

THE RIGHTS OF WOMEN AND GIRLS IN

South Africa ♀

African Commission's Concluding Observations and Recommendations to the Government of South Africa, with regards to guaranteeing the rights of women and girls

Young girls forced into marriages stand a higher risk of pregnancy related complications, maternal mortality and a high risk of contracting STD's and HIV/AIDS

Maputo Protocol

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, otherwise referred to as the Maputo Protocol is a regional human rights treaty that was adopted by the African Union in 2003, and came into force in 2005. It is a comprehensive document that seeks to improve the status and lives of all women and girls in Africa. It addresses inequalities and discrimination against African women.

African Charter

The Maputo Protocol supplements the African Charter on Human and Peoples' Rights (African Charter). The African Charter is a regional instrument that promotes and protects human rights and basic freedoms on the African continent. All 54 member states of the African Union are parties to the Charter, 38 of which have also ratified the Maputo Protocol as of June 2017.

Women seeking political office face considerable obstacles, including patriarchal attitudes toward leadership, lack of financial support, and threats of violence and intimidation?

Teenage pregnancy has negative consequences on the health, education, employment and rights of an untold millions of girls?

African Commission

Implementation of the rights set out in the African Charter and the Maputo Protocol are monitored by the African Commission on Human and Peoples' Rights (African Commission). The African Commission is a human rights treaty body established under Article 30 of the African Charter. It is made up of eleven independent experts who receive and consider periodic reports on the situation of human rights in each country and issue concluding observations and recommendations. State parties are required to submit reports under Article 62 of the African Charter and Article 26 (1) of the Maputo Protocol.

Concluding Observations

Concluding observations give an account of the positive aspects of the implementation of a treaty, the factors restricting the enjoyment of human rights and the areas of concern regarding the exercise of human rights in a country. The Commission also makes recommendations to guide State Parties in dealing with the concerns raised.

Did you know that when more women work, economies grow?



South Africa's 2nd Periodic State Report

In February 2016, the Government of South Africa submitted its combined second State periodic report under the African Charter and its initial report under the Maputo Protocol to the African Commission. It outlined the steps taken to implement the human rights treaty provisions in the Country. This report comprised of Part A, which is a report on implementation of the African Charter, and Part B, on the Maputo Protocol.

This factsheet focuses on the CONCLUDING OBSERVATIONS AND RECOMMENDATIONS issued by THE AFRICAN COMMISSION in 2016 relating to the implementation of the MAPUTO PROTOCOL^[1]

AFRICAN COMMISSION OBSERVATIONS AND RECOMMENDATIONS

The African Commission made several major observations and recommendations to the South African Government on measures for strengthening the enjoyment of women's rights as guaranteed by the African Charter and the Maputo Protocol.

On the Maputo Protocol

RECOMMENDATIONS BY THE AFRICAN COMMISSION:

Government should enact a legislation domesticating the Maputo Protocol.

PROBLEM:

Lack of a law domesticating the Maputo Protocol.

The Commission also noted with concern the continued presence of reservations made under the Maputo Protocol in respect to the following articles:

- Article 4(2)(j) which deals with the issue of death penalty in relation to pregnant and nursing mothers
- Article 6(d) which deals with the registration of marriages
- Article 6(h) which deals with the equality of parents to pass nationality to their children

FACT:

The Maputo Protocol recognises the crucial role that women play in preserving African values based on principles of equality, peace, freedom, dignity, justice, solidarity and democracy ^[2].

On Rights Related to Marriage

RECOMMENDATIONS BY THE AFRICAN COMMISSION:

- Government must enforce laws that outlaw the practice of 'Ukuthwala'
- Harmonise laws on the minimum age of marriage to reflect 18 years as minimum without any exceptions
- Review laws criminalising child marriage for better and more adequate protection

PROBLEM:

Existence of harmful practices such as 'Ukuthwala' and child marriage despite efforts at criminalisation.

'Ukuthwala' is a form of abduction that involves the kidnapping of a girl or a young woman by a man and his friends or peers with the intention of compelling the girl or young woman's family to endorse marriage negotiations. *'Child marriage'* is a marriage in which either one of the parties, or both, is or was a child under the age of 18 at the time of union.

FACT:

Six percent (6%) of girls in South Africa are married before the age of 18 ^[3].

On the Rights to Life, Integrity and Security of the Person

RECOMMENDATIONS BY THE AFRICAN COMMISSION:

Government should speed up the enactment of the Hate Crimes Bill to criminalise corrective rape.

PROBLEM:

High incidences of sexual and gender based violence particularly against members of the LGBTI community in form of 'corrective rape'.

'Corrective rape' (Homophobic rape) is a hate crime wielded to punish non conformity to gender stereotypes and convert lesbians to heterosexuality – an attempt to 'cure' them of being gay.

'Hate crimes' are identity crimes, directed not only at the identity of the victim but also of the group to which they belong. A victim is thus often targeted on the basis of their race, religion, creed, national origin, sexual orientation, or gender.

FACT:

At least 500 lesbian women in South Africa are victims of 'corrective rape' each year ^[4].

On the Right to Participation in Political and Decision-Making Processes

RECOMMENDATIONS BY THE AFRICAN COMMISSION:

Government should develop laws and policies to increase women's representation in all levels of decision making and in the Judiciary.

PROBLEM:

Low representation of women at decision-making levels and the Judiciary despite the concerted efforts made at ensuring gender equality in all sectors.

FACT:

As of 2016, out of a total of 242 permanent judges in South Africa, only 86 are women ^[5].

On the Right to Education and Training

RECOMMENDATIONS BY THE AFRICAN COMMISSION:

Government must develop programmes aimed at curbing pregnancy amongst girls of school going age

PROBLEM:

High school drop-outs amongst girls of school going age as a result of teenage pregnancy. Other factors limiting women and girls access to quality education include family responsibilities, poverty and other socio-economic conditions prevalent in the country.

FACT:

Over 45 thousand female learners in South Africa fell pregnant in 2009, with teenage pregnancy representing one of the leading causes of early school drop outs after economic reasons ^[6].

On Economic and Social Welfare Rights

RECOMMENDATIONS BY THE AFRICAN COMMISSION:

Government should build operational and institutional mechanisms to combat the high rate of unemployment amongst women aged 15 to 24 years

PROBLEM:

High unemployment rates amongst women aged 15 to 24 years who are at their vibrant working ages.

FACT:

Nearly one in every two black South African women is unemployed. South African women between the ages of 15 and 34 years constitute 49.1% of youth not employed or studying ^[7].

On Extractive Industries and Environment

RECOMMENDATIONS BY THE AFRICAN COMMISSION:

- Government should take measures to address the following limitations in the Mining Charter such as:
 - failure to address gender inequality in the sector whether in relation to ownership, management positions or core mining roles
 - lack of reference to measures addressing gendered impacts of mining, which include the loss of livelihoods experienced by women who are dispossessed, due to mining activities

PROBLEM:

Limitations in the Mining Charter that negatively impact women and their livelihood.

FACT:

Women make up only 11% of the operational mining workforce in South Africa despite efforts by government to increase women participation in this sector ^[8].

THE RIGHTS OF WOMEN AND GIRLS IN South Africa ♀

**"There is no tool for development more effective
than the empowerment of women."
Kofi Annan**

Maputo Protocol

For more information on the Maputo Protocol, South Africa's report and concluding observations and recommendations, please visit www.maputoprotocol.up.ac.za

Women's Rights Unit

This factsheet has been produced by the Women's Rights Unit, Centre for Human Rights, University of Pretoria, South Africa. Established in 1993 the objective of the Women's Rights Unit at the Centre for Human Rights is to contribute to the improvement of the quality of life and the status of women (and the girl-child) in Africa.

Centre for Human Rights

The Centre for Human Rights, Faculty of Law, University of Pretoria, is both an academic department and a non-governmental organisation. The Centre is an internationally recognised university-based institution combining academic excellence and effective activism to advance human rights, particularly in Africa. For more information on the Centre for Human Rights, please visit www.chr.up.ac.za

Sources

- 1 African Commission on Human and Peoples' Rights
<http://www.achpr.org/states/south-africa/reports/2nd-2003-2014/>
(accessed 25 August 2017)
- 2 Institute for Security Studies 'Women, peace and security: Implementing the Maputo Protocol in Africa' JULY 2016
<https://oldsite.issafrica.org/uploads/Paper295.pdf>
(accessed 24 August 2017)
- 3 Girls Not Brides 'Child marriage around the world'
<http://www.girlsnotbrides.org/child-marriage/south-africa/>
(accessed 23 August 2017)
- 4 OSISA 'Classify 'Corrective' Rape as Hate Crime' 25 November 2012
<http://www.osisa.org/buwa/south-africa/classify-%E2%80%98corrective%E2%80%99-rape-hate-crime>
(accessed 22 August 2017)
- 5 Michelle Toxopeus 'Women in the Judiciary' 12 June 2017
<http://www.politicsweb.co.za/opinion/women-in-the-judiciary--michelle-toxopeus--hsf>
(accessed 23 August 2017)
- 6 UNFPA 'Young People: Factsheet' March 2013
http://countryoffice.unfpa.org/filemanager/files/southafrica/young_people_march_2013_fact_sheet.pdf
(accessed 23 August 2017)
- 7 Africa Check 19 November 2014
<https://africacheck.org/reports/do-black-women-make-up-37-5-of-unemployed-south-africans-aged-15-34/>
(accessed 24 August 2017)
- 8 Susan Kihn 'The challenges that women in mining in South Africa continue to face'
<http://careermine.infomine.com/the-challenges-that-women-in-mining-in-south-africa-continue-to-face/>
(accessed 23 August 2017)

Women's Rights Unit
Centre for Human Rights
Faculty of Law, University of Pretoria
Tel: 012 420 4525
patience.mpani@up.ac.za

www.chr.up.ac.za



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA



**Centre for
Human Rights**
UNIVERSITY OF PRETORIA