally recognized standards and best practices; and the right to have family planning education.³⁹

c) The Maputo Plan of Action for the Operationalization of the Sexual and Reproductive Health and Rights Continental Policy Framework

This Continental Policy Framework on Sexual Reproductive Health and Rights⁴⁰ is intended to accelerate the improvement of sexual and reproductive health and reproductive rights in Africa, which is a vital foundation for the achievement of the ICPD Programme of Action and the Sustainable Development Goals, particularly SDGs 3 and 5.

In 2006, the Special Session of African Union Health Ministers adopted the Maputo Plan of Action for implementing the Continental Policy Framework on SRH&RR which expired at the end of 2015. The goal was for all stakeholders and partners to join forces and re-double their efforts, so that the effective implementation of the Continental Policy framework, including universal access to sexual and reproductive health and reproductive rights by 2015 in all countries in Africa, could be achieved. The Revised Maputo Plan of Action (MPoA) 2016 – 2030 was subsequently endorsed by the African Union Heads of State at the 27th AU Summit in July 2016 in Kigali, Rwanda. The plan reinforces the call for universal access to comprehensive sexual and reproductive health and reproductive rights services in Africa and lays a foundation for the Sustainable Development Goals, particularly Goals 3 and 5, as well as the African Union Agenda 2063.

The ultimate goal of this Plan of Action is for African governments, civil society, the private sector, and all multisector development partners to join forces for the effective implementation of the continental policy framework, Agenda 2063, and the SDGs in order to end preventable maternal, newborn, child and adolescent deaths by expanding contraceptive use, reducing unsafe abortion, ending child marriage, eradicating harmful traditional practices (including female genital mutilation) and eliminating all forms of violence and discrimination against women and girls and ensuring access of adolescents and youth to SRH&RR by 2030 in all countries in Africa.

d) The Addis Ababa Declaration on Population and Development in Africa Beyond 2014

This declaration contains strong commitments by the African States on sexual and reproductive health and reproductive rights. It calls for universal access to sexual and reproductive health and reproductive rights information and services, with

³⁹ OHCHR, 'Your Health, Your Choice, Your Rights: International and Regional Obligations on Sexual and Reproductive Health and Rights,' [OHCHR Factsheet Your Health.pdf](#).

⁴⁰ African Union, 'Maputo Plan of Action 2016 – 2030 for the Operationalization of the Continental Policy Framework for Sexual and Reproductive Health and Rights' (29 March 2016), <https://au.int/en/documents/20160329/maputo-plan-action-2016-2030-operationalisation-continental-policy-framework>

particular attention to the needs of adolescents, as well as emergency contraception, comprehensive sexuality education and critical services for survivors of violence against women and girls.

e) **The Africa Union Roadmap on Harnessing the Demographic Dividend**

This policy is built around the four pillars of employment and entrepreneurship, education and skills development, health and wellbeing and rights, governance, and youth empowerment. The Roadmap provides clear actions and deliverables to harness the demographic dividend emanating from an increasingly youthful population in Africa.⁴¹ The roadmap highlighted the need for continued engagement in the Campaign for Accelerated Reduction of Maternal Mortality in Africa, the Campaign to End Child, Early and Forced Marriage that seeks to keep girls out of an early marriage and in school, and the need to fast-track the implementation of the Addis Ababa Declaration on Sexual Reproductive Rights and Health.



QUESTIONS FOR MODULE II

- > Why is a human rights perspective important for SRH&RR?
- > Name some of the sections of the Maputo Protocol pertinent to SRH&RR.
- > Why is the Maputo Protocol so important for SRH&RR services?
- > What is the Maputo Protocol plan of action? Name three recommendations.

41 African Union, 'AUC and UNFPA recommit to accelerate efforts to implement roadmap to harness the demographic dividend through investments in youth' (Addis Ababa, 5 July 2017), <https://au.int/fr/node/32660>

MODULE III. **RATIFICATION, DOMESTICATION, AND IMPLEMENTATION OF INTERNATIONAL AND REGIONAL INSTRUMENTS ON EVAWG AND SRH&RR**





Aim of the Module

This module has three aims. First, it helps participants gain a deeper understanding of the process of ratification and domestication of international and African human rights instruments on EAWG and SRH&RR. Second, it equips participants with practical skills in reviewing and working on drafting legislation to transform treaty commitments into national laws. Third, it helps participants to understand the implementation and advocacy strategies of international and regional human rights instruments.



Learning objectives

1. Participants will gain a deeper understanding of the processes and mechanisms for domesticating international and regional human rights instruments.
2. Participants will gain knowledge and skills in utilizing a human rights-based approach in drafting and reviewing laws to ensure that women's and girls' rights to be free from violence and to SRH&RR under international and regional human rights instruments are effectively reflected in and implemented by national laws.
3. Participants will be equipped with an understanding of the mechanisms of monitoring and enforcing the implementation of human rights instruments.



Outline of the Module

1. Discusses the nature of the duties that States assume when they accept an international treaty on human rights.
2. Reviews the mechanisms of ratifying and domesticating international instruments.
3. Discusses mechanisms for implementing and monitoring the implementation.
4. Outlines pointers on drafting legislation that realizes women's rights to be free from violence and to SRH&RR.
5. Discusses the mechanisms for monitoring and enforcing the implementation of women's and girls' rights to be free from any form of violence.



Duration of the Module: 120 Minutes



Guide for Facilitators

1. Participants will be asked to identify and bring to the session any law from any African country that deals with any issue relevant to EAWG and SRH&RR.
2. Participants will have an opportunity to read the text of the Module.

3. The facilitator will give a 15 minute lecture on the three main topics of the Module. The lecture will be followed by a 10 minute Q&A session in which the participants' can reflect and ask clarifying questions on the text and lecture.
4. Participants will then be divided into small groups (suggest five if possible) to work on the first review question at the end of the Module for 30 minutes. At the end of the group discussions, group rapporteurs will present a summary of the discussions to all participants. During the next 20 minutes, participants will be invited to provide their comments and reactions to the presentations. The facilitator will summarize the key points from the group discussions and provide feedback on the discussions.
5. After a 10 minute break, participants will go back to their groups to work on a second question. During the first five minutes, each participant will briefly describe the law that they have brought for discussion to the group. Based on the description of the laws presented by the participants the group will select the law (s) that it will use as a case study. Participants will then review the selected law in light of the checklist in Section 3.3 of the Module during the next 15 minutes.
6. The groups will present a summary of their discussions at a plenary of all participants for 15 minutes.

A. States' Duties under International and Regional Human Rights Instruments, Duties to Respect, Protect and Fulfill

States have duties to respect the rules of international law. Another commonly adopted typology of the duties of States under international law classifies them into three broad categories.⁴² These are the *duties to respect, protect, and fulfill (or ensure)* human rights. The ACPHR explained what these obligations entail when it considered a case in which a complaint was lodged against the Government of Nigeria alleging non-compliance of the African Charter. In relation to the duties of States under international and African human rights laws, the Commission noted:

“ Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights, both civil and political rights and social and economic, generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote, and fulfill these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties. ”

42 Some authorities, including the African Commission on Human and Peoples' Rights whose interpretation is quoted below, use a four-part classification splitting the duty to protect into two (i.e., the duty to protect and the duty to promote), although still recognizing the duty to promote falls within the rubric of the duty to protect.

At a primary level, the obligation to respect entails that the State should refrain from interfering in the enjoyment of all fundamental rights; it should respect right-holders, their freedoms, autonomy, resources, and liberty of action.

At a secondary level, the State is obliged to protect right-holders against other subjects by legislation and provision of effective remedies. This obligation requires the State to take measures to protect beneficiaries of the protected rights against political, economic, and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms.

The last layer of obligation requires the State to fulfill the rights and freedoms it freely undertook under the various human rights regimes. It is more of a positive expectation on the part of the State to move its machinery towards the actual realization of the rights. In relation to the rights of women, the CEDAW Committee explained these responsibilities in its General Recommendation No. 28. Thus,

Under article 2, States parties must address all aspects of their legal obligations under the Convention to respect, protect and fulfill women's right to non-discrimination and to the enjoyment of equality. The obligation to respect requires that States parties refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of equal enjoyment by women of their civil, political, economic, social and cultural rights. The obligation to fulfill requires that States parties take a wide variety of steps to ensure that women and men enjoy equal rights *de jure* and *de facto*, including, where appropriate, the adoption of temporary special measures in line with article 4, paragraph 1, of the Convention and general recommendation No. 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures. This entails obligations of means or conduct and obligations of results. States parties should consider that they have to fulfill their legal obligations to all women through designing public policies, programmes and institutional frameworks that are aimed at fulfilling the specific needs of women leading to the full development of their potential on an equal basis with men.

B. Ratification

States must express their consent to be bound by the obligations an instrument lays out. Ratification is the formal act of a State in which it expresses its willingness to be bound by the provisions of a treaty. As noted in Module I, a State's signature of a treaty is not equivalent to its assumption of the obligations of the treaty. It is ratification, rather than signature, that signifies that the State has now assumed the international obligations of the treaty. Ratification also allows the State to go through the processes of domesticating the treaty, i.e. making the treaty part of the law of the land. It also implies the involvement of the legislature in giving the treaty the force of domestic law through a legislative act of ratification. Not all States and not all types of instruments

call for such legislative involvement. Acceptance and approval are both terms that are used under such circumstances.

C. Domesticating Human Rights Instruments

A ratification is an act under international law. The formal communication of the State's explicit commitment to be bound by the treaty is sufficient under international law to conclude that the State is a party to the treaty. For the purposes of domestic law, however, the treaty or its obligations have to be made part of the law of the land. They have to be domesticated. In general, the implementation of a human rights treaty calls for the adoption of new or the revision of existing legislation to give effect to the rights the treaty recognizes. For example, the Committee on the Rights of the Child elaborated the specific actions that States may need to undertake in order to implement their overall duty of taking legislative measures to give effect to the rights under the CRC that may also apply to other human rights instruments. These include:

1. A comprehensive and continuous review of all laws that ensures the full compliance of municipal law, including customary law, to the specific articles as well as the overarching spirit of the treaty;
2. Clarifying the applicability of the treaty in the domestic legal system;
3. Ensuring the direct application of the rules of the treaty by courts;
4. Ensuring the supremacy of the treaty in cases where its rules conflict with those of municipal law; and
5. Adopting additional legislative measures to allow the exercise of rights by rights holders.

The CEDAW and the Maputo Protocol deal extensively with the obligations of States to enact or review laws to give effect to the rights under them.

There has been some progress in the signing and ratification of international laws and human rights treaties. Some Member States have ratified, but with reservations.

1. All 55 Member States of the AU have ratified the Convention on the Rights of the Child (CRC), excluding Sahrawi Arab Democratic Republic,
2. 52 countries have ratified the CEDAW,
3. 43 countries have ratified the Maputo Protocol,

4. 33 countries have ratified the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights (AfCHPR),
5. 39 countries have ratified the African Youth Charter,
6. 49 countries have ratified the African Charter on the Rights and Welfare of the Child, and
7. 54 countries have ratified the African Charter on Human and Peoples' Rights (ACHPR).

a) **The Nature and Rationale of Domesticating Human Rights Instruments**

The 'domestication of international law' refers to the integration of the norms of international law into national laws. A major duty that States have in relation to their commitments under international law is of ensuring that their legal and judicial systems conform to the rules and obligations of international law. This is also true of commitments under human rights instruments. Human rights norms that a State agrees to under a human rights treaty can only be effective if they are translated into domestic laws that govern the life of individuals and citizens whose lives are normally governed by municipal laws. In fact, a basic principle of international human rights law is the 'exhaustion of local remedies' which requires that even for those States that have accepted the adjudication jurisdiction and procedures of human rights treaty bodies such as those under the UN human rights treaty system or under the ACHPR, individuals have to first resort to local mechanisms and remedies before availing themselves of the mechanisms under human rights instruments. Thus, for human rights instruments to have any meaningful effect on those they are meant to protect or provide rights for, they need to be incorporated into and become part of the rules of domestic law.

Incorporating the rules of international human rights instruments into domestic law is important, especially in terms of providing legal recognition to the rights and affording redress especially judicial redress when the rights are violated. However, the need to integrate the rules of human rights instruments into national legal systems is broader than the mere reproduction of the rules of human rights instruments in national legislation. Human rights norms call for major transformations in a country's overall life ranging from reshaping broad and varied social norms and values, to restructuring State institutions, establishing sanctioning and remedial mechanisms, and reallocating budgetary and human resources. Human rights instruments leave the task of detailing the specific modality for the operation of the rights they establish to domestic laws.

b) Modes of Domesticating Human Rights Instruments - An Overview of Monist and Dualist Approaches

Once a State ratifies a treaty, it assumes the duties of the treaty without any further action. Ratification is sufficient in itself to bind the State under international law. Apart from the ratification of the treaty by the State under international law, however, more legislative action may be required to make the treaty part of the legal system or to make it effective within the legal system of the State.

In incorporating treaty obligations, States generally follow either one of two approaches: either the *monist* and *dualist* approaches. It should be noted that these approaches are not legal principles themselves. They are developed as ideal types to understand and summarize the practices of States. It is also worth noting that, while States may generally follow one or another approach, they also borrow and adopt elements from both approaches.

1. The Monist Approach

In general, States that follow the *monist* approach look to international law and domestic law as forming an integrated whole. When an international treaty is ratified, it automatically becomes part of national law without any further need to enact another legislation. This approach is also known as ‘*automatic incorporation*’ since instruments are incorporated into national law automatically and as they are. Many States that follow the civil law system (i.e. legal systems that rely on codified laws enacted by the legislature with limited, if any room, for rules that judges can make by relying on and interpreting previous cases and legislation) take this approach. Constitutions that follow this approach may have explicit provisions that establish that international instruments the country enters into become part of the law of the land.

The power to ratify instruments is usually reserved for the head of State, although in many cases specific types of instruments such as those that involve peace, establish boundaries, entail budgetary consequences, and affect human rights may be required to be ratified by legislatures. Instruments once ratified also attain a higher status than domestic laws. Thus, domestic laws that conflict with properly ratified instruments become ineffective. Many countries in Europe and Latin America follow the monist approach. In Africa, many countries that follow the civil law system also follow the monist approach.

2. The Dualist Approach

Those legal systems that follow the dualist approach view a distinction between international and domestic law. International law is seen as strictly applying to the relations between States that happen at the international level. To have an effect on the subjects of domestic law, that is on individuals who are subject to domestic law, the provisions of international instruments have to be transformed into and given the forms of national laws. As the legislature or parliament has the exclusive power to make laws, instruments that are generally negotiated and concluded by the executive

can only have the power of the law when the former body enacts them as domestic law. Since Instruments get their legislative force from the act of the legislature, they do not have supremacy over other laws issued by that body. In cases where there is a conflict between a treaty and another law issued by the legislature it is up to courts to determine which one will prevail.

In general, countries that follow the common law system (i.e countries that inherit the English common law and recognize the rulemaking power of judges through setting precedents), follow this approach. Since laws that incorporate instruments into national law are ordinary acts of the legislature, the constitutions of States that follow the dualist approach may not have special provisions. There are, however, some constitutions that specifically outline this approach.

In Africa, countries that inherit their legal systems from the common law system generally follow the dualist approach. For example, in South Africa, the Constitution provides the following for international agreements:

1. The negotiation and signing of all international agreements is the responsibility of the national executive.
2. An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces unless it is an agreement referred to in subsection (3) of the Constitution.
3. An international agreement of a technical, administrative, or executive nature, or an agreement that does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces but must be tabled in the Assembly and the Council within a reasonable time.
4. Any international agreement becomes law in the Republic when it is enacted into law by national legislation, but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

D. Legislative Drafting and Review to Ensure EVAWG And SRH&RR

a) Introduction

One of the important measures that States can take to realize the rights of women in this regard is a comprehensive review of their legal and judicial systems in general and with EVAWG and SRH&RR in particular. The focus of this section is on ensuring the

compliance of domestic laws with the rights of women under CEDAW and the Maputo Protocol. We can then use tools developed by relevant UN bodies to identify possible areas to help review or enact legislation on EAWG and SRH&RR. Documents prepared by Treaty bodies and other UN agencies, especially the UN Fund for Population Activities (UNFPA) and UN Office of the High Commission for Human Rights (OHCHR),⁴³ are also used to construct the checklist as appropriate. The checklist will be used to work on a practical exercise in the form of a case study in the last subsection.

b) Sources of Obligations for Legislative Enactment and Review

International obligations on States to enact new or revise existing laws to ensure their compliance with human rights standards and to realize the rights of women stem from different international human rights instruments. Most notable among these are the CEDAW and the Maputo Protocol.

The CEDAW Committee explained the legislative obligations of States in relation to EAWG as follows:

According to articles 2 (b), (c), (e), (f), and (g) and 5 (a), States are required to adopt legislation prohibiting all forms of gender-based violence against women and girls, harmonizing national law with the Convention. In the legislation, women who are victims/survivors of such violence should be considered to be rights holders. It should contain age-sensitive and gender-sensitive provisions and effective legal protection, including sanctions on perpetrators and reparations to victims/survivors. The Convention provides that any existing norms of religious, customary, indigenous, and community justice systems are to be harmonized with its standards and that all laws that constitute discrimination against women, including those which cause, promote, or justify gender-based violence or perpetuate impunity for such acts, are to be repealed. Such norms may be part of statutory, customary, religious, indigenous or common law, constitutional, civil, family, criminal or administrative law, or evidentiary and procedural law, such as provisions based on discriminatory or stereotypical attitudes or practices that allow for gender-based violence against women or mitigate sentences in that context.⁴⁴

The UN Committee on Economic, Social and Cultural Rights (CESCR) Committee elaborated the core obligations of States in relation to SRH&RR. Accordingly, the core obligations include at least the following:

- a. To repeal or eliminate laws, policies, and practices that criminalize, obstruct or undermine access by individuals or a particular group to sexual and reproductive health and reproductive rights facilities, services, goods, and information;

43 OHCHR and UNFPA, 'Reproductive Rights are Human Rights: A Handbook for National Human Rights Institutions' (2014), <https://www.ohchr.org/sites/default/files/Documents/Publications/NHRIHandbook.pdf>.

44 Committee on the Elimination of Discrimination Against Women, 'General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19' (2017, CEDAW/C/GC/35), para 26(a)

- b. To adopt and implement a national strategy and action plan, with adequate budget allocation, on sexual and reproductive health and reproductive rights, which is devised, periodically reviewed, and monitored through a participatory and transparent process, disaggregated by a prohibited ground of discrimination;
- c. To guarantee universal and equitable access to affordable, acceptable, and quality sexual and reproductive health and reproductive rights services, goods, and facilities, in particular for women and disadvantaged and marginalized groups;
- d. To enact and enforce the legal prohibition of harmful practices and GBV, including FGM, child, and forced marriage, and domestic and sexual violence, including marital rape, while ensuring privacy, confidentiality, and free, informed, and responsible decision-making, without coercion, discrimination or fear of violence, in relation to the sexual and reproductive needs of individuals;
- e. To take measures to prevent unsafe abortions and to provide post-abortion care and counseling for those in need;
- f. To ensure all individuals and groups have access to comprehensive education and information on sexual and reproductive health and reproductive rights that are non-discriminatory, non-biased, evidence-based, and that take into account the evolving capacities of children and adolescents;
- g. To provide medicines, equipment and technologies essential to sexual and reproductive health and reproductive rights, including based on the World Health Organization (WHO) Model List of Essential Medicines⁴⁵; and
- h. To ensure access to effective and transparent remedies and redress, including administrative and judicial ones, for violations of the right to sexual and reproductive health and reproductive rights.⁴⁶

c) Checklist for Legislative Review and Drafting

The rights framework that flows from the relevant international and regional human rights instruments and the authoritative interpretations of the provisions of these instruments can be used to construct a checklist to guide the legislative review and drafting to ensure EAWG and SRH&RR. Thus, such legislative review and drafting should address the following:

1. A Human rights based approach to legislative review and drafting

45 WHO, 'WHO Model Lists of Essential Medicines', <https://www.who.int/groups/expert-committee-on-selection-and-use-of-essential-medicines/essential-medicines-lists>

46 Committee on Economic, Social and Cultural Rights, 'General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)' (2016, E/C.12/GC/22).

Violence against women and girls is a violation of the human rights of women. Women's sexual and reproductive health and reproductive rights are also central to the human rights of women. States parties to relevant instruments are thus under the legal duty to respect, protect and fulfill these rights. A human rights-based approach to legislation highlights the importance of clearly defining the content of rights, and the mechanisms and processes of accountability and remedies to violations of rights.

2. A comprehensive and multidisciplinary approach

In addressing both VAWG and SRH&RR, a comprehensive and multidisciplinary approach is necessary since both are embedded within complex societal, institutional, and normative contexts. In this regard the Handbook for Legislation on Violence Against Women recommends legislation to be “comprehensive and multidisciplinary, criminalizing all forms of violence against women, and encompassing issues of prevention, protection, survivor empowerment and support (health, economic, social, psychological), as well as adequate punishment of perpetrators and availability of remedies for survivors.”⁴⁷

3. Ensuring the Equality of Women and the Prevention of Discrimination through gender sensitive legislation

EVAWG and SRH&RR are both recognized as intimately related to issues of equality and non-discrimination. Violence against women and the denial of women's SRH&RR are manifestations of the unequal and discriminatory treatment of women. There are also particular groups of women who are especially marginalized such as women with disabilities and migrant women. Legislative review and measures should end the explicit and formalized inequality of women and discriminatory practices. No less importantly, however, they should also aim at identifying and ending inequality and discrimination that is not open and legally recognized but does happen as a result of historical legacies or the factual operation of the law. Legislation should also be sensitive to the specific needs of women.

Apart from these broad and overarching principles, the following pointers may be used to ensure that legislative review and drafting address EVAWG and SRH&RR.

4. Clear and Comprehensive Definitions of violence against women

1. Is there any definition of violence against women and girls? Does it cover all forms of violence against women and girls?
2. Does the law provide a comprehensive definition of domestic violence?
3. Does the law include a comprehensive definition of rape including marital rape?
4. Does the law recognize and provide a comprehensive definition and criminalization of sexual assault?

⁴⁷ UN Women, 'Handbook for legislation on violence against women' (2012), p.

5. Does the law recognize sexual harassment as a form of discrimination? Does the law provide a comprehensive definition of and criminalize sexual harassment?

5. Clear definition of the scope of persons protected by the law

1. Does the law ensure that the rights of all persons who faced VAWG and by the denial or the SRH&RR are recognized and protected?
2. In relation to EAWG these may include individuals who are or have been in an intimate relationship, including marital, non-marital, and non-cohabiting relationships; individuals with family relationships to one another; and members of the same household.
3. In relation to SRH&RR these may include: adolescents, migrant women, members of minority or indigenous groups, older persons, persons with disabilities, women and adolescents in conflict and -post-conflict zones, and women in institutional settings.⁴⁸

6. Inclusion of Preventive Measures

Does the law incorporate preventing measures to protect women from violence and the denial of SRH&RR including:

1. Educational measures including the inclusion of subjects relating to EAWG and SRRH&RR in school curricula?
2. Promoting awareness raising and sensitization of EAWG and SRH&RR?
3. Protecting the rights to acquire and disseminate information on SRH&RR?

7. Provision of comprehensive and integrated support services

1. Does the law provide measures to provide comprehensive and integrated support services to survivors of violence?
2. Does the law have measures to realize the accessibility and affordability of SRH&RR?

48 Center for Reproductive Rights and UNFPA, Reproductive Rights: A Tool for Monitoring States' Obligations (2012), https://reproductiverights.org/sites/crr.civicaactions.net/files/documents/crr_Monitoring_Tool_State_Obligations.pdf

8. Establishing specialized police, prosecution and court units to deal with VAW

1. Are there any provisions in the law that establish specialized police and prosecution units that deal with VAWG?

9. Clear and Gender Sensitive Provisions on the Roles of Law Enforcement Agencies and the Justice Process in Dealing with VAW

1. Does the law have clear and detailed provisions on the roles and responsibilities of the police and prosecution agencies in dealing the investigation and prosecution of VAWG cases?
2. Does the law have clear and detailed rules on the processes and steps of the criminal justice process in dealing with VAWG cases and in protecting survivors of violence?
3. Does the law prohibit mediation and other alternative dispute resolution mechanisms VAWG cases?
4. Does the law encourage timely and expedited proceedings in VAWG cases?
5. Does the law provide for protection orders for all forms of violence against women and girls?⁴⁹
6. Does the law provide for emergency orders in VAWG cases?⁵⁰
7. Can survivors have access to participate in criminal proceedings of VAWG cases?
8. Does the law have specific measures dealing with domestic violence?⁵¹
9. Does the law have specific rules on sentencing in VAWG cases?⁵²
10. Does the law have specific rules on handling civil lawsuits in cases of VAWG?

10. Access to Justice

1. Do survivors of violence have access to free legal aid?
2. Does the law provide for mechanisms to provide legal information and services for women to utilize their SRH&RR?

49 UNWomen, 'Handbook for legislation on violence against women' (2012), pp. 44- 47

50 Ibid., p. 47.

51 Ibid., pp 49-50.

52 Ibid., pp. 50- 54.

3. Are there any measures in the law that will hinder women from benefiting from their rights against violence and to SRH&RR?

11. Inclusive Legislative Review and Drafting Process

Does the legislative review and drafting processes:

1. Clearly define the legislative goal?
2. Consult with relevant stakeholders?
3. Adopt an evidence-based approach to legislative drafting?

d) Strategies for Domestication

1. Campaign to Ratify the Maputo Protocol

The overarching goal of this Manual, as with the Spotlight Initiative Africa Regional Programme is that of 'protecting women's rights in Africa'. The key to achieving this goal is to provide resources and support to women's NGOs and CSOs to work with their national governments and regional institutions to help develop a conducive legal environment in the continent. While there is a multitude of activities that this would take, the most critical are a) pushing for the ratification of the Maputo Protocol in all the Member States of the African Union (AU), preferably without harmful reservations, and b) enabling national legislation to domesticate and implement the principles stated in the Protocol. The promotion of the ratification of the Maputo Protocol by member states of the AU that has been an essential pillar in the work of women's organizations such as Equality Now, SOAWR, and the many activist women's NGOs and CSOs.

The SOAWR Coalition has been seeking to achieve this through two main avenues:

a) increased lobbying capabilities of the Coalition to promote the Protocol and hold member states to account; and b) increased public will in support of women's rights articulated by the Protocol. The Coalition has focused on three groups of strategies to achieve these outcomes:

1. Strengthening the Coalition and its members' lobbying capabilities.
2. Awareness-raising among civil society organizations at national and grassroots levels; practitioners (professionals, such as lawyers, judges or the police, who can exert influence on how the Protocol is implemented and domesticated nationally); and the general public.
3. Increasing capabilities among government officials through institutionalizing the government's commitment to women's rights across all sectors of government through sensitization and training work with government officials.

Frequently, the Protocol is regarded by campaigners as a ‘menu of rights’, a powerful tool to tackle ‘hot issues’ where national laws are insufficient to guarantee particular rights for women. This has been done by aiming for the domestication of the Protocol through the incorporation of its provisions into specific national legislation, such as violence against women. This strategy has worked in Liberia, Uganda, Mozambique and Nigeria.

In Liberia, for instance, the SOAWR campaign has focused on urging the Government to take expeditious action to protect girls and women from female genital mutilation (FGM/C) and, to this end, has called on the Government of Liberia to stop issuing permits to FGM/C practitioners, to initiate the process of criminalizing FGM/C and to invest in public education against the practice. Through the Liberian campaign SOAWR was able to seek justice for Ruth Berry Peal who was forcibly genitally mutilated. Ruth was the first Liberian to take the bold stand of announcing publicly the harm caused to her by the practice. Ms. Peal was aware of the poor judicial system in Liberia and requested that the case be transferred to a neutral location so that she could get a fair trial. In this case, the judge made references to the Liberian Constitution and article 4(1) of the African Protocol on the Rights of Women which states that “Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

Ratification and domestication of the Protocol require an increase in the political will of duty bearers (i.e. policy makers at the national level and at the African Union). The SOAWR Coalition has been seeking to achieve this through a) increased lobbying capabilities of the Coalition to promote the Protocol and hold member states to account; and b) increased public will in support of women’s rights articulated by the Protocol.

2. Public Awareness

According to Charles Nyuykonge, a South Africa-based peace and development expert, the African Union and its member states should invest in popularizing AU instruments among the African citizenries.⁵³ This should be a multi-stakeholder task shared between the government, private sector, and the civil society (including the media). The institutional framework for implementation should have a civic education component that educates the public on the content and benefits of complying with the signed instruments.

More than two decades ago, noted feminist legal scholar Sylvia Tamale said,

“ It is the duty of the citizenry, especially political representatives of the people, NGOs, and the media to make our governments more accountable. We need to force our governments to translate their political rhetoric into substance, to incorporate instruments into domestic laws. For example, we must ask our governments to inform the general public about who is in charge of implementing instruments. The citizenry will then have a mechanism (through lobbying, campaigning, demonstrations etc.) to which it can direct its concerns.⁵⁴ ”

⁵³ Charles Nyuykonge p xv

⁵⁴ Tamale, Sylvia, ‘Think Globally, Act Locally: Using International Treaties for Women’s Empowerment in East Africa’, (Agenda: Empowering Women for Gender Equity, 2001, No. 50, African Feminisms One), pp. 97-104.

For example, to report professionally and with impact, journalists need training on SRH&RR to not only help put issues into perspective but also help change negative and retrogressive cultural norms. The African Women's Development and Communication Network (FEMNET) has recognized SRH&RR as an advocacy issue with media being a key partner in driving this agenda. In many African societies, gender relations are characterized by unequal power relations that are dominated within a culture of shared beliefs, values, customs and behaviours. It is within this context that women and girls face discrimination and violations of their rights. Culture is a learning process which changes over time and journalists can play a huge role in changing social thinking and attitudes to enable women and girls achieve human development and lead long healthy lives where their rights are respected.

3. Strategic Litigation

Key organizations in Africa have undertaken the use of strategic litigation to enforce national governments to comply with International Human Rights Law (IHRL) as well as regional mechanisms and the Maputo Protocol. As Equality Now has noted regarding the Maputo Protocol, different countries have enforced the Protocol either directly through state administrative and policy action or decisions of courts, both at the national and regional level, demanding accountability for the rights therein.⁵⁵ Some courts have made reference to the Protocol in the adjudication of cases.⁵⁶ Equality Now has reported on some of the key victories for women's rights advocates and will be contributing to this training with more examples.⁵⁷

In March 2021, the Constitutional Court in Kenya upheld the constitutionality and legality of the Prohibition of Female Genital Mutilation Act, which the petitioner, a medical doctor, had sought to be invalidated on allegations that the Act contravened and violated the rights of women who consented to FGM. The court also found that the Act needs to be strengthened to ensure total protection of women and girls from all forms of FGM/C.

In December 2020, the High Court of Kenya issued a historic decision that found the Government of Kenya liable for lack of efforts to investigate and prosecute cases of sexual and gender-based violence that happened during the post-election violence of 2007. The case was filed by eight survivors with support from NGOs who were seeking accountability and redress for these violations. The Court found the government to not fulfilling the obligations of several human rights instruments including the Maputo Protocol and ordered the government to pay compensation to four of the survivors amounting to KSH 4 million (approximately US\$40,000) per survivor.

55 See '9 Ways the Maputo Protocol Has Protected and Promoted the Rights of Women and Girls across Africa', (Equality Now, 30 October 2021), https://www.equalitynow.org/news_and_insights/9_ways_maputo_protocol/.

56 For a review of 46 cases, see: 'Breathing Life Into The Maputo Protocol: Jurisprudence on The Rights of Women and Girls in Africa' (Equality Now, 2018).

57 '9 Ways the Maputo Protocol Has Protected and Promoted the Rights of Women and Girls across Africa', (Equality Now, 30 October 2021), https://www.equalitynow.org/news_and_insights/9_ways_maputo_protocol/.

Four women were physically and sexually assaulted in 2011 during a demonstration organized by the Egyptian Movement of Change to challenge the Egyptian Constitution to allow for multiple candidates during presidential elections. The women reported the case to the Public Prosecution Office, but the investigators refused to take statements from eye witnesses. The African Commission referred Egypt to the definition of violence against women under Article 1 of the Maputo Protocol and also urged the Egyptian government to ratify the Maputo Protocol.

Another leader in strategic litigation is the Institute for Strategic Litigation in Africa (ISLA⁵⁸). Based in South Africa ISLA also works in Benin, Botswana, Ghana, Kenya, Liberia, Malawi, Nigeria, Tanzania and Uganda, with a mandate to develop a pan African and feminist approach to strategic litigation. They use the rule of law and African domestic and regional courts to advance women's human rights with a particular focus on EAWG by articulating progressive standards and contributing to the development of legal precedents that elaborate on state obligations to protect women.

4. Develop National and Regional Action Plans

A companion intervention to this Manual is the development of a Regional Action Plan (RAP) for Africa on EAWG (including SGBV/ Harmful Practices and SRH&RR).

The goal of the development and rollout of a Regional Action Plan for Africa on EAWG to redress the factors that have impeded progress towards EAWG on the African continent. The need for the RAP indicates the lack of a number of member states to prioritize the development and implementation of National Action Plans (NAP) as well as poor commitment by regional and national partners to increase investment on EAWG by integrating SGBV/HP and SRH&RR into the planning and budget frameworks; and that there is a need to fast track, monitor, and report on Member States' compliance, commitment and achievement on EAWG. While almost half (28 countries out of 55 AU member states) have a NAP on EAWG, there is a definite need to have a regional framework to boost Member States efforts towards EAWG. The inception plan for this project also outlines the components of good practices for NAPs. Very few have the development of legislation and policy reviews as a cross-cutting issue. The development of domestic legislation that incorporates the principles of international and regional human rights instruments is one strategy that should be supported and developed.

5. Draft, Support and Pass National Legislation – Role of Parliament

As we have reviewed above, in some countries, once a treaty is ratified at the international level, it may automatically form part of national law. In other words, it would be directly enforceable by national courts and other implementing authorities. In some other countries, the legislature might have to adopt an act of ratification at the national level. This may have the effect of incorporating a Convention into domestic law. However, even when parliaments ratify a Convention (national ratification), many provisions might still require legislative action before they come into force. This depends, in part, on

58 ISLA, 'Home', (30 June 2022), <http://www.the-isl.org/>.

how specific the Convention's obligations are: the more specific the obligation, the less likely that implementing legislation will be needed. In other cases, including many common-law countries, only those provisions of the treaty that are directly incorporated into national law will give rise to enforceable rights and duties.

Governments might benefit from having a newly established or already existing body, such as an equality commission, a national human rights institution or a gender commission, and conduct a comprehensive review of legislation based on the standards in the Maputo Protocol, CEDAW, and other international and regional human rights instruments (such as the CRC and the CRPD). The process should include:

1. Involving experts from government institutions and ministries, civil society, and persons with disabilities and their representative organizations;
2. Establishing and monitoring time frames for the completion of the review; and
3. Establishing a parliamentary committee to oversee the process and systematically scrutinize any legislative proposal to ensure consistency with the Constitution.

Parliaments can:

1. Revise existing provisions in the constitution or basic law;
2. Include a general guarantee of equality;
3. Draft specific VAWG laws and provisions to protect and guarantee SRH&RR;
4. Adopt additional implementing legislation; and
5. Ensure that there is a mechanism for consulting with women and their representative organizations, at the law-making level.

6. Feminist Movement Building and Advocacy

Women's rights CSOs are a strong force in promoting the rights of women in Africa, even though they have to work under challenging conditions. CSOs have developed knowledge and skills in national and regional networks to push for countries to ratify, domesticate, implement and report on gender equality and women's empowerment instruments. As noted above, domestication refers to the process of transforming or incorporating international laws into national legal systems.⁵⁹ They often share expertise and resources with government entities to promote the objectives of the various women's rights instruments. Many CSOs have generated, implemented and

⁵⁹ The Centre for Human Rights, 'The impact of the Protocol on the Rights of Women in Africa on violence against women in six selected Southern African countries: An advocacy tool' (2009)

documented good practices on EVAWG and have contributed to the drafting of laws, a national consultative process to develop a national action plan, and have set up methods to monitor implementation. For example, Solidarity for African Women's Rights (SOAWR) has remained an indefatigable and resolute force for gender equality for more than a decade, calling upon African governments to adopt, ratify, domesticate and implement the Maputo Protocol. The Coalition has over these years positioned itself as the largest network of women's rights organizations working on the adoption and universal ratification, domestication, and implementation of the Maputo Protocol. With over 50 members in 27 countries⁶⁰, working across the Continent, the SOAWR Coalition is poised to grow in numbers and stride, by ensuring stronger sub-regional clusters that will propel its members to foster greater collaboration at national, sub-regional, and regional levels.

In addition to the work of SOAWR as a coalition, its members also undertake feminist movement building work. For example, Akina Mama Wa Afrika⁶¹ chairs the CSO Committee on Sexual and Gender-Based Violence (SGBV) in the Great Lakes Region, which comprises national, regional, and international human rights organizations and international NGOs based in Kenya and Uganda. The committee mobilizes CSOs in the Great Lakes region to participate in deliberations leading summits of Heads of State of the International Conference on the Great Lakes Region (ICGLR) Member States' Special Summit on Sexual and Gender-Based Violence (SGBV). It also it currently monitors and evaluates the implementation of the Kampala Declaration.

7. Developing Other Monitoring Mechanisms for Accountability

There are other innovative ways of developing monitoring mechanisms in addition to the complementary report writing to instruments and conventions. One is the 'Maputo Protocol Scorecard & Index (MPSI): A Stepping Stone Towards Achieving Women's Rights'. Despite the fact that many countries have now ratified, domesticated and even enacted national laws that borders on issues captured in the Maputo Protocol, reporting continues to remain a challenge. This causes a lack of an effective framework and means to measure the performance of Member States and hold them accountable in terms of commitment and expectation of the Protocol.

The impact of the various mechanisms can be assessed to ensure the successful adherence and implementation of all the Articles in the Maputo Protocol. One way is to use institutional scorecards and an index framework as a form of ongoing audits to evaluate compliance. To support Member States, the AU itself is leading the reprioritization and shifting of focus toward the implementation and monitoring of the Maputo Protocol through the implementation of the Maputo Protocol Scorecard and Index (MPSI). The MPSI aims to promote compliance and accountability for the implementation of continental instruments on women's rights and contributes to the

⁶⁰ For list of members see: SOAWR, 'Members', <https://soawr.org/members/3/>.

⁶¹ Akina Mama wa Afrika, 'Feminist Movement Building', (accessed 9 July 2022), <https://www.akinamamawaafrika.org/feminist-movement-building/>.

body of tools that seek to enhance accountability and assess the progress by Member States in implementing women's rights under the Maputo Protocol. It adopts reporting guidelines produced by the ACPHR which generated indices covering, amongst other themes EAWG and SRH&RR.

The MPSI is particularly important in the context of Covid-19 as it will monitor Member States compliance with the Maputo Protocol during the crisis, identify gaps and shape implementation strategies to promote and protect women's rights during the emergency responses and in long-term recovery plans. This is critical because of the widespread 'shadow pandemic' of violence against women that has occurred during the Covid pandemic. Major benefits can be derived from the effective implementation of the MPSI, including supporting Member States to comply with their reporting obligations under the Maputo Protocol and underscoring various commitments and responsibilities by Member States in implementing the Protocol.

E. Implementation and Monitoring of International Human Rights Instruments

I. Implementation and Monitoring of International and Regional Human Rights Instruments on Ending Violence against Women and Girls (EAWG)

a. Reporting Mechanisms

1. State Reporting

The State reporting process is a fundamental component in monitoring the implementation of a treaty or human rights instrument. The African States that have ratified the Maputo Protocol should report to the African Commission on Human and Peoples' Rights (African Commission). Article 62 of the African Charter and Article 26 (1) of the Maputo Protocol obligates States Parties to submit reports every two years indicating legislative and other measures undertaken towards the full realization of the rights enshrined in the Maputo Protocol.

Without an enforcement mechanism, the State reporting process is the strongest means through which the African Commission can monitor State compliance with regional treaty obligations and engage in constructive dialogue with States toward recommendations for concrete actions at the national level to domesticate the Protocol.

Women in Africa will benefit from legal measures undertaken by States to uphold and guarantee the rights enshrined in the Maputo Protocol. The State reporting process will monitor and guide State action in this respect.

The role of civil society in the State reporting process is outlined in the Charter. Article 45 (1)(c) of the African Charter grants the African Commission an opportunity to cooperate with other African and international organizations with the mandate to protect and promote human rights across the globe. This opportunity inspired the granting of ‘observer’ status to CSOs upon due application and consideration. The African Commission’s resolution 30(5) stipulates that an advantage that CSOs derive from such ‘observer status’ is the preparation of ‘shadow’ or ‘alternative’ reports on the human rights situation in their countries.

2. Alternative and Shadow Reports

While sometimes the terms are used interchangeably, there is a difference between a shadow report and an alternative report. In some jurisdictions, there is now a move to use the term ‘complementary’ report. For example, when a CSO writes its report on CEDAW, with access to the government report submitted to the CEDAW Committee, this is called a shadow report. When a CSO writes its report where no government report is available (either because their government has not written one, or it is written too late), this is called an alternative report. Both of these processes require budget commitments – funds to CSOs and funds allocated to government departments or ministries to undertake the necessary research and report writing. Without earmarked funds, this can be challenging for policymakers, planners, and implementers, particularly where they lack the required capacity due to institutional resource constraints.

Some States submit late reports or combine two or more outstanding reports as a way to keep up to date with their treaty reporting obligations. Sometimes, governments are also burdened with multiple reporting processes on various instruments, causing them to proceed cautiously with the adoption of other instruments.⁶²

A shadow report is an independent report that explains measures that the government has not taken (which it is legally bound by ratification to take) in implementing the provisions of a treaty. The report could be employed as an instrument for monitoring the progress made by governments on the human rights situation of respective States.⁶³

These reports serve several important purposes:

1. As a means through which the African Commission, CEDAW Committee, or other UN or regional bodies can get a reliable and factual picture of the human rights situation in a country.
2. To assist the Commissions and Committees in their constructive engagement and dialogue with States Parties upon consideration of reports.

62 African Union, ‘Law 19- 20 October 2015 Cairo, Egypt,’ Concept Note: “The challenges of ratification and implementation of treaties in Africa,” by Justice Kholisani SOLO (President), Prof. Hajer GUELDICH (Rapporteur).

63 For the preeminent organization that trains NGOs around the world on the development of alternative reports, how to present them to the UN, and the follow up process for advocacy, see: IWRAP, ‘Asia Pacific: International Women’s Rights Action Watch Asia Pacific’, iwrap-ap.org.

3. As an important advocacy tool to be used by CSOs within their countries to address their governments on the need for specific reforms and to mobilize civil society.⁶⁴

The African Union Commission recognizes a shadow report when it is submitted as a parallel report to 'shadow' or to supplement a State report by providing information that is not reported or under-reported.

Equality Now and other CSOs in Africa have developed very effective shadow reports. For example, Equality Now worked with a coalition of CSOs on a range of women's rights issues for the Government of Kenya to urgently address, and conform to the promises and commitments it made when it acceded to the Maputo Protocol.⁶⁵ These topics included equality and non-discrimination; the right of women to participate in the political and decision-making process; protection of women from sexual and gender-based violence, female genital mutilation, child marriage, and technology-assisted violence against women; women's rights relating to marriage, health, and reproductive rights; maternal healthcare; and the rights of women in need of special protection, including women with disabilities, and indigenous women.

In another example, in South Africa in 2011, a coalition of 36 CSOs (under the leadership of three key EVAWG NGOs) worked together to prepare a comprehensive CEDAW shadow report to:⁶⁶

1. Assess the Government's compliance with CEDAW obligations;
2. Identify and comment on the disparities in the government's report; and
3. Assist the Committee in conducting an assessment of the government's compliance with CEDAW and make recommendations that will contribute to the promotion and protection of women's rights in South Africa.

b. Complaint Mechanisms

1. CEDAW Optional Protocol Mechanism

The Optional Protocol (OP) to the CEDAW allows individuals to bring complaints or inquiries to the independent experts of the CEDAW Committee when there has been an alleged violation of CEDAW. Article 8 also establishes an inquiry procedure that allows the Committee to initiate an investigation where it has received reliable information of grave or systematic violations by a State Party of rights established in the Convention.

64 For some earlier research see: CEDAW, 'The First CEDAW Impact Study', <http://iwrp.org/projects/cedaw/>.

65 Equality Now, 'Kenya Shadow Report on Maputo Protocol Points to Opportunities and Challenges in Enforcing Women's Rights Treaties', (6 December 2021), https://www.equalitynow.org/news_and_insights/kenya-shadow-report-on-maputo-protocol-points-to-opportunities-and-challenges-in-enforcing-womens-rights-treaties/.

66 South Africa CEDAW Shadow Report in response to South Africa Country Report (ohchr.org)

The OP comprises two procedures: 1). a quasi-judicial procedure allowing submission to the CEDAW Committee communications by or on behalf of individuals or groups of individuals, in cases of violations of rights protected under the Convention; and 2). an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights. Under the communications procedure, the CEDAW Committee will determine whether or not the State has failed to fulfill its obligations under CEDAW. If a violation is found, the Committee will issue its views and provide recommendations to the State for actions that it may take to remedy the situation. This may include both remedies for the individual victim, in terms of recommending adequate compensation and reparation, as well as structural or systemic change.

A 2012 case under the OP concerned the plight of two widows in Tanzania ('E.S.' and 'S.C.') who, under Tanzania's customary inheritance law, were denied the right of inheriting or administering the estates of their late husbands.⁶⁷ The submission alleged that millions of other women in Tanzania remain governed by discriminatory customary laws, and experienced the same violations encountered by the two women in this case. The patrilineal inheritance law was criticized and noted that such a State of vulnerability restricted the economic autonomy of the two women, preventing them from enjoying equal economic opportunities. The Committee held that the Government of Tanzania, by condoning legal restraints on inheritance and property rights that discriminate against women, had violated several articles under the CEDAW Convention. The Government of Tanzania was informed to grant the women appropriate reparation and adequate compensation, commensurate with the seriousness of the violations of their rights and the Committee urged the Government to repeal or amend its customary laws, including those on inheritance, to bring them into full compliance with CEDAW requirements.

Two other very important recommendations in the decision were that the State should:

1. Encourage dialogue by holding consultations between civil society and women's organizations and local authorities, including with traditional leaders at the district level, to foster dialogue on the removal of discriminatory customary law provisions; and
2. Conduct awareness-raising and education measures to enhance women's knowledge of their rights under the Convention, in particular in rural and remote areas.

The key role played by CSOs in the Committee case law underlines the Optional Protocol's "potential not only as a redress route for particular individuals but also as a focus for wider mobilization around needed legal and policy reforms."⁶⁸

⁶⁷ ESCR, 'E.S. & S.C. v. United Republic of Tanzania' (CEDAW/C/60/D/48/2013 Communication No. 48/2013), <https://www.escr-net.org/caselaw/2015/es-sc-v-united-republic-tanzania-cedawc60d482013-communication-no-482013>.

⁶⁸ Ibid.

2. The Maputo Protocol and EVAWG

The most important instrument in Africa for women is the Maputo Protocol. To date (as of July 2021)⁶⁹ 43 out of the 55 countries in Africa have ratified the Protocol.⁷⁰ Under the Maputo Protocol, any act of violence that is directed against a woman or girl because of her gender, or violence that affects women disproportionately is considered GBV or VAWG. These definitions include acts or threats of violence in both the private and public spheres, in peacetime as well as during armed conflict. According to the Maputo Protocol, this violence includes physical, sexual, or psychological violence; economic abuse and exploitation; deprivation or neglect. The provisions cover all spheres in which women experience violence—in the family, in the community (eg. at school or work), and at the hands of the State.⁷¹

The Maputo Protocol⁷² covers a wide spectrum of women's rights and incorporates provisions that relate to the specific threats women encounter including violence in the family, at work, in their communities, and during times of armed conflict. It calls for the elimination of all forms of gender-based violence within the rights to life, integrity, and security of the person (Article 4), with other provisions reinforcing the State's obligation to end gender-based violence and discrimination. It contains progressive wording on sexual and reproductive health and reproductive rights (Article 14) the right to "a positive cultural context" (Article 17) and a "healthy and sustainable environment" (Article 18). As well as the right to be the protection by the rules of international humanitarian law in armed conflict (Article 11), the Maputo Protocol includes the "right to a peaceful existence and the right to participate in the promotion and maintenance of peace" and (Article 10) includes diversion of military spending to social development, particularly for women (Article 10 (3)). It is also the first women's rights treaty in the world to call for the elimination of female genital mutilation (Article 5) and to address the HIV/AIDS pandemic through women's experiences of it (Article 14). In addition, the language of the Maputo Protocol makes it clear that women and girls are to be protected from abuse and sexual harassment in educational institutions and the workplace.

As with the CEDAW OP, CSOs and individuals can file individual complaints alleging violations of the rights protected in the Maputo Protocol, as well as the Protocol to the African Charter on Human and Peoples' Rights of Persons with Disabilities in Africa, which prohibits discrimination on the basis of disability and guarantees persons with disabilities equal and effective legal protection.⁷³ The African Commission examines the facts and review arguments of parties to determine whether there has been a violation and if so, recommends what the State must do to remedy the victim. For

69 Ratification status can be checked at: Solidarity for African Women's Rights, 'Protocol Watch', <https://soawr.org/protocol-watch/>.

70 '9 Ways the Maputo Protocol Has Protected and Promoted the Rights of Women and Girls across Africa' (Equality Now, 30 October 2021), https://www.equalitynow.org/news_and_insights/9_ways_maputo_protocol/.

71 London School of Economics and Political Science, "LSE WPS" (London School of Economics and Political Science, accessed 9 July 2022), <https://www.lse.ac.uk/women-peace-security>

72 African Union, 'Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa', (date of adoption 1 July 2003), <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>

73 OHCHR 'Convention on the Rights of Persons with Disabilities', (13 December 2006, resolution A/RES/61/106), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

individual complaints, the African Commission can determine a number of remedies, including ordering State authorities to make urgent interventions.

c. **Checklist for Monitoring Compliance with the International and Regional Human Rights Instruments on EAWG**

A checklist can be a useful tool to ensure that key components of compliance are monitored. Some CSOs also issue annual score cards to measure the compliance of their governments with specific instruments.

The following are some of the questions to check to see whether there is compliance:

1. What steps has the State taken to eliminate violence against women in institutional settings, such as violence against girls in educational institutions or involuntary sterilization in health facilities?
2. What steps has the State taken to eliminate violence against women in conflict or post-conflict settings?
3. What steps has the State taken to prevent violence against women in the private and community sphere?
4. What measures are in place for the State to exercise due diligence to investigate and punish acts of violence against women?
5. What steps has the State taken to ensure that accountability mechanisms that facilitate access to justice are available to survivors of violence, and to what extent are these mechanisms responsive to the specific obstacles women and girls face when seeking justice?
6. To what extent has the State developed and implemented national strategies and plans aimed at preventing, punishing, and eradicating all forms of violence against women, including harmful or abusive practices against adolescents?⁷⁴
7. To what extent has the State allocated adequate budgetary, human, and administrative resources to the implementation of such strategies or plans?
8. To what extent does the State penalize violent crimes against women?
9. What steps has the State taken to eliminate loopholes for escaping liability, for instance by allowing a rapist to escape criminal liability by marrying his victim?

⁷⁴ For a good example of a national action plan see: Republic of South Africa, 'National Strategic Plan on Gender-Based Violence & Femicide', (11 March 2020), https://www.gov.za/sites/default/files/gcis_document/202006/stratplan-gbvs.pdf

II. Implementation and Monitoring of International and Regional Human Rights Instruments on Sexual and Reproductive Health and Reproductive Rights (SRH&RR)

The implementation of international and regional human rights instruments on SRH&RR including the Maputo Plan of Action 2016 – 2030 is critical to ensure operationalization of existing laws and policies. For instance, the ultimate goal of Maputo Plan of Action is for African Governments, civil society, the private sector and all multisector development partners to join forces and redouble efforts so that together, the effective implementation of the continental policy frameworks on SRH&RR, Agenda 2063 and SDGs are achieved in order to end preventable maternal, newborn, child and adolescent deaths by expanding contraceptive use, reducing levels of unsafe abortion, ending child marriage, eradicating harmful traditional practices including female genital mutilation and eliminating all forms of violence and discrimination against women and girls and ensuring access of adolescents and youth to SRH&RR by 2030 in all countries in Africa.

a. Checklist of Positive Duties

This checklist can help to ensure that States can meet these positive duties when drafting and domesticating International and Regional Human Rights legislation so that:

1. All laws and policies, and their implementation, prohibit discrimination in the provision of SRH&RR, including repealing laws that criminalize services that only women need and taking into consideration the specific needs of marginalized populations.
2. Women and girls have access to the full range of maternal health services, including safe abortion services both in law and in practice.
3. All barriers are removed to accessing contraception, including emergency contraception, and safe abortion services, such as parental or spousal authorization requirements.
4. Laws and practices respect the right to informed consent in reproductive health care services, especially for marginalized populations, with particular safeguards against involuntary sterilization.
5. Comprehensive reproductive health care is guaranteed to be affordable and geographically and physically accessible.
6. All, including adolescents, have the right to full and accurate information on sexual and reproductive health and reproductive rights, including formal sex education.

7. Privacy and confidentiality in the provision of sexual and reproductive health care, including for adolescents, are respected.
8. There are adequate budgetary allocations for the full implementation of laws and policies on sexual and reproductive health and reproductive rights.
9. There is broad participation of key stakeholders in the formulation, implementation and monitoring of laws, including relevant government bodies, ministries, and external stakeholders such as civil society, women groups and the marginalized groups who are impacted.
10. The monitoring and evaluating of laws and policies is consistent to ensure their implementation and attainment of their proposed aims.
11. Data disaggregated by sex are collected as part of rigorous mechanisms for monitoring and evaluation.
12. Individuals who are harmed by human rights violations have access to appropriate and adequate remedies and the State must take measures to prevent human rights violations from recurring.
13. Those responsible for any violations are held to account.

b. A Checklist on Compliance

This checklist can assist CSOs and other stakeholders to monitor whether or not their State is complying with positive laws and policies on SRH&RR, if they exist, as well as international and regional human rights mechanisms.⁷⁵ It is also a useful guide for drafting domestic legislation to ensure that these components are included.

Has the State taken steps to:

1. Develop and implement measures to eliminate discrimination in the field of sexual and reproductive health and reproductive rights through policy?
2. Ensure that SRH&RR services are available, accessible, acceptable and of good quality both in law and in practice?
3. Eliminate laws or policies that require third party authorization for access to SRH&RR information and services?

⁷⁵ Based on Center for Reproductive Rights and UNFPA, Reproductive Rights: A Tool for Monitoring States' Obligations (2012), https://reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_Monitoring_Tool_State_Obligations.pdf.

4. Eliminate discriminatory policies or practices in both the public and private spheres, such as mandatory pregnancy testing or practices that target ethnic or racial minorities and groups, women living with HIV/AIDS, or women with disabilities for involuntary surgical sterilization?
5. Involve women in the planning, implementation, and monitoring of policies, plans, and programmes?
6. Ensure access to justice for persons who have suffered discrimination in access to sexual and reproductive health and reproductive rights services, goods and information?
7. Develop a national strategy or plan that includes measures to ensure access to contraceptive information and services?
8. Ensure that such administrative or judicial safeguards are accessible and timely?
9. Eliminate harmful practices that can contribute to high-risk pregnancies, such as FGM/C or early or forced marriages?
10. Ensure that women and girls are not exposed to preventable health risk because of pregnancy?
11. Develop and implement measures to reduce the risks of unsafe or clandestine abortions?
12. Eliminate restrictions on access to abortion services such as laws requiring third-party authorization (e.g., parental, spousal, or judicial) to access abortion services?
13. Develop a national strategy or plan aimed at ensuring prevention, treatment, and control of HIV, including by ensuring access to prevention and treatment programmes and eliminating discrimination against individuals living with HIV/AIDS?
14. Allocate adequate budgetary, human, and administrative resources to the implementation of such strategies or plans?

III. **Advocacy by Stakeholders on the Implementation**

Undertaking advocacy at all levels to ensure the implementation of international and regional human rights instruments on EAWG and SRH&RR is critical to realize the Operationalization of the laws and policies that have been ratified and domesticated.

These are specific recommendations to the following bodies:

To the AUC:

- Engage in high-level advocacy to ensure political commitment and leadership on the ratification, domestication and implementation of international and regional human rights instruments on EAWG and SRH&RR.
- Advocate for increased resources for programmes on EAWG and SRH&RR
- Ensure policies and strategies among member States are harmonized with continental and global instruments.
- Put in place a monitoring, reporting, and accountability mechanism for the plan under which five-year, 10-year and end-of-term evaluations of progress of implementation would be ensured.
- Host a data and best practice platforms to support the monitoring, reporting and accountability mechanism.
- Identify and share best practices.

To the RECs:

- Engage in high level advocacy to ensure political commitment and leadership on the ratification, domestication and implementation of international and regional human rights instruments on EAWG and SRH&RR; Provide technical support to Member States including training in the area of laws and policies on EAWG and SRH&RR.
- Advocate for increased resources for programmes on EAWG and SRH&RR.
- Harmonize the implementation of national action plans, and monitor progress annually.
- Identify and share best practices.

To Parliaments:

- Raise public awareness of the key issues and priorities around EAWG and SRH&RR laws and budgets.
- Allocate adequate funding to budgets that prioritize programmes on EAWG and SRH&RR.
- Review proposed annual work plans and budgets to ensure that EAWG and SRH&RR programme targets and priorities are reflected in the implementation phase.

To the Member States:

- Ratify, domesticate and implement laws and policies related to EAWG and SRH&RR.
- Put in place advocacy, resource mobilization and budgetary provisions.
- Monitor the implementation of the relevant laws and policies on annual basis.
- Closely coordinate with civil society organizations, private sectors, public institutions and religious and traditional institutions to participate in national initiatives and programmes.

To the CSOs:

- Examine the policies, strategic budgets, and implementation plans of governments on EAWG and SRH&RR.
- Work alongside government implementers to advocate for the appropriate standards to be incorporated in the implementation phase.
- Monitor the implementation of programmes to assess whether the results will contribute to EAWG and SRH&RR.

REVIEW QUESTIONS AND EXERCISE – CASE STUDY OF DOMESTIC LAWS ON EAWG AND SRH&RR

A facilitator in each small group can assist in developing various scenarios and case studies for the group participants to engage in a dynamic exercise.

Reflecting on your experiences working on EAWG and SRH&RR, discuss the challenges of ratification and domestication in a country that you are familiar with. What differences, if any, do you see in the nature of these challenges? What can be done to address these challenges?

Select a country whose law(s) deal with EAWG and SRH&RR. Use the checklist in Section 3 of this Module to evaluate if the law conforms to the normative standards of human rights instruments on EAWG and SRH&RR. Identify any measures to improve the standards and effectiveness of the law. Suggest any modification or expansion to the checklist itself.

Annex: Additional Resources for Each Module

MODULE I

On the nature of international law and the law of treaties –

United Nations. 'United Nations Audiovisual Library of International Law'. United Nations. <https://legal.un.org/avl/trainingmaterials.html>

The following two United Nations publications dealing with international law and treaties are particularly useful:

United Nations. *International Law Handbook: Collection of Instruments, United Nations Audiovisual Library of International Law*. <https://legal.un.org/avl/handbook.html>

United Nations Treaty Section of the Office of Legal Affairs. 'Treaty Handbook', United Nations (2013). <https://treaties.un.org/doc/source/publications/THB/English.pdf>

On the international and African human rights systems:

The UN Office of the High Commissioner on Human Rights has extensive publications dealing with the international human rights system, the various human rights conventions, and the treaty bodies including their jurisprudence. Educational materials dealing with the subjects covered in the second section of this Module are available at:

OHCHR Databases. <https://previous.ohchr.org/EN/PublicationsResources/Pages/databases.aspx>

African Union. *Handbook 2021: Arts, Culture and Heritage: Levers for Building the Africa We Want*. African Union (2021). https://au.int/sites/default/files/documents/31829-doc-AU_HBK_2021_-_ENGLISH_web.pdf

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MODULE II

AUC, United Nations Economic Commission for Africa and UNFPA. 'Addis Ababa Declaration on Population and Development in Africa beyond 2014'. 4 October 2013.

AUC. 'The Maputo Plan of Action 2016-2030 for the Operationalization of the Continental Policy Framework for Sexual and Reproductive Health and Rights: Universal Access to Comprehensive Sexual and Reproductive Health Services in Africa', https://au.int/sites/default/files/documents/24099-poa_5-_revised_clean.pdf.

International Planned Parenthood Federation, Liaison Office to the African Union and ECA. *Maputo Plan of Action 2016 – 2030: For the Operationalization of the Continental Policy Framework for Sexual and Reproductive Health and Rights (Popular Version)*. IPPF and the Department of Social Affairs of the African Union Commission. [MAPUTO-PLAN-OF-ACTION-2016-2030.pdf](https://www.srjc.org.za/FILES/2016-2030/PLAN-OF-ACTION-2016-2030.pdf) (srjc.org.za).

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