

# **Study on Domestication and Implementation of African Union Treaties**

## **Synthesis Report**

The Benefits for AU Member States and Africa's dynamic people

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## **About “Accelerating the Ratification and Domestication of AU Treaties” Project**

The project is designed to address challenges and bottlenecks associated with ratification and domestication of 6 selected treaties, and help enhance the capacity of the AU for the medium and long term to enable, manage the ratification process, and provide tailored support to member states with domestication challenges. The project is implemented both at the regional and national levels and aims to leverage UNDP’s presence in all AU Member States; in Kenya, the project is implemented in close collaboration with the Ministry of Foreign Affairs.

The project focuses on the following objectives, which are inherently linked to the outcomes of the project:

1. To ensure that the AU has legitimacy and meaning beyond its Headquarters in Addis Ababa by linking the treaties it has developed at the continental level with positive impact on the lives of ordinary Africans; this will ensure that the values on which the AU is built are protected and advanced.
2. The African continent is better enabled to meet both the objectives outlined in the Agenda 2063 and the 2030 Agenda for Sustainable Development by providing a robust legal framework in which they can be implemented at regional and country levels.
3. To improve harmonization between AU treaties and the different RECs on the continent - thereby enhancing national planning processes and developing synergies across legal frameworks. Fostering a harmonized approach among the RECs, which are guided by AU agreements and principles, is expected to have a significant impact on relations within but also between the RECs, and to facilitate cooperation for trade and human security in border regions.
4. To ensure the work of international development partners – including both bilateral and multilateral actors – is anchored in, supportive of and leveraging AU treaties.

Six priority countries were selected jointly with the AUC and partners based on regional balance, openness to civil society, ‘deep-rootedness’ of democratic system, legal diversity (encompassing the three-major existing legal systems on the African continent) and willingness to participate in this first phase of the project. These are Senegal and Burkina Faso (Western Africa) Kenya (East/Horn of Africa), Tunisia (Northern Africa), Sao Tome and Principe (Central Africa) and Mozambique (Southern Africa). The following 6 treaties have also been

selected during the first phase:

- 1) African Charter on Human and People's Rights, adopted in 1981
- 2) Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), adopted in 2003.
- 3) African Youth Charter, adopted in 2006.
- 4) African Charter on the Rights and Welfare of the Child, adopted in 1990.
- 5) African Charter on Democracy, Elections and Governance, adopted in 2007.
- 6) AU Convention on Prevention and Combatting Corruption, adopted in 2003.

The ratification and domestication of the treaties will have a significant impact on development in the country as it gives basis for state consent to issues of common concern and enhances government accountability to the people.

## **List of Acronyms & Abbreviations**

ACDEG	African Charter on Democracy, Elections and Governance
ACHPR	African Charter on Human and Peoples' Rights
ACMPR	African Commission on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AJS	Association of Senegalese Jurists
APAC	Association of African Communication Professionals
APRM	African Peer Review Mechanism
ASCE	Higher Authority of State Control and Fight against Corruption
AU	African Union
AUABC	African Union Advisory Council on Corruption
AUC	African Union Commission
AUCIL	AU Commission on International Law
CAJ	Commission for Administrative Justice, Kenya
CEMIRIDE	Centre for Minority Rights and Development
CNPVE	National Council for the Prevention of Violence in schools (Burkina Faso)
COK	Constitution of Kenya (2010)
COSEF	Senegalese Council of Women
CRC	United Nations Convention on the Rights of the Child
CSO	Civil Society Organisations
DOJ	Department of Justice
EAC	East Africa Community
EALA	East African Legislative Assembly
ECOWAS	Economic Community of West Africa
FC	Civil Forum
FGM	Female Genital Mutilation
IEBC	Independent Electoral and Boundaries Commission
ILO	International Labour Organisation
IREC	Independent Review Commission
KNHRC	Kenyan National Human Rights Commission
MENA	Middle East and North Africa sub-region
MFA	Ministry of Foreign Affairs
MOF	Ministry of Finance

NEPAD	New Partnership for Africa's Development
NGEC	National Gender Equality Commission, Kenya
NGEC	National Gender Equality Commission, Kenya
NGO	Non-governmental Organization
OAG	Office of the Attorney General
OAU	Organisations of African Union
ODI	Overseas Development Institute
OLC	Office of the Legal Counsel, African Union
PADS	African Party for Democracy and Socialism
PARENA	Party for African Renaissance
PDS	Senegalese Democratic Party
PIT	Party for the Independence of Labor
PM	Prime Minister
PS	Socialist Party
REC	Regional Economic Communities
RND	African Party for Democracy and Socialism
RSJ	Network <i>Siggil Jigeen</i>
STP	Sao Tome and Principe
UN	United Nations
UNCAC	UN Convention against Corruption
UN-CRC	United Nations Convention on the Rights of the Child
UNDP	United Nations Development Programme
UNDP	United Nations Development Program
URD	Union for Democratic Renewal
VCLT	Vienna Convention on the Law of Treaties

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## **Executive Summary**

The aspirations of the African continent's citizens have over the years been aptly described in the African Union's (AU) legal instruments, policy frameworks, and standards. The formation of the Organisation of African Union (OAU) on the May 25, 1963 and its transition to the AU in 1999 as the continental bodies charged with formulating international policy prepared the ground for translating these instruments and frameworks into reality. The fiftieth anniversary of the AU in 2013 provided a fitting opportunity to showcase its progress in impacting the lives of the citizens of Africa. The AU has steadily showed its commitment to improving the lives of Africans, at least at the policy formulation level, evident in the 49 legal instruments and policy frameworks<sup>1</sup>.

The UNDP and the OLC believe that popularising, implementing, and domesticating these treaties successfully at the national level will have a tremendous positive impact on the lives of nearly 1 billion citizens of the African continent. Through several initiatives since the inception of the project, the joint UNDP-OLC partnership has re-examined the imperative of compliance with AU instruments by member states at the national level: looking at the progress made by member states, and the implications of existing challenges and successes on realising the aspirations set out in those treaties.

This report comprises four major chapters that discuss the status of compliance with six AU treaties in six case study countries. An introduction to the project provides the contextual background which discusses the implications of treaty ratification and domestication on democratic governance, transparency and human rights; rights of women; the rights and welfare of the child and the youth; anticorruption and development. In its background the chapter offers a synopsis of the rationale for case studies, and research methodology. Chapter one speaks to the benefits of treaty ratification and x-rays the contents of AU treaties under review. Chapter two discusses the treaty making processes and unearths some nuances in the different approaches which AU member states take. This helps in pointing out where there might be hold-ups in the domestication process and as such projects towards supporting member states can have a clear entry and anchor point. Chapters three explores attitudes of African states and preferences for international treaties over AU treaties. The chapter equally offers a persuasive justification for why AU treaties should be given preference while concluding with an extensive survey of ratification and domestication experiences of pilot countries with the view of showing slow and steady efforts by different stakeholders to reap

from the benefits of rights enshrined in treaties. And chapter four discusses the challenges which bedevil and stall treaty ratification and domestication: some of such challenges are political, financial and operational considerations. That these challenges come with grave consequences cannot be overstated and as such Chapter 5 is a synoptic conclusion which also enlists a set of operational recommendations critical for accelerating the ratification and domestication of AU treaties.

The report's main conclusion is that efforts to establish mechanisms for implementing AU instruments have been robust. However the actual implementation has not been as robust and more efforts are needed. AU and its member states still remain committed to expressing their aspirations for improved socio-economic and political development by formulating instruments. This is an expression of their belief in the potential role that these decisions have in transforming the continent to better the citizens' lives.

In 2014 alone, the AU adopted six new legal instruments addressing various policy issues, ranging from the decentralisation of government and cross-border cooperation, to cyberspace security. These are positive steps towards improving lives and eradicating poverty. But translating these steps into concrete results requires full compliance with the instruments' provisions: Member states need to ratify, implement, and domesticate these decisions at the national level.

A compliance snapshot of most countries, for instance, shows that apart from AU's foundational instruments like the Treaty Establishing the African Economic Community - which has attracted 49 ratifications (91%) - those relating to good governance, transparency, environment and natural resources, gender justice, and human rights have been signed by most states but ratified by only a few, and at a slow rate. The challenge going forward is, therefore, not so much the formulation of new policies but rather the implementation of those already formulated. This will require political resolve and heightened institutional capacities. The policy arguments and main messages of this report are summarized below

### **Democratic governance, transparency and human rights**

Most AU member states where this research was conducted are on track with regard to implementation of instruments that touch on democratic governance, transparency, and human rights. These countries have passed laws and established institutions aimed at strengthening

democracy, human rights and anti-corruption efforts. They have invested resources in supporting these institutions to operate, reduce levels of corruption and make progress in the delivery of services and in political, economic and social governance. Political participation in these countries has increased as more institutions are enabling citizens to engage public institutions. The number of civil society organisations has also increased and media freedom is legislated.

Although this account speaks to positive progress, the challenges are equally immense. For instance, in spite of the many laws enacted and institutions established to address corruption between 2012 and 2014, the vice has gone up in Kenya and Nigeria. Neither Kenya nor Nigeria has registered an anti-corruption perception index beyond 30 per cent since 2010, an indication of poor performance and low gains in preventing and/or combating corruption. In Malawi, the anti-corruption perception index has peaked between 2013 and 2014, while in Rwanda and Tunisia, where corruption has been low, there have been slight increases in anti-corruption perception indices. Ghana, Mozambique and South Africa have registered slight declines in corruption while Senegal has experienced a significant decrease in the vice. Corruption not only presents a stumbling block to political, economic and other reforms but also undermines the effective implementation of all instruments, especially those related to elections, human rights, natural resources, youth, peace and security. Increased control over the activities of civil society organisations has undermined their sustainability, as have attacks on journalists and the media. The effectiveness of political, legal, and economic reforms has been hampered by lack of local ownership, Reform programmes are largely donor-dependent, thus limiting the capacity to monitor them and innovate. Weaknesses in the existing reform frameworks as well as low commitment of civil servants and political leaders to policy reform initiatives compound these limitations.

### **Rights of women**

There is considerable progress in establishing institutions and passing laws to protect women's rights, ban harmful practices, outlaw the abuse of females and prohibit their alienation. Most countries have passed laws and adopted constitutions that guarantee the participation of women in leadership and management positions.

However, the culture of patriarchy continues to negatively impact on gender relations in the areas of power, production, distribution and governance, while harmful practices against

women like Female Genital Mutilation (FGM) continue in most countries - without the necessary intervention. Weaknesses in the application of the national constitution and the Penal Code, stemming from inconsistencies, also create permissive legal environments that perpetuate the violation of women and children's rights. This impedes successful implementation of related instruments - especially the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women.

In terms of women participation, only Kenya has exceeded the target of 30 per cent female membership in its parliament. Women constitute 56 per cent of the Members of Parliament in Kenya, 43.03% in Senegal, 14.55% in Sao Tome and Principe, 42.4% in Mozambique and 24.88% in Tunisia. Still, the number of women in regional and district administration, the judiciary, and other public institutions is still very low in all the countries.

### **Rights and welfare of the child and the youth**

The African Charter on the Rights and Welfare of the Child is one of the instruments with the highest number of ratifications at 47, representing 87 per cent of the AU member states. All the case study countries have ratified the Charter. They have set up institutions such as ministries, juvenile courts, and committees on the rights and welfare of the child. Most countries are also implementing the Charter's provisions on the right to education for children by providing free books, transport and uniforms.

There has been an increase in enrolment of female students, and provision of free basic education in many countries. Governments are allocating funds for children's immunisation programmes, with allocation being highest in Senegal and South Africa (100%), lowest in Mozambique (24%), and between 45 per cent and 70 per cent in the other countries. Most countries have also formulated national youth policies to enable young people to take part in the formulation and evaluation of economic and social development policies, create jobs for themselves; enable rural dwellers to acquire production capacity and assets to make it possible for them to produce and participate in local, national and international markets as well as to work with the private sector to enable it to create more jobs.

While these achievements are commendable, most countries still confront a number of challenges in ensuring the welfare of the African child. Mortality rates for children under five, for instance, have remained above 100 out of 1,000 births in Mozambique and Tunisia; and between 50 and 90 in Ghana, Kenya, Senegal and Burkina Faso.

The right to basic education has also not been equally enjoyed by children in rural areas. The quality of education has declined and the number of school dropouts has increased as facilities - such as libraries, number of desks, toilets and housing for teachers - remain a challenge even in some of the middle income countries.

Youth unemployment remains a major challenge globally and in Africa particularly. This is compounded by limited access to adequate financial resources to enable youth to start dynamic and innovative businesses, lack of appropriate skills required in the labour market, lack of entrepreneurial culture for most youth, lack of mechanisms for entry and re-entry into the labour market, and limited access to information on national and foreign labour markets.

## **Recommendations**

Full domestication and implementation of AU instruments will have a tremendous positive impact on African citizens if member states move beyond ratification. Implementation reflects a country's commitment to actualise the provisions enshrined in the instruments. In order to realise meaningful implementation, policy makers should consider the following recommendations.

- AU and AU member states need to ensure policy coordination among their organs. At the country level, especially, there is **need for improved coordination between state agencies and government arms** that connect instruments' aspirations to their intended results. Such efforts will include the establishment of mechanisms for tracking, monitoring and reporting progress and accountability for actions and results. This will help in identifying gaps that require policy and infrastructural attention while also making implementation a goal-oriented and time-consistent process.
- Establishing quality institutional frameworks at the national level for realising the policy objectives of AU instruments is important. But this is not sufficient: **Institutions need to be empowered** (to have the capacity) **to design, formulate, and implement policies** that fulfil these objectives. This empowerment should include training and lending support to government officials and critical stakeholders whose core work can be a vehicle for the promotion of rights contained in AU treaties.
- Governments should also complement the existing institutions with strong laws that are elaborate, stable, and backed by the national constitutions, rather than those that permit narrow interpretations and collusion. Stronger anti-corruption laws and institutions, for instance, have

yielded lower the levels of corruption.

- Governments should incorporate AU instruments' obligations into their constitutions, backed by - and not contrary to or separate from - independent national legislation. **National law should be seamlessly applied in relation to already ratified AU instruments.** A country's extradition laws should, for instance, allow extradition for offences of universal jurisdiction under international treaties and conventions (e.g. AU Convention on the Fight Against Corruption) ratified by that country.
- Countries need to **develop supreme universal laws that ensure consistency in the application of both national constitutions and the Penal Code.** Persons charged with offences under the Penal Code should not be acquitted under the provisions of the Constitution. Currently, the Cameroonian Constitution, for instance, affirms the right of women to dignified treatment and protection of their integrity. However, there is no provision in the Penal Code providing for protection against sexual harassment. Senegal's Penal Code makes it an offence to have carnal knowledge with a woman below the age of 16 years, yet the Constitution allows marriage of girls aged 15 years if the parents give their consent. Such a permissive legal environment creates exit routes for offenders and perpetuates violation of women and children's rights, hence impeding implementation of related instruments - especially the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women.
- **AU member states should harness innovation, which has the potential to increase skill formation, enhance productivity, and create youth employment opportunities.** They should also build institutional quality so that individuals and organisations are effective in responding to the needs of the youth.
- AU member states must not neglect their responsibility to finance healthcare. **Governments should scrap or substantially minimise user fees to facilitate access to affordable healthcare services. They should also combine direct expenditure with other healthcare financing models** by either funding healthcare administration, leaving specific projects relating to the control of epidemic diseases to external donors, or financing health by paying into health insurance schemes, instead of paying directly for medical services.
- **The African Union and its member states should invest in popularising AU instruments** among the African citizenry. 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. A

best practice case is Kenya's Anti-Corruption Police Unit - a body which investigates and prosecutes corruption cases: The unit's Department of Research, Information and Public Education carries out research and awareness programmes on corruption (ACBF, 2007), hence facilitating implementation of the AU Convention on Preventing and Combating Corruption.



## Introduction and Background

The African Union was established after two thirds of Africa's governments signed the Constitutive Act of the AU in July 2001. Formally launched in Durban, South Africa, in July 2002, the AU replaced the Organisation of African Unity (OAU). The Constitutive Act commits African governments to further the values of African integration, democratic governance, human rights and the participation of its citizens in the African Union. Indeed, it asserts that the AU will be a union not just of governments, but peoples as well.

Since the Act, African governments have developed and acceded to several instruments in the form of protocols, conventions, treaties and declarations. These instruments were developed to accelerate the integration of African government policies and to foster good governance, the respect for human rights and advance development at the national level. Collectively, these instruments offer critical rights to citizens and responsibilities to governments, on the whole, they offer a promise of a better life for all. Consequently, this study is anchored on the 1995, Australian Human Rights Council (1995) report titled, *The Rights Way to Development: Human Rights Approach to Development Assistance*. According to the authors, “[d]evelopment exists within a human rights framework ... Development should rightly be seen as an integral part of human rights.” And so to anchor treaty formation as a stepping stone to development, some civic and government consensus about its importance is heightened. Resultant from this frame of reasoning, Brigitte Hamm (2001) argues that, “rights can be the consensual frame for development policy because the moral commitment to human rights is universal.” To Hamm, states have no difficulty in ratifying major treaties because at the core of them is the pursuit of human rights. This therefore blends seamlessly with the “*Accelerating the Ratification and Domestication of African Union Treaties*” project. However, although often argued that, Human Rights and development are intertwined, the role of treaties as an enabler of development and development being the expression and fulfilment of human freedom remains murky to many. When the correlation between human rights, treaty ratification and domestication are established, the removal of impediments to human security and personal development such as poverty, discrimination, inequalities, absence of social services, lack of economic opportunities, social exclusion, armed conflicts, large-scale violence and other forms of physical insecurity is assured.

Human Rights and basic freedoms guaranteed in treaty formation are channels for the extermination of poverty and mainstream economic issues which breed governance deficiencies, weak national institutional frameworks and instability. There is therefore a need for a wider approach to, and interpretation of development that incorporates treaty ratification and domestication. Slow or non-ratification and domestication of treaties can therefore not just be overlooked as states' oversight, but must be causal linked with weak national normative and institutional framework, slow-paced development, widening inequality, high-levels of unemployment and lowness of income. Treaty ratification and domestication inter alia must come through a democratic and participatory process following a bottom-up approach, rather than from the linear process from the AUC to member states' foreign affairs and justice or constitutional affairs ministries and departments. In so doing, "A rights-based approach to [treaty making and] development sets the achievement of human rights as an objective of development" (Overseas Development Institute (ODI), 1999).

In conclusion therefore, while the goal of ratification is clear and more or less agreed upon, the views of how, when and the process of domestication vary in detail and different states have different experiences and nuances of doing so. These differences notwithstanding, suffice to state that the following common traits extrapolated from Brigitte Hamm (2001) run across treaties:

- Reference to or/and starting from human rights treaties;
- Non-discrimination, special focus on disadvantaged groups, explicitly women and children;
- Participation and empowerment; and
- Good governance.

From the foregoing, the linkage between human rights, treaty ratification and development is not so much a new concept as it has been around. However, a project such as this serves to remind scholars and policy makers that rule of law is the harbinger of development. As such, as long as treaty ratification and domestication remains slow and low, civic activism and policy advocacy needs to remain engaged. This is even more so because, states commitment to the SDGs and African states' commitment to Agenda 2063 is near consensus. This report offers a picturesque overview of the following six treaties and further dissects their domestication in

Burkina Faso, Kenya, Mozambique, Sao Tome and Principe, Senegal, and Tunisia.

- The African Youth Charter
- African Charter on the Rights and Welfare of the Child
- African Charter on Human and People's Rights in Africa
- African Charter on Democracy, Elections and Governance
- African Union Convention on Preventing and Combating Corruption
- Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

These treaties are examined from the hypothetical view that, if fully implemented, have tremendous promise for the lives of millions in Africa.

Against this backdrop therefore, this report is structured into four main chapters. The first chapter foregrounds the quintessence of AU treaties and x-rays the contents of selected treaties with the view of demonstrating what is in them which should appeal to any state or stakeholder concerned about rights and the development of people's and African states broadly. Following this, chapter (bearing in mind that different countries have different approaches to treaty making) looks into the treaty making processes and unearths key bottlenecks which projects such as these need to be familiar with in the design of workplans on how to support states. Chapter three looks at the status of ratification of AU treaties. The chapter primarily offers a status report of which treaties the pilot countries have ratified before discussing the decision making process which propels states to ratify certain treaties and not others. Last but not the least, before offering a glossary of policy recommendations in chapter five, chapter four examines the challenges and constraints which underlie treaty –making and reflects on how such challenges permeate and slow the ratification and domestication of treaties. This chapter is particularly important in grounding prospective areas for future project focus.

### **The purpose**

Slow ratification and domestication of AU treaties impacts human development and negatively affects national economic indicators. Ratification and a thoughtful commitment to domestication breed good citizenship, harmony and peace which are cornerstones of good

governance and development. As a consequence, slow ratification, domestication and implementation are causally responsible for certain instances of poor governance and attitudes which have weakened the capabilities of African citizens and civil society organisations to hold their governments accountable for the decisions they take in multi-lateral spaces, particularly the AU.

The three-year multi-country and regional UNDP's "Accelerating the Ratification and Domestication of AU Treaties" is designed to provide a focused and coherent capacity development support to the AU OLC which is the principle organ tasked to oversee the ratification of AU treaties. Based on their willingness to participate in this project, Burkina Faso and Senegal (Western Africa), Kenya (East/Horn of Africa), Mozambique (Southern Africa), Sao Tome e Principe (Central Africa) and Tunisia (Northern Africa), the UNDP works with these countries and regional flag bearers to address the challenges and bottlenecks associated with the slow pace of ratification and domestication of AU treaties.

So far, the "Accelerating the Ratification and Domestication of AU Treaties" project has contributed to this policy gap by tracking the performance of African governments, raising awareness on the value of AU treaties and supporting country-officers in engagements which propel quicker domestication. This is in line with Article 4.1(b) of the Rules of Procedure of the AU Assembly of Heads of States, which requires the Assembly "to monitor the implementation of policies and decisions of the Union as well as ensure compliance by all Member States." The OLC and the UNDO urge compliance to AU treaties in recognition of the tremendous opportunities they offer for eradicating poverty, promoting justice and realising political, economic and social rights in Africa. The overall aim of monitoring is:

1. To assess and determine the level of compliance by AU member states on key commitments;
2. To determine the effectiveness of mechanisms on implementation at the AU and country levels;
3. To recommend specific measures to promote and encourage compliance and implementation.

### **The impact**

This report seeks to catalyse active citizenship, effective national governance and the realisation of the fundamental freedoms and human rights contained in AU treaties. The report encourages citizens to track the performance of governments and the AU against key democratic governance, socio-economic; and civil and political rights enshrined in the AU treaties broadly and in the selected treaties more specifically.

The AU Commission, Permanent Representatives Committee and relevant arms of national governments are challenged to develop appropriate tools for the acceleration of ratification, tracking of implementation and domesticating of AU treaties in the areas of democratic governance, human rights, protection of minorities and elimination of all forms of discrimination on racial, gender, ethnic or political reasons.

This report is therefore a pathway and an opportunity for national governments, civil society organisations, development partners and the AU to dialogue on issues hindering the ratification and domestication of AU treaties and states' international obligations. It is expected that this advocacy and activism would lead to increased citizenship participation in the affairs of the African Union.

### **Rationale for countries' selection**

The six countries were selected on the basis of:

- Regional representation.
- Rights and accountability thresholds.
- Linguistic representation.
- Experience with compliance with other international treaties and protocols.
- Capability to be influencers in their respective sub-regions

### **Research Methodology**

This synthesis report series is the first concerted effort towards a review and audit of continental performance against 6 AU treaties. The study was undertaken over a four-month period between July 2020 and November 2020. From July to September 2020, some 6 country consultants reviewed official and unofficial secondary documents and interviewed key

stakeholders for the 6 selected countries. For each country, a draft report on the country's experience with ratification of AU treaties and a policy brief was produced. These were reviewed, provisionally validated and forms the basis of the analysis weaved into this report. This report would further be reviewed and subjected to a validation workshop and critique from those that participated in the study. The country reports were revised to incorporate comments from the international consultants and UNDP country teams. In all 6 countries, a senior consultant provided critically researched reports about their country-experienced with AU treaties and indicated areas where the government could gain some support from. While an analytical approach has been used, this report broadly unearths the benefits of ratifying and domesticating AU treaties.

The research question that has been answered in this report is, **‘How can the ratification and domestication of AU treaties be accelerated in selected countries and Africa broadly?’**

This study adopted a mixed methods research methodology, combining quantitative and qualitative research designs concurrently for triangulation of findings. The research design for this study was systematic analysis (Meta-analysis of secondary data). The quantitative methodology, ensues from findings drawn from a survey done to appreciate the depth of knowledge about AU treaties. The qualitative approach helped describe and explain, rather than predict phenomenon. The approach enabled the team to gain a deeper understanding through discovering meaning that may be difficult to convey quantitatively. Qualitative techniques explain the “how” and “why” questions that support the discovery of new information.

Qualitative and quantitative methodologies reinforce each other through their contemporary interpretive and explanatory strengths. The qualitative and quantitative research paradigms also complement each other. The triangulation of findings substantially helped to dispense of bias, seek convergence of results and bring out contradictions and fresh perspectives on what is expected of each stakeholder.

Data was analysed both qualitatively and quantitatively. Information is reported in terms of frequencies and percentages and visualised through graphs and pie charts. The same methodology was used for all chapters. Therefore the methodology used is not separately presented in each chapter. Factors affecting ratification and domestication were teased out

using country experiences and recommendations synthesised to showcase broad areas of consensus. The research also revealed that there is no reliable data on budgetary allocation, amount of resources allocated to human resources, capacity building and other support to the implementation of the AU treaties at national level. Such evidence probably explains the sluggishness of some countries and their desire for support which few institutions are habilitated to offer.

While the first chapter offers a synopsis of various treaties, there is interconnectedness between treaties and development, freedom from discrimination and exclusion on the basis of class, gender and age, and democracy and human rights. It is this interconnectedness which slow ratification and domestication of AU treaties is being denied to millions of Africans.

Last but not the least, suffice to state that, while all efforts have been made to ensure the accuracy of the findings, a report of this nature is likely to include omissions, errors or differences of perceptions from those held by the stakeholders it addresses. If the report generates debate and the sharing of new information, it will have served its purpose.

From these findings, it will be possible to make some broader generalizable findings and recommendations for African Union organs and member states during AU Summits. It is hoped that it will stimulate dialogue and discussion as well as accelerate concerted efforts towards monitoring and raising awareness both within governments, the African Union, development partners and the wider general public.

# **Chapter 1**

## **The Quintessence of selected AU treaties and their beatitudes**

Since the formation of the OAU, African Governments committed to ratify, domesticate and implement 42 Charters, Treaties, Protocols and Conventions. At least a third of these have been developed after the African Union was established in 2001. Key among these are the African charter on Human and People's rights (1990), the Protocol to the African Charter on Human and People's on the Rights of Women in Africa (2003) and the African charter on the Rights and Welfare of the Child (1990), the Convention on Preventing and Combating Corruption (2003), the African Charter on Democracy, Elections and Governance (2007) and the African Charter on the Values and Principles of Public Service and Administration (2011) among others.

This report summarizes six AU treaties agreed by our Heads of State at African Union level. These treaties significantly raise the bar for most African governments in the areas of political, social and economic rights and freedoms.

This chapter is designed to offer insights on the selected AU treaties as translated into rights and commitments. The chapter also attempt answers to answer some of the critical questions on the value of these protocols and the impact they can bring if implemented. Additionally it is meant to guide those involved in empowering citizens to claim their rights and freedoms based on the commitments espoused.

This chapter therefore provides asimple, straightforward and comprehensive information on the selected instruments to support Africa citizen to understanding and be able to articulate these rights and commitments. This resource can be used as a tool to monitor compliance of these instruments at the national level.

This resource is for use by all professionals who are concerned with the African Union affairs. It will be of particular use to policy and governance professionals, citizen activists and trainers on issues of human rights and the design of treaty manuals and training materials.

### **1.1 The African Charter on Democracy, Elections and Governance (the Democracy Charter)**



## **Context and Background**

The African Charter on Democracy, Elections and Governance (the Democracy Charter) was adopted on the 30<sup>th</sup> January 2007. This was during the 8th ordinary session of the Assembly of the African Union (AU). It came into effect on the 15<sup>th</sup> February 2012. By April 2013, the Charter has been signed by 41 countries out of which only 17 countries have so far ratified. The Democracy Charter aspires to address issues of poor governance and unconstitutional changes of government in Africa. It specifically deals with mismanagement of electoral processes, human rights abuses, and inadequate participation of all citizens in their governance. It aims to reinforce the commitment of the African states through the AU towards the universal values of: democracy, respect for human rights, the rule of law, supremacy of the Constitution and constitutional order, in the political arrangements of the AU member States.

## **The Issues**

The principles of the Charter include: the promotion of democratic values and participatory democracy, separation of powers, holding of regular, credible and transparent elections, gender equality and a rejection of acts of corruption-related offences and impunity.

All African countries must uphold the supremacy of their constitution and promote a culture of constitutionalism and the rule of law. They must inculcate a culture of popular participation and protect fundamental freedoms, human security, human and people's rights. They must also eliminate all forms of discrimination and intolerance, so as to respect diverse governments.

African countries must establish, promote and consolidate a culture of democracy and peace. This can be done by ensuring transparent and accountable public administration, strengthening institutions of governance, promoting civic and voter education and ensuring multi-stakeholder political and social dialogue.

African countries will establish effective institutions for democracy, in order to consolidate civil control over the security forces. In this regard, governments must establish and capacitate institutions that protect democracy, such as the Ombudsman, human rights commissions and

electoral commissions. The various institutions should cooperate at regional and continental levels, through exchange of best practices in governance.

Following ratification and application of the charter, AU member states must submit a report on measures taken towards domestication every two years. These consolidated reports will be tabled by the AUC (African Union Commission) to the AU Assembly of Heads of State and Government through the Executive Council. The Assembly must then take appropriate action on the reports, as deemed fit by the Assembly and the Peace and Security Council.

### **The Rights**

- All African citizens have a right to civilian rule and must not be subjected to unconstitutional changes of government including a military coup, replacement of an elected government by mercenaries or armed dissidents or rebels. Refusal by incumbent government to relinquish power to a winning party following democratic, credible and transparent elections and amendment of the constitution, infringes on the democratic change of government;
- Perpetrators of unconstitutional change of government are prohibited from participating in elections meant to restore the democratic order, or hold any position of responsibility in political institutions of their state;
- All women are entitled to the necessary conditions, including encouragement, for their full and active participation in the decision-making structures, and processes at all levels;
- All Africans are entitled to the necessary conditions that promote citizen participation including access to information, freedom of the press and accountability of public institutions;
- All Africans are entitled to regular, credible and transparent elections as defined in the AU's Declaration on the Principles Governing Democratic Elections in Africa;
- All Africans must have access to an independent and impartial national electoral body, which ensures fair and equitable access to public resources by parties and candidates contesting elections;
- All Africans must have access to credible national mechanisms for constructive management of electoral disputes, and an enforceable and binding code of conduct for all electoral stakeholders;
- No African must be subjected to any form of discrimination or intolerance based on ethnicity, culture, political opinion, gender, race or religion;

- All Africans have a right to an independent judiciary along with a functional and effective parliament;
- All Africans have a right to equality before the law, and equal protection of the law as a fundamental pre- condition for a just and democratic society;
- The rights of women, ethnic minorities, migrants, people with disabilities, refugees, displaced persons and other marginalised or social groups, will be protected by the appropriate national legislature and administrative measures;
- All men and women are entitled to equal and effective participation in all forms of political involvement as well as economic and social governance;
- Civil society organisations are entitled to a favourable environment that enables them to exist, and operate within the law;
- Contesting parties and candidates to elections must have fair and equitable access to state controlled media during elections;
- All Africans are entitled to an independent observer mission for all elections, which shall observe the process prior to, during and after the electoral process. The independent observer should state whether the conditions prior were conducive for holding elections and ascertain the freeness and fairness of the electoral process;
- All Africans and particularly youth and people with disability, are entitled to systematic and comprehensive civic education and other measures to promote their full participation in democracy and development processes.

## **1.2 The African Convention on Preventing and Combating Corruption**

### **Context and Background**

In 2003 the African Union (AU) adopted the African Convention on Preventing and Combating Corruption and it subsequently came into force on 5<sup>th</sup> August 2006. As of April 2013, 34 countries have ratified it. The convention focuses on the promotion of accountability and transparency in the management of public affairs and creating conditions that support socio-economic development. The convention aims to promote and strengthen mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sector. It was intended to take the high incidences of corruption, malfeasance and abuse of public offices in Africa.

## **The Issues**

The convention seeks to promote, facilitate and regulate co-operation amongst African governments in ensuring the effectiveness of initiatives targeting the prevention, detection, punishment and eradication of corruption and related offences. The purpose is to ensure that African peoples can fully enjoy economic, social and cultural rights as well as civil and political rights, by fostering transparency and accountability in the management of public affairs.

The convention promotes respect for democratic principles and institutions while supporting popular participation, rule of law, good governance and a respect for human and peoples' rights. Through this convention African's governments condemn and reject all acts of corruption, related offences and impunity in a bid to achieve social justice and ensure balanced socio-economic development. The convention also prescribes legislative and other measures to ensure clarity on corruption and enforce appropriate redemptive and prohibitive measures. It further targets laundering of the proceeds of corruption and illicit enrichment.

The convention promotes various levels of co-operation in order to eradicate corruption at national and international levels. It further outlines the roles of civil society and the media in fighting corruption. It also provides for the confiscation and seizure of the proceeds and any instrumentality of corruption and widens the jurisdiction for states in instances of corruption. An Advisory Board on Corruption is established within the AU, as the mechanism to promote and encourage adoption and application of anti-corruption measures on the continent.

## **The Rights**

- African countries will develop legislative and other measures at national and international level to eradicate corruption including establishing national anti-corruption authorities or agencies;
- Governments will protect informants and ensure that citizens can report instances of corruption without fear of consequent reprisals;
- African states will strengthen mechanisms for promoting the education of Africans to respect the public good and public interest. It will in addition, raise awareness in the fight against corruption including through educational programmes and sensitisation of the media;

- African states will develop legislative measures to criminalise the conversion, transfer and disposal of property that is the proceeds of corruption or related offences. These measures will also criminalise the disguise or concealment of the true nature, source, location, disposition, movement or ownership of or rights with respect to property acquired through proceeds of corruption.;
- All governments will ensure that public officials declare their assets when they assume office and after they leave office. They will also develop disciplinary measures and investigative procedures to root out corruption;
- African governments must develop laws to establish the offence of illicit enrichment;
- All African states shall ensure the development of laws to guarantee access to information, to assist in the fight against corruption;
- African governments will adopt laws to prescribe the use of funds by political parties in a transparent and accountable manner;
- African states will develop laws, mechanisms and other measures to fight corruption in the private sector including companies paying bribes to win tenders, while encouraging the private sector to assist in the fight against corruption;
- Governments will create an enabling environment for civil society and the media to proactively participate in eradicating corruption. It will particularly give access to information, provided that such access does not adversely affect the investigation process;
- African governments will cooperate in the extradition of corruption offenders;
- Every person deemed to have committed the crime of corruption will be entitled to a fair trial as prescribed in the African Charter on Human and Peoples' Rights;
- Every African state shall develop laws that enable competent authorities to confiscate and seize proceeds and any instrumentality of corruption and ensure the repatriation of proceeds of corruption;
- African governments will cooperate in the national and international level to ensure that corruption and related offences are addressed adequately, from investigation to repatriation of proceeds of corruption.

### **1.3 The African Charter on Human and Peoples' Rights (Also known as the Banjul Charter)**

#### **Context and Background**

The Organization of African Unity adopted the African Charter on Human and Peoples' Rights (Also known as the Banjul Charter) in 1981 and it was enforced on 21<sup>st</sup> October 1986. Thus 21<sup>st</sup> October is the African Human Rights day. As of April 2013, all Member States of the African Union (AU) have ratified the Charter, except the newly established state of South Sudan. The Banjul Charter covers both civil and political rights as well as economic, social and cultural rights. The charter, furthermore, includes rights not only for individuals but also for a people. In addition, it imposes duties that are unique in international human rights instruments. The instrument is strongly African, aiming to further African values and build on the virtues of African historical traditions, while alleviating human rights violations. The charter is an international legal instrument, intended to promote and protect human rights and basic freedoms in Africa.

### **The Issues**

The charter recognises universally accepted civil and political rights, including the rights to non-discrimination, equality, life and personal integrity. The Charter also recognises freedoms of religion, information and expression, association and assembly, movement, political participation, freedom from slavery, cruel, inhuman and degrading treatment. The Charter further recognises certain economic, social and cultural rights, and overall, is considered to place significant emphasis on these rights.

The organ charged with the mandate to promote and protect human rights is the African Commission on Human and Peoples' Rights (ACMPR). It has the functions of promoting and protecting the human and peoples' rights, and interpreting the provisions of the charter and any other task assigned to it by the Assembly. The Commission consists of eleven members chosen from amongst African personalities of the highest reputation. The potential members are known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights. Particular consideration is given to persons having legal experience.

The commission is mandated to collect documents, undertake studies and research on African challenges in the field of human and peoples' rights. The ACMPR is also required to disseminate information, encourage national and local institutions concerned with human and peoples' rights, and give its view or make recommendations to governments where necessary.

The commission was established in 1987 in Banjul, Gambia. A protocol to the charter was subsequently adopted in 1998, whereby an African Court on Human and Peoples' Rights was to be created. The protocol came into effect on 25<sup>th</sup> January 2005.

### **The Rights**

- All Africans have a right to freedom from exploitation and degradation particularly through: slavery, slave trade, torture, and cruel, inhuman or degrading punishment and treatment;
- All Africans have a right to participate freely in the government of their country, either directly or through freely chosen representatives, in accordance with the provisions of the law;
- All Africans are equal before the law and shall enjoy equal protection of the law;
- All Africans have the right to non-discrimination, equality, life and personal integrity, liberty and security of person. They have the right: to fair trial, to receive, express and disseminate information and opinions, to property and to education;
- All Africans have the right to freedom of: conscience, profession and free practice of religion, association, assembly, expression, political participation and movement;
- All people have a right to economic, social and cultural development, and a right to national and international peace;
- All African people are equal and may freely dispose of their wealth and natural resources. They also have the right to a general satisfactory environment favourable to their development;
- All Africans have a duty to exercise their individual's rights and freedoms with due regard to the rights of others. They have the right to: collective security, moral and common interest and to serve their national community, by placing their physical and intellectual abilities at its service;
- All Africans have the right to equal access to the public service of their country. Additionally, they have the right to public property and services in strict equality, of all persons before the law;
- All Africans also have a duty towards the family and state security; to pay taxes, and to promote the achievement of African unity.

### **The commitments**

- African governments will care for the physical and moral health of the family and ensure the protection of the rights of women, children and the disabled;
- African governments will eliminate all forms of foreign exploitation. It will assist all peoples in their liberation struggle against foreign domination in political, economic or cultural context;
- African governments have an obligation to protect and assist the family;
- African governments shall promote and ensure the popularisation of the Banjul Charter through teaching, education and publication.

#### **1.4 The Protocol to the African Charter on Human Rights and Peoples' Rights on the Rights of Women in Africa**

##### **Context and Background**

The Protocol on the Rights of Women, also called the Maputo Protocol, seeks to broaden the human rights spelt out in the Banjul Charter to address rights specific to women. Article 2 calls upon member states to include in their laws and constitutions clauses on the principles of equality between men and women. Article 3 guarantees the right of women to dignity and calls for prohibition of all forms of exploitation and degradation against women. Article 4 covers the right to life, integrity and security, and calls for laws punishing acts of violence against women and policies promoting peace education. It also calls for laws and policies eradicating cultural beliefs, practices and stereotypes that perpetuate the tolerance of acts of violence against women; to set up institutions that support victims of violence; to pass laws that allow prosecution and punishment of women traffickers and ban experiments on women without their consent.

Article 5 calls for the abolition of harmful practices, prohibits female genital mutilation, human sacrifice, medicalization and para-medicalization of females. Article 6 calls for equal rights in marriage, prohibition of forced marriage; sets a minimum age of marriage at 18; provides for equal rights to nationality and children in marriage; and rights for married women to acquire and own property. Rights on divorce are spelt out in Article 7, which calls for the right to access judicial services, and equal representation of women in the judiciary and law enforcement



agencies.

Article 9 calls upon member states to ensure equal participation of women in leadership and governance and Article 10 calls for their increased participation in peace processes. Article 12 calls for the elimination of all forms of discrimination in all spheres of education and the elimination of all forms of stereotypes in textbooks, syllabi and the media; to protect women from sexual harassment in educational institutions and provide institutional support to victims of sexual harassment.

Equal opportunity in employment, remuneration, choice of occupations, participation in business and special protection for women are covered in Article 13. Article 14 calls for the protection of the sexual and reproductive rights of women, while Article 15 commits state parties to ensure women have the right to nutritious and adequate food, while equal rights to housing and acceptable living conditions are covered by Article 16 and women's cultural rights by Article 17.

The right to a healthy environment is enshrined in Article 18, and the right to fully enjoy sustainable development in Article 19. Rights of guardianship to children after the death of a spouse and equal rights of inheritance are covered by Articles 20 and 21. Article 22 calls upon state parties to protect elderly women and ensure they are free from violence. Article 23 provides for protection of women with disabilities. Article 24 calls for protection of poor women and treatment of pregnant or nursing women in detention or other forms of custody.

Implementation of the Maputo Protocol is examined in terms of civil and political rights (Articles 2 to 12), and economic, social and cultural rights. In the next sections, the report presents measures taken by various countries to implement the protocol. Progress will be analysed based on indicators such as laws, policies and institutions established to protect the rights of women, degree of gender-based discrimination, freedom from violence and harmful cultural practices, rights to education and training opportunities, and the representation of women in public offices and their level of participation in the political process in each country.

## **The Issues**

The protocol guarantees comprehensive rights to women including the right to: engage in the political process, social and political equality with men, control of their reproductive health, and the end of harmful practices against women including female genital mutilation.

The protocol promotes the principles of equality, peace, freedom, dignity, justice, solidarity and democracy and aims to give greater attention to the plight of women in Africa. Through the recognition of a wide spectrum of women's civil and political rights, as well as economic, social and cultural rights, it reaffirms the universality, indivisibility and interdependency of all internationally recognized human rights of women. These include the right to life, integrity, security, elimination of all harmful practices, access to justice and equal protection before the law.

The protocol also specifically targets the elimination of all forms of discrimination and harmful practices against women. The Protocol defines what constitutes discrimination and violence against women. It proceeds to outline measures which governments are required to take in both the public and private spheres to put to an end to such practices. The Protocol prescribes legislative, institutional and other measures to be adopted by governments in order to eliminate all forms of discrimination against women.

The Maputo protocol calls for the adoption and implementation of measures to prohibit exploitation or degradation of women, and protect women from all forms of violence whether sexual or verbal, whether in public or in private. The protocol specifically requires governments to prohibit and condemn practices such as "female genital mutilation, scarification, medicalising and para-medicalising of female genital mutilation." It further requires that member states take measures to ensure that women and men enjoy equal rights and are regarded as equal partners in marriage, including outlawing marriages that take place without the free and full consent of both parties. The minimum age of marriage for women is set at 18 years of age. The Protocol also encourages monogamy as the preferred form of marriage.

By ensuring that governments submit periodic reports, the protocol mandates both the African Commission and the African Court, to elaborate on how the rights are recognized and ensure their enforceability. African governments are also called upon to review and amend criminal laws and procedures to eliminate discrimination against women and ratify all other regional

and international human rights instruments essential for the effective protection of women's human rights in Africa

### **The Rights**

- Women are entitled to participate in all elections without discrimination, and enjoy effective representation and participation at all decision-making levels;
- Women are entitled to respect as a person, and to the full development of a her personality;
- All women have a right to peace and must be protected in armed conflict;
- All women must have access to justice and equal protection before the law;
- African women are entitled to dignity, life, integrity and security and will be protected from all forms of exploitation or degradation;
- African women are protected from all forms of violence including sexual abuse and discrimination;
- No African women will be discriminated against and governments will adopt legal and regulatory measures at all levels, to ensure that there are no discriminatory practices based on gender;
- All women have the right to education, training and information to ensure their effective and equal participation in their development and that of their communities and countries;
- All women will be protected from harmful traditional practices;
- African women have the right to health and reproductive rights of women;
- Women in Africa are entitled to food security, adequate housing and a healthy and sustainable environment;
- African women are entitled to inheritance and a positive cultural context;
- African women have the right to decide whether to have children, the number of children to have and the spacing of the children;
- African women are entitled to control their fertility and have a right to choose any safe method of contraception, and have the right to have family planning education;
- All women have the right to sustainable development, to economic and social welfare rights;
- All women and men have equal rights in a marriage and women are entitled to acquire their own property and to administer and manage it freely;
- All women and men are entitled to equal rights in the case of separation, divorce or

annulment of marriage including reciprocal rights and responsibilities towards their children and equitable sharing of joint property;

- Women have the right to protection against sexually transmitted infections including HIV/AIDS and the right to be informed of their health status and that of their partner;
- Widows are protected from inhuman, humiliating or degrading treatment and shall automatically become guardians and custodians of their children after the death of their husband unless it is not in the “best interest” of the children;
- A widow has the right to remarry a person of her own choice
- Elderly women are protected from discrimination based on their age;
- Disabled women are protected from discrimination based on their disability;
- Governments must prevent and condemn trafficking of women while prosecuting the perpetrators of such acts and must prohibit medical or scientific experiments on women without their informed consent.

## **1.5 The African Youth Charter**

### **Context and Background**

The African Youth Charter was adopted by the African Union (AU) in 2006 and came into force on 8<sup>th</sup> August 2009. As of April 2013, 41 countries have signed the Charter out of which only 31 have ratified. The Charter was to address the growing need of youth empowerment, development and their participation in Africa’s development. Youth constitute over 60% of Africa’s population but their participation and empowerment is not guaranteed. The objective of the Youth Charter is to provide governments, youth, civil society and international organisations with a continental framework, which underlines the rights, duties and freedoms of youth in Africa. It also provides the parameters for development of national programmes and strategic plans geared toward youth empowerment. The African Youth Charter, on the other hand, defines youth as people between the age of 15 and 35 years. It provides for non-discrimination, freedom of movement, expression, thought, association, conscience, religion and privacy. It provides for the right to marriage, ownership of property, participation in all spheres of society and calls upon member states to develop national youth policies. It also provides for the right to education and skills development, the integration of youth in development activities and their empowerment and the right to healthcare. These charters focus

mainly on civil, political, economic and social rights.

## **The Issues**

The Charter defines youth as any individual between the ages of 15-35 years. The African Youth Charter covers prominent issues affecting youth in the areas of employment, sustainable livelihood, education and skills development, health, youth participation, national youth policies, peace and security, law enforcement, youth in the Diaspora and youth with disabilities. The Charter addresses these issues as part of the framework for youth empowerment, rights and responsibilities.

It further calls on African governments to ensure the freedom of movement, expression, private life and property for young people. It calls on the establishment of structures for youth participation and particularly national youth coordinating mechanisms established within the framework of national youth policies as a means of mainstreaming youth issues in development of policies and programmes.

The AUC is commissioned to collaborate with governmental, non-governmental institutions and developmental partners, so as to identify the best practices on youth policy formulation and implementation. In addition, the AUC should encourage the adaptation of principles and experiences among member states. In addition, African states should be invited to include youth representatives as part of their delegations, to the ordinary sessions of the African Union and other relevant meetings of the policy organs. This will broaden the channels of communication and enhance the discussion of youth-related issues.

Finally the Charter outlines the responsibilities of youth to their own development, that of their countries and the continent at large. In order to effectively implement the Charter, the youth are expected to develop and promote the required self- discipline, patriotism, volunteerism, environmental conservation and cultural development among other values.

## **The Rights**

- Every youth will enjoy the freedom of: movement, expression, association, thought, conscience and religion. Their private life, family and property will be protected;
- Every young person will have the right to social, economic, political and cultural development, with emphasis on the media promoting this development;
- No African youth will be discriminated on grounds of race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status;
- Every young person has the right to education of good quality. The multiple forms of education including formal, informal, non-formal, distance learning and lifelong education shall be embraced in order to meet the diverse needs of young people, including free and compulsory basic education;
- Youth have the right to leisure and rest, and to engage in play and recreational activities that are part of a healthy lifestyle.

### **The Commitments**

- African states will provide for the right of young people to a standard of living, for their holistic development. Training in agriculture, mining, commercial and industrial production, and access to grants and support to facilitate access to financing for socio-economic development;
- African governments will guarantee the participation of youth in parliament and other national decision-making bodies, as well as facilitate the establishment or strengthening of national, regional and continental platforms for youth participation;
- Governments, civil society, youth and development partners must ensure the equal access of young women and young men to participate in decision-making, and their fulfilment of civic duties;
- African governments will develop cross-sectoral policies and programmes, which take into consideration the inter-relatedness of the needs of youth, with the view of integrating and mainstreaming the perspectives of youth into decision-making and development processes;
- African governments will develop a comprehensive national youth policy after extensive consultation with youth, and will include the establishment or reform of a national youth coordinating mechanism, to conform to the Charter;

- States will develop legislative measures that eliminate all forms of discrimination against girls and young women, and ensure their human rights and fundamental freedoms. The states will also ensure that they are able to participate actively, equally and effectively with boys and young men at all levels of social, educational, economic, political, cultural, civic life and leadership, as well as scientific endeavours;
- African governments will ensure the availability of accurate data on youth employment, unemployment and underemployment, so as to facilitate the prioritisation of the issue in national development programmes. In addition, they will promote youth entrepreneurship by including entrepreneurship training in the school curricula, providing access to credit, business development skills training, mentorship opportunities and better information on market opportunities;
- African governments will make available equitable and ready access to medical assistance and health care especially in rural and poor urban areas, with an emphasis on the development of primary health care and institute comprehensive programmes. As a result, enable the prevention of the transmission of sexually transmitted infections and HIV/AIDS by providing education, information, communication and awareness creation as well as making protective measures and reproductive health services available;
- Governments, civil society, youth and development partners will establish structures and networks that encourage and assist the youth in the Diaspora, to return to and fully re-integrate into the social and economic life in Africa. Moreover, they will promote and protect the rights of young people living in the Diaspora;
- Governments will recognise the right of the mentally and physically challenged youth to special care, and ensure equal and effective access to education, training, health care services, employment, sport, physical education and cultural and recreational activities;
- Governments have a duty to popularise the Charter and its entitlements.

## **1.6 The African Charter on the Rights and Welfare of the Child (ACRWC)**

### **Context and Background**

The African Charter on the Rights and Welfare of the Child (ACRWC) also known as the Children's Charter, was adopted by the Heads of State of the then, OAU in 1990. It came in force on 29<sup>th</sup> November 1999. As of April 2013, 47 African countries have ratified the Charter. The Children's Charter lays out the responsibilities of: the state, the family, the community and

the individual, in the protection and promotion of the rights of the child. It is rooted in other human rights treaties, including the African Charter on Human and Peoples' Rights (ACHPR). The Children's Charter originated from member states believing that the United Nations Convention on the Rights of the Child (UN-CRC) missed important socio-cultural and economic realities particular to Africa. It emphasises the need to include African cultural values and experiences, when dealing with the rights of the child. The Charter defines a child as person below the age of 18 years. The charter provides for children to enjoy rights and freedoms without discrimination and guarantees all children the right to life, nationality, education, privacy, health, leisure, recreation and culture. It guarantees the children's freedom of speech, expression, association, thought, conscience and religion, and contains special provisions requiring measures to be taken by member states to protect physically and mentally handicapped children. This charter also requires state parties to protect children against child labour, child abuse and torture; and for juvenile offenders, it requires special measures to be taken in the administration of justice.

### **The Issues**

The ACRWC defines a "child" as a human being below the age of 18 years. It calls for the child's protection from abuse and bad treatment, negative social and cultural practices and all forms of exploitation and sexual abuse, including: commercial sexual exploitation and illegal drug use. It aims to prevent the sale and trafficking of children, kidnapping, and use of children as beggars.

The charter acknowledges that children are entitled to the enjoyment of freedom of: expression, association, peaceful assembly, thought, religion, and conscience. It seeks to protect the private life of the child, and safeguard against all forms of economic exploitation and hazardous work. Such things interfere with the child's education; and can compromise his or her health or physical, social, mental, spiritual, and moral development.

The Children's Charter has stronger and clearer reference than the CRC, to harmful traditional practices. It also has enhanced protection for: children with disabilities, children living in prison with their mothers, girls who become pregnant and internally displaced children. The principles guiding implementation of these rights include: non-discrimination, the best interest, life,



survival and development of the child, his or her participation while providing for the child's responsibilities to the society, the state and the international community.

The Charter creates the African Committee of Experts on the Rights and Welfare of the Child (Committee of Experts) whose mission is to promote and protect the rights established by the ACRWC. The Committee of Experts is mandated to practice applying these rights, and interpret the disposition of the ACRWC, as required of party states, AU institutions, or all other institutions recognised by the AU or by a member state.

### **The Rights**

- Customs, traditions, cultures or religions that are inconsistent with the provisions of the Children's Charter, must be discouraged;
- Every child is protected against harmful social and cultural practices including child marriages, betrothals and discriminatory practices based on sex or other status;
- Every child is entitled to the best attainable state of physical, mental and spiritual health;
- Every child has a right to freedom of expression, freedom of: association, thought, conscience and religion, and protection of privacy;
- The "best interests of the child" must be the primary consideration in all action concerning children, even in cases of adoption and separation of parents;
- Children shall not be discriminated against on the grounds of their own or their parent's: race, ethnic group, colour, sex, language, relation, political or other opinion, national or social origin, fortune, birth or other status;
- Every Child has the right to life and shall not be subjected to death sentence for any crimes committed;
- Children must not be recruited in armed conflict or conscripted into the armed forces;
- Every child is entitled to a name and nationality from birth and a birth registration;
- Every child has the right to rest and leisure, to engage in play and recreational activities and to fully participate in cultural and artistic life;
- Children must not be used in any form of child labour or begging and are protected from child abuse and torture;
- Every child is entitled to parental care and protection, and no child shall be deprived of maintenance due to their parent's marital status;

- Parents and Children have a responsibility towards family and society, to work for the cohesion of the family, to respect parents, superiors and elders and to preserve African cultural values as this can promote their overall development;
- All children including gifted and disadvantaged children have a right to education starting with free and compulsory basic education;
- Children are entitled to juvenile justice and shall not be subjected to torture, inhuman or degrading treatment. They shall be separated from adults while in detention or imprisonment;
- Girls have the right to return to school after pregnancy while states must promote affirmative action for girls' education, to ensure greater enrolment of girls;
- Handicapped children are entitled to special measures of protection in keeping with their physical and moral needs;
- Refugee children including internally displaced children are entitled to appropriate measures for their protection and well-being;
- Every child has a right to protection from drug abuse, abduction and child trafficking;
- No child shall be induced, coerced or encouraged to engage in any sexual activity, prostitution or pornographic activities;
- The state will ensure the protection of imprisoned expectant mothers, and mothers of infants and young children.

## **Chapter 2**

## **Treaty-making: The Ratification and Domestication Process**

Majority of the laws and regulations that govern the right to initiate treaties, the process of formation, interpretation, amendment and dissolution are laid down in the 1969 *Vienna Convention on the Law of Treaties* (VCLT)<sup>1</sup>. Broadly defined, a treaty is “an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation<sup>2</sup>.” The rules relating to treaties in the 1969 VCLT are delimited to agreements between and among state parties. However, given the accelerating process of globalisation and the evolving nature of international space, systems and its dynamics, agreements between states and international organisations have also gained force in this age of treaties. This later form of treaties is governed by the *1986 Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations*. The principal rules and some provisions of the Vienna Conventions are widely recognised to embody customary international law and state practice regarding treaties.

The emergence and evolution of treaties encompass distinct processes and cover variety of aspects. There are, as such, several dimensions to treaty making and inquiries around treaty formulation play an increasingly critical role in the development of international law which is guided by regional and states’ realities, with the projected aim and directives for holistic implementation at national levels. Not only do treaties serve as sources of international law, underpin the international legal system and shape international affairs, they also canalize the concept of ratification or expression of consent to be bound by states and the agreements they make. Primordially, states have signed treaties on a wide variety of issues, and overtime, treaties have fundamentally become an important part of the sovereignty of states as well as a significant bedrock of states’ rapports with other nations. In accordance with the purpose or context of establishment, treaties are either bilateral or multilateral, and both forms are commonly viewed as frameworks of legal instruments that underlie international law. Beside treaties providing the basis for renewed and improved relationships and a progressively safe atmosphere that promotes social stability and development, benefits also accrue from them to

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<sup>1</sup> United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: <https://www.refworld.org/docid/3ae6b3a10.html> [accessed 28 August 2020]

<sup>2</sup> Article 2(1)(a) of the *Vienna Convention on the Law of Treaties* of 1969 (hereinafter referred to as VCLT / the Vienna Convention).

the state parties<sup>3</sup> who not only ratify but take measures to domesticate and effectively implement the treaties nationally. However, the processes by which states ratify or express their commitment to be bound by treaties are often divergent and contingent on the history as well as context of the respective state's legislative, legal and political circumstances.

Noting that treaties are formally and legitimately binding contracts of obligations on state parties to them under international law, it is thus necessary to understand the processes and benefits of treaty making, ratification, and domestication. Also, while the process of treaty formulation or international law-making is, generally, by no means as systematic and bureaucratized as the national ones, it is nevertheless possible to discern some procedural steps, at least for analytical reasons.

## **2.1 Treaty Making and Formation**

International consensus on the making and conclusion of treaties are typically driven by complex international and national challenges that states and societies face in managing the global economy, fostering sustainable development and economic growth, minimising climate change, preserving human rights and strengthening human security<sup>4</sup>. These realities which underlie the start of a treaty making process precede formal proposals by member states representatives or non-governmental organisations to the international community, often, passing through an intergovernmental or international organisation.<sup>5</sup> However, contemplating the establishment of a treaty entails taking into account several factors, like whether the apparent decision about the need, foreseen benefits, and chances of realising the proposed international instrument 'justifies the commitment of the resources expected to be required to formulate, adopt, and bring the instrument into force'<sup>6</sup>. Put forward, the making of international or multilateral treaties between regional states or states worldwide remains an undertaking that involves four major phases, including negotiations; adoption and authentication; expression of consent to be bound or ratification; and entry into force. Guidelines for these processes are outlined in the VCLT Part II—Sections 1, 2 & 3 (Articles 2

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<sup>3</sup> Article 2(1) (g) of the VCLT, defines the term 'party' to mean "a State which has consented to be bound by the treaty and for which the treaty is in force."

<sup>4</sup> Nakhjavani, Salim A (2010). Rules for our country, rules for our world: Prospects for enhancing Parliamentary oversight of treaty-making and implementation in South Africa. A briefing paper prepared at the request of the Portfolio Committee on International Relations and Cooperation

<sup>5</sup> Weiss, Edith Brown (editor). (1992). Environmental change and international law: New challenges and dimensions. United Nations University Press: Tokyo, Japan.

<sup>6</sup> Ibid

t0 25) on 'Conclusion and Entry into force of Treaties'. The successful realisation of the phases also signifies the completion of the process by which a treaty becomes binding under international law<sup>7</sup>. Notably, establishing a treaty is in the main considered an executive-led operation, and the international negotiation procedures as well as the expression by states of consent to be bound by a treaty are all part of the conduct of international relations and policy<sup>8</sup>.

### **2.1.1. Treaty Negotiation**

The making and conclusion of multilateral treaties are intricate as the discussions and negotiations requires the participation of several parties. While baseline studies are conducted from the outset of the treaty initiating process, the drafting which involves documenting the provisional terms of an agreement, spans through the negotiations<sup>9</sup>. The introduction and negotiations of multilateral treaties are usually done behind closed doors and by way of diplomatic or intergovernmental conferences, with 'representatives accredited by States' and conferred the 'full powers'<sup>10</sup> to represent the interest of the state in high-level negotiation of treaty making and conclusion. Clearly defined, full powers is "a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty"<sup>11</sup>. However, 'Heads of State, Heads of Government and Ministers for Foreign Affairs', do not require full powers, as representing their states in the process of treaty formation and conclusion is considered a function of their office.<sup>12</sup>

The process of negotiating the establishment of multilateral treaties can be quite complex, fragmented and involving drawn-out debates in large assemblies or conferences, because most parties desire to express their opinions in defining its final terms. In the case of the establishment of the African Union, for example, a total of fifty three Heads of State and Government of the Member States of the Organization of African Unity<sup>13</sup> participated in the two years negotiations starting in the year 2000 and leading to the official launch of the AU in July 2002. Beside the lengthy negotiations, state representatives routinely maintain contact and

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<sup>7</sup> Nakhjavani, Salim A (2010), op.cit

<sup>8</sup> Committee of Legal Advisers on Public International Law (CAHDI). (2001). Expression of Consent by States to be Bound by a Treaty: Analytical Report and Country Reports. Secretariat memorandum Prepared by the Directorate General of Legal Affairs – CAHDI.

<sup>9</sup> Weiss, Edith Brown (1992), op.cit

<sup>10</sup> See: Article 7 of the VCLT on 'Full Powers'

<sup>11</sup> Article 2(1)(c) of the VCLT

<sup>12</sup> Article 7(2)(a) of the VCLT

<sup>13</sup> See: Constitutive Act of the African Union of 11<sup>th</sup> July 2000

consultation with their respective governments for advice where appropriate and conclude with signatures on the final text of treaty without reservation following informed directives or guidance from their states<sup>14</sup>. In the case of the African Union treaties, therefore, endorsement of the treaties must be obtained by states at the national level, and treaty becomes legally binding on the state concerned only after it has been ratified, adopted or approved within the context of national law. Generally, and during treaty negotiations and deliberations, provisional terms of the contract are also drafted, and states representatives review them severally and make proposal for changes to the wording of the tentative text document.<sup>15</sup> A resolution by the negotiating state parties on the final term of the text usually precedes the adoption and authentication process.

### **2.1.2. Adoption and Authentication of the Treaty Texts**

Rules on the adoption and authentication of texts are provisioned in the Vienna Convention. Adoption constitutes a formal act which establishes the form and content of a proposed treaty text, of which its adoption generally occurs through the negotiating states' expression of consent in the process of treaty making<sup>16</sup> or when an agreement is reached on the language of the final text<sup>17</sup>. Speaking to the participation of all negotiating states in international treaty process, it can be said that the process encourages equality. Treaties negotiated and formed within an intergovernmental or international conference can, as a rule of law, be adopted by a two-thirds vote of the state parties present and voting<sup>18</sup>. However, same majority can through a consensus decide to apply a different rule for the form of adoption.

The standard practice which follows the adoption of a treaty text is authentication. This process is quite important and involves all states representatives validating the wordings or language of the treaty text. Accordingly, a "the text of a treaty is established as authentic and definitive by such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up"<sup>19</sup>. Authenticating or validating a treaty text can be accomplished through any specific process agreed to by the states' parties. However, in the absence of such an agreed procedure for authentication by the negotiating states, then the treaty practically will be

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<sup>14</sup> I.A. Sheirer (1994). *Starke's International Law*. 11<sup>th</sup> edition, London: Butterworths.

<sup>15</sup> Stanford Law School & American University of Iraq (2016). *Public International Law: Treaties and International Organizations Pub.* Available at: <https://law.stanford.edu/wp-content/uploads/2018/04/ILEI-Treaties-and-Intl-Orgs-2016.pdf>

<sup>16</sup> See: Article 9(1) of the VCLT

<sup>17</sup> Committee of Legal Advisers on Public International Law (CAHDI). (2001), op.cit

<sup>18</sup> Article 9(2) of the VCLT

<sup>19</sup> Ibid, Article 10(a)

authenticated by “signature, signature ad referendum<sup>20</sup> or the initialling by the representatives of those states of the treaty text or of the Final Act of a conference which incorporates the text”<sup>21</sup>. The adoption and authentication of the texts of a treaty entails the treaty negotiation process was a success. Meanwhile, once the authentication of the text is done, states cannot independently revise its terms, but can express consent to be bound by the treaty.

### **2.1.3. Expression of Consent to Be Bound**

To be party to a treaty, states must bound themselves by expressing consent through one of the following forms which are by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession”<sup>22</sup>. Instances where signatures are viewed as the conclusive expression of consent by states to be bound are stipulated in Article 12 of the Vienna Convention. However, in certain instances, the treaty remains non-binding until the state parties concerned proceed to the process of ratification. In other words, signature maybe subject to ratification, acceptance or approval<sup>23</sup> before the treaty is considered a binding contract of obligations. This notwithstanding, the mere signing of a treaty texts obliges state not to defeat the object and purpose of the treaty, until such time as it makes clear its intention not to become party to the treaty.<sup>24</sup>

Beyond signature as a consensus to be bound, is also expression by ratification which in international law perspective, as in the Vienna Convention of 1969 provides that “ratification, acceptance, approval and accession mean in each case the international act so named whereby a state establishes on the international plane its consent to be bound by a treaty”<sup>25</sup>. Article 14 of this Convention governs consent by ratification, a process which principally entails the execution of a formal instrument to that effect to the depositary of a multilateral treaty after its examination and approval by heads of states or governments, often in conformity with their nations’ respective constitutional laws and practices<sup>26</sup>. In other words, the signing and ratification process varies across national contexts, depending the individual country’s administrative processes, constitutional provisions and the legal system in place<sup>27</sup>. Note is also

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<sup>20</sup> That is, adding or appending the signature of the representatives of the participating states in the negotiation of the text, subject to further confirmation by their governments

<sup>21</sup> Article 10(b) of the VCLT

<sup>22</sup> Ibid, Article 11

<sup>23</sup> Ibid, see: Article 18(a).

<sup>24</sup> Committee of Legal Advisers on Public International Law (CAHDI). (2001), op.cit

<sup>25</sup> Article 2(1)(b) of the VCLT

<sup>26</sup> Maluwa, Tiyanjana (2012). Ratification of African Union Treaties by Member States: Law, Policy and Practice. *Journal of International Law*, 636.

<sup>27</sup> ibid

taken to the effect that each member state has the power to ratify separated in different branches of government, wherein some countries the responsibility falls to the executive as well as on the legislative or the judiciary in other countries<sup>28</sup>. So, irrespective of the signature appended through adoption and authentication, except otherwise states, a treaty only becomes binding on the effective date of ratification<sup>29</sup>. However, the pace of ratification by states (that is, the time interval between signature and ratification) remains a major concern and a challenge. Meanwhile, the Vienna Convention on its part, does not impose any time limit for ratification<sup>30</sup>. Looking at the case of African Union treaties, the procedure for ratification as explained, requiring that the instrument be signed by the Head of State, the Head of Government or the Minister of Foreign Affairs, or by representatives authorised act as such by the full powers bestowed on them by one of these authorities. The requirement of state consent has been said to be a clear indication that “sovereignty is not being relinquished by ratification, but rather that ratification is a free exercise of that sovereignty<sup>31</sup>”.

Overall, international treaties create binding obligations for states that have consented to be party to the treaty. In other words, “a treaty does not create either obligations or rights for a third State without its consent<sup>32</sup>”. Therefore, for states that did not participate in negotiating the treaty terms or sign them, but which to be bound by them, may such express through accession. Article 15 of the Vienna Convention provisions that a State may express its consent to be bound by means of accession where (a) the treaty so provides; or (b) it is otherwise established that the negotiating States agreed that the consent of that State may be expressed by means of accession; or (c) all of the parties have subsequently agreed that the consent of that State may be expressed by means of accession<sup>33</sup>. Apparently, the right accorded to states under the treaty to accede or adhere to the text and become bound by it need not be preceded by signature. This process only requires the deposit of an instrument of accession once the signatures are closed and depending on the instance, accession may be allowed even when the treaties are still open for signature or before and after they enter into force, as has been the case with some AU treaties<sup>34</sup>.

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<sup>28</sup> *ibid*

<sup>29</sup> Malcom Shaw (1997). *International Law*. 4th edition, Cambridge University Press: Melbourne.

<sup>30</sup> See: Article 18 of the VCLT

<sup>31</sup> Nakhjavani, Salim A (2010), *op.cit*

<sup>32</sup> See: Article 34 of the VCLT

<sup>33</sup> Committee of Legal Advisers on Public International Law (CAHDI). (2001), *op.cit*

<sup>34</sup> Maluwa, Tiyanjana (2012), *op.cit*



#### **2.1.4. Entry into Force**

As a matter of practice in international law, treaties still must take formal legal effect or enter into force after the expression of consent to be bound by the treaty terms. Article 24 of the Vienna Convention provided that ‘a treaty enters into force after the requisite number of ratifications have been obtained, as specified in the provisions of the treaty or as agreed by the negotiating States parties; as soon as consent to be bound by the treaty has been established for all the negotiating states; and when the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, unless the treaty otherwise provides’<sup>35</sup>. The *Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa* which was adopted in July 2003 and entered into force in November 2005, makes for a good example here. Article XXIX (1) of this document provides that Protocol shall enter into force thirty days after the deposit of the fifteenth instrument of ratification; Article XXIX (2) states that for each State Party that accedes to this Protocol after its coming into force, the Protocol shall come into force on the date of deposit of the instrument of accession; and Article XXIX (3) states that the Chairperson of the Commission of the AU shall notify all Member States of the coming into force of this Protocol.

In all intents and purposes, therefore, states enjoy rights and obligations only under treaties that are at that time in force<sup>36</sup>. Overall, once treaties have come into force, the sovereign nations that are bound by the treaty can consider it to be constitutional or law that needs to be implemented domestically.

#### **2.2. Benefits of Treaty Making: the Flavor for African States**

States are the primary subjects of international law and treaties the primary source of legal relations between and among states. The importance of treaty making is in its attempts to meet the basic needs of states to govern and address issues of mutual concerns by way of agreements that would in effect, and regardless of their ‘constitutional and social systems’, bring about stability and peaceful cooperation among nations<sup>37</sup>. However, realising the benefits that may accrue from treaties demands that, states should, upon ratification of the treaty terms ensure the effective domestication and implementation of such treaties at the national level. The

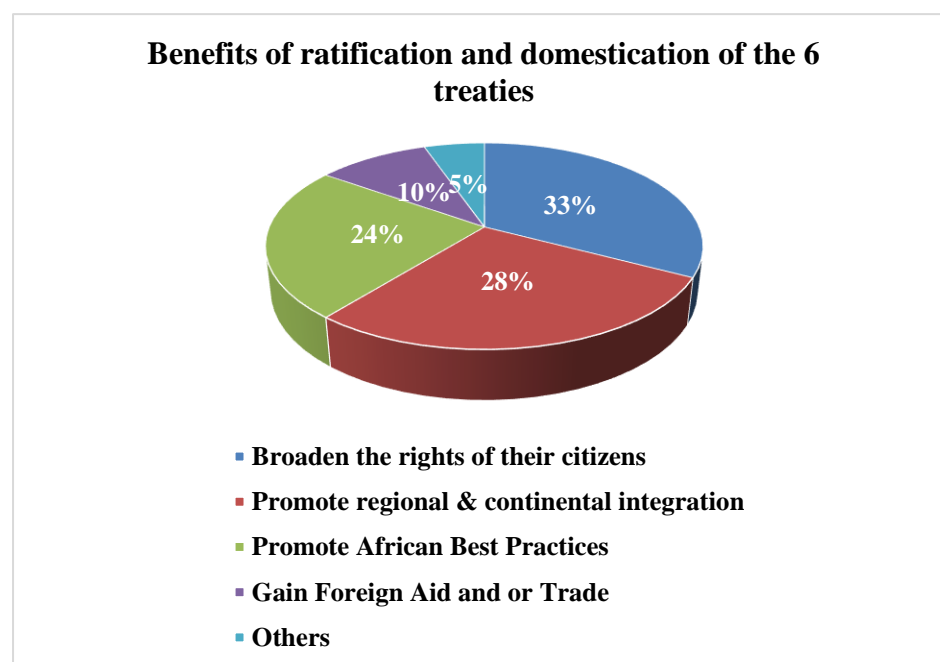
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<sup>35</sup> See: Article 24(1 - 3) of the VCLT

<sup>36</sup> Nakhjavani, Salim A (2010), op.cit

<sup>37</sup> See: The preamble of the VCLT - *Considering the fundamental role of treaties in the history of international relations; and Recognizing the importance of treaties.*

process of domesticating a treaty entails incorporating the international obligations into the domestic laws of the states, either by revising existing national norms or passing new legislation. It is against this background that, one can infer that, the motivations behind AU member states' adoption of the OAU and AU conventions clearly indicate the benefits that African states can derive from ratifying these treaties. However, beyond the arguments and the explanatory memorandum that led to the elaboration and adoption of these legal instruments, the surveys conducted in the target countries among professionals and various actors made it possible to identify the immediate and concrete benefits that African states would gain from the ratification of these regional conventions. The most highly recognized benefits of ratifying and domesticating the treaties are said to broaden the rights of the citizens, promote African best practices and promote regional and continental integration. Other benefits mentioned include improve the legal framework of the countries, improve the international image of respective countries, as well as promoting peace and freedom in the continent and beyond.



On the political and diplomatic level, the officials of the countries surveyed indicate that the ratification of the OAU/AU treaties allows the country to show itself as an exemplary state, respectful of the rule of law not only at the international level but also at the internal level with the progressive construction of a state governed by the rule of law. As indicated above, this is an argument and a useful asset in the negotiation of agreements not only with financial partners but also a guarantee of legal security attractive to potential foreign investors.

In Burkina Faso, judicial authorities have indicated that the ratification of treaties has provided the judge with a greater panoply of texts that can serve as a basis for jurisdictional decisions. These instruments thus provide them with precise insights into the understanding of certain human rights and ensure better protection of citizens and their rights. Moreover, in the application of these provisions, the national judge has the possibility of proceeding by comparative approach since these provisions are applied by the national courts of the other Member States that are also parties to these treaties.

As part of the fight against corruption, Burkina Faso's ratification of the AU Convention on Preventing and Combating Corruption has led to a strengthening of the national institutional and normative framework with the creation in 2007 of the *Autorité Supérieure du Contrôle de l'Etat et de Lutte contre la Corruption* (ASCE/LC). Similarly, the ratification of the Maputo Protocol on the Rights of Women in Africa has led to the taking of concrete measures to guarantee the principle of equality between men and women, as well as the guarantee of certain rights to women such as the right to education, and the elimination of harmful practices such as early marriages or excision.

But more than States and institutions, the main beneficiaries of the ratification of international instruments are first and foremost the citizens, who thus see their rights better protected as well as the resources to be used for the country's development.

### **2.2.1 Domestication and implementation**

The place of international treaties in the legal order of African states depends on their respective constitutions and legal traditions, most of them inherited from the former colonial power. For some countries such as Burkina Faso and Senegal, once the government has signed-on to a treaty (ratified) there is no additional national process to ensure required for its application or invocation in courts. This means that, once the statutory authority has signed-on to a treaty, citizens are entitled to the rights therein enshrined and can claim same. In other countries such as Mozambique, Kenya and Tunisia where a dualist approach to ratification and domestication of internalisation procedure is necessary, ratification must be accompanied by the adoption of a specific statutory process to enable the application of the instrument by the national judge. Such processes differ from country to country. With some, it's as simple as a cabinet endorsement, with others, it has to be approved by parliament or by both parliament and the

cabinet as is the case with Kenya<sup>38</sup> and Mozambique. On this aspect, there may be delays and challenges arising from lack of technical capacity, such as difficulties in drafting implementing legislation and lack of trained personnel to deal with ratification issues broadly and domestication in particular. There is then a necessity for enhancing the role of parliamentarians and the participation of civil society in treaty ratification and appropriation of treaties, and the need to equip governments with the necessary technical capacity and expertise on these issues.

The appropriation and domestication of the OAU/AU treaties also requires that the national legal framework be brought into line with the ratified regional instruments. As an example, the Mozambican Family Law allows the marriage of girls from the age of 16, which is contrary to the provisions of the African Charter on the Rights and Welfare of the Child which prohibits child marriage, i.e. under the terms of the Charter any individual under the age of 18. Similarly, the Labour Code admits in exceptional circumstances the employment of minors aged between 12 and 15 years. Such derogation, even if strictly limited, is once again contrary to the Charter, which prohibits all child labour. These contradictions renege owing to the fact customary and sharia law (where it is practiced) have allowed them to go-on unabated.

Beyond the constitutional differences linked to the requirement of internalisation or not of international treaties, the OAU/AU conventions can only really produce their effects if they are known and used by citizens and applied by national jurisdictions. On this point, there is a need to popularise the conventions among African citizens. One of the essential links in the appropriation and domestication process is the actors in the judicial sector, who unfortunately do not seem to have mastered these tools. In Tunisia, experienced judges, each with some thirty years of experience, have thus indicated that although efforts are now being made to have judges apply UN treaties, they have no recollection of any decision in which the judge bases his or her decision on an OAU/AU treaty.

### **2.2.2 A regional strategy**

The challenge faced by the AU and the member states is to put in place measures to encourage more expeditious ratification of the regional treaties. The greater part of this challenge, of course, falls upon the signatory states. Nevertheless, the pan-African organisation also has an

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<sup>38</sup> Art 12(1) of the Treaty Making and Ratification Act states that “a person shall not ratify any treaty on behalf of the Government of Kenya unless the treaty has been considered and approved by the Cabinet and Parliament in accordance with this Part.” [Act No. 45 of 2012](#), [Act No. 18 of 2014](#), [Act No. 18 of 2018](#). This principle which underscores Art 12(1) is in consonance with Article 2 (5) of the Constitution of Kenya 2010 provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya.

important responsibility in the face of this challenge and should develop a proactive and effective strategy to ensure not only the ratification of these treaties by member states but also their domestication and effective compliance by member states. This view is shared by African citizens and officials who believe that the AU has the primary responsibility, after states, for the ratification and implementation of the continent's legal instruments.

The AU, through the AU Commission (AUC), should develop a policy to streamline the AU's normative output for greater effectiveness and efficiency. This requires enshrining the principles of proportionality and effectiveness in its normative policy. In practical terms, this means committing itself to adopt new instruments only if the desired result cannot be achieved with existing instruments or through national legislation and limiting itself to what is really necessary. This rationalisation also means opting for a policy of saving resources, making it possible to reduce the number of reports on the implementation of the instruments that States have to produce by grouping them together. Besides, the process of negotiating a treaty should ensure the involvement of civil society at the appropriate level. This would help address concerns from interest groups, consider the resources involved and provide a clearer understanding of the issues at hand. It would also ensure that by the time the state commits its signature to the treaty and subsequently presents it to the legislative domestic organ for national-level ratification, endorsement, harmonization or domestication, there is some awareness of the subject matter of the treaty, its benefits and its implications for the state and citizens. Such awareness would be beneficial in marshalling domestic political support for speedy domestication of the treaty.

The slow pace of ratifications upon which this study and project is hinged, underscores the need for a more effective mechanism than general exhortations. The AU should be more involved in encouraging the ratification of treaties adopted under its auspices. Such encouragement does not amount to undue interference with the state's freedom to ratify or not to ratify a particular treaty, but on the contrary, it simply serves to urge the state to exercise its sovereign discretion in a particular direction. In doing so, the African Union Commission will simply be following a practice effectively followed by other organizations, notably the United Nations and the International Labour Organisation. Within the framework of the latter organization, states are required under the ILO Constitution to submit within one year any convention they sign to national authorities for ratification. They must also produce a report on compliance with this obligation to a Committee, which publishes it together with its comments

and observations. The latter publication is in turn used by the ILO to overcome the problems and promote a wider understanding of the difficulties faced by various countries in their attempts to ratify and implement the conventions. This practice could inspire and serve as a model for the AU

## **Chapter 3**

### **Current Status of Ratification and Domestication of African Union Treaties**

The African continent has experienced over 50 years of international policy formulation, generating about 49 treaties, conventions, and protocols aimed at transforming the lives of Africa's citizens if fully implemented. This results according to this study are converse. The record of ratification of major AU instruments has been poor. Apart from the foundational instruments such as the Treaty Establishing the African Economic Community, and The Protocol to that Treaty and the Constitutive Act of the African Union, which have been ratified by 96 per cent of AU member states, instruments relating to good governance, human rights, anti-corruption and the rights of women, children and youth were signed by the majority (over 80%) of the member states but ratified by very few.

The African Charter on Democracy, Elections and Governance, signed by 46 member states, has only been ratified by 34 members. The African Charter on Human and Peoples Rights on the Rights of Women in Africa, signed by 49 (or 89%) of AU members has been ratified by only 42 or 76 per cent of all member states. The African Youth Charter has attracted a paltry 39 ratifications or 70.9 per cent, while The African Charter on the Rights and Welfare of the Child has been ratified by only seven or 89 per cent of all member states. In critical areas such as infrastructure and energy, the ratification record has also been less than encouraging.

In spite of significant evidence that good governance and human rights breed peace, stability and development, it is worrisome that none of the AU governance or human rights treaties have 100% been ratified talk less of domesticated or implemented in a manner that assures citizens that treaty compliance is a pathway to development. Even other treaties which reason would expect states to give significant attention to have not garnered near as much attention as these that the UNDP project has focused on. Perhaps the UNDP should reorient the focus of the project to look into, and support domestication and implementation while broadening the treaty choices to include those that seek to address issues of crop insurance, disaster risk reduction and social protection which have been signed by only 24 (54.44%) of the member states but has so far not attracted a single ratification. The Convention for the Establishment of the African Centre for Fertiliser Development, and the Banjul Convention on Hazardous Wastes have been ratified by 6 (11%), 25 (46%) of all member states, respectively.

*Process of Ratification of AU Charters, Treaties, Protocols, and Conventions as at 16 December 2020 by six pilot countries*

			COUNTRIES					
			Burkina Faso	Kenya	Mozambique	Sao Tome & Principe	Senegal	Tunisia
TREATIES	DATES							
African Charter on Human and People's Rights	Date Of Signature		26/02/2004	17/12/2003	15/12/2003	01/02/2010	26/12/2003	30/01/2015
	Date of Ratification		09/06/2006	06/10/2010	09/12/2005	18/04/2019	27/12/2004	23/08/2018
	Date of Deposit		09/08/2006	13/10/2010	30/12/2005	27/06/2019	30/01/2005	27/09/2018
Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), adopted in 2003	Date Of Signature		05/03/1984	17/12/2003		29/01/2016	23/09/1981	
	Date of Ratification		06/07/1984	23/01/1992	22/02/1989	23/05/1986	13/08/1982	16/03/1983
	Date of Deposit		21/09/1984	10/02/1992	07/03/1990	28/07/1986	25/10/1982	22/04/1983
African Youth Charter	Date Of Signature		25/03/2008	28/06/2008	25/10/2007	01/02/2010	09/10/2007	31/03/2008
	Date of Ratification		17/09/2008	23/01/2014	29/07/2008	19/09/2014	17/09/2009	08/06/2011
	Date of Deposit		24/10/2008	29/01/2014	28/08/2008	27/06/2019	20/10/2009	06/07/2011
African Charter on the Rights and Welfare of the Child	Date Of Signature		27/02/1992			01/02/2010	18/05/1992	16/06/1995
	Date of Ratification		08/06/1992	25/07/2000	15/07/1998	18/04/2019	29/09/1998	
	Date of Deposit		10/07/1992	10/08/2000	22/12/1998	27/06/2019	30/10/1998	
African Charter on Democracy, Elections and Governance	Date Of Signature		02/08/2007	28/06/2008	27/05/2010	01/02/2010	15/12/2008	27/01/2013
	Date of Ratification		26/05/2010		24/04/2018	18/04/2019		
	Date of Deposit		06/07/2010		09/05/2018	27/06/2019		

*Status of Ratification of AU Charters, Treaties, Protocols, and Conventions as at 16 December 2020 by six pilot countries*

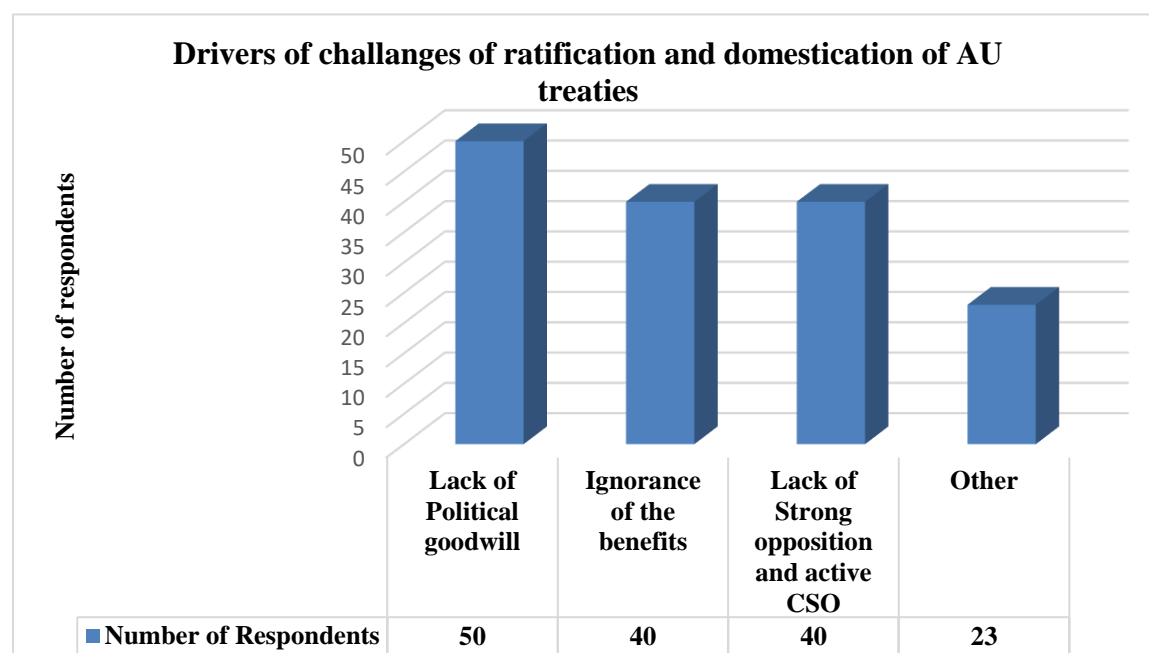


<b>Treaties / Country</b>	African Charter on Human and People's Rights,	Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)	African Youth Charter,	African Charter on the Rights and Welfare of the Child	African Charter on Democracy, Elections and Governance	AU Convention on Preventing and Combating Corruption
Burkina Faso	√	√	√	√	√	√
Kenya	√	√	√	√		√
Mozambique	√	√	√	√	√	√
Sao Tome e Principe	√	√	√	√	√	√
Senegal	√	√	√	√		√
Tunisia	√	√	√			√

.Overall, the snapshot above suggests that Africa is far from universal ratification of AU instruments. Concern over the low ratification of OAU/AU treaty instruments and their impact on the achievement of the Organisation's objectives is a crucial issue that has been raised since the early days of the new pan-African organisation. On the eve of the birth of the AU, at the 71st Ordinary Session of the OAU Council of Ministers held from 6 to 10 March 2000 in Addis Ababa, the Council adopted Decision A/DEC.511 (LXXI) in which it expressed the need for a systematic review of all OAU treaties with a view to establishing their relevance, identifying those that need to be updated or cancelled and identifying areas requiring the conclusion of new treaties. Three years later, one of the first decisions of the AU Executive Council urged all member states that have not yet done so to ratify or accede “as soon as possible” to OAU/AU treaties to which they are not parties (Decision EX. CL/dec.11 (II), 10 March 2000).

Following this, at a meeting of experts convened to review OAU/AU treaties in 2004, the Chairperson of the AU Commission observed that “it was worrying to note the slow pace of signature and ratification [of these treaties] by Member States, bearing in mind the process of integration that the member states had embarked on” (*Summary Report of the Meeting of Experts on the Review of the OAU/AU Treaties*, OAU-AU Treaties/Exp-PRC/Rpt (I) Rev.I, 18-20 May 2004). On its part, the Executive Council continues to reiterate its appeal to member states to ensure that they initiate the process of ratification of new treaties within one year after

their adoption. The Council the established the Ministerial Committee on Challenges of Ratification/Accession to AU Treaties and no similar body to track implementation of the treaties. As such, for key African leaders and citizens, there are three main reasons for this lack of enthusiasm on the part of African states to ratify AU treaties: lack of political goodwill; ignorance of the benefits; and lack of strong opposition and active CSOs.

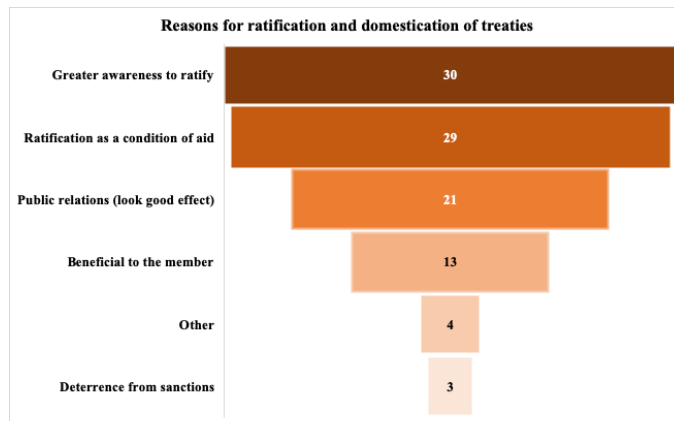


Whatever the case may be, it goes without saying that no matter how admirable the AU's policy goals and objectives on any issue addressed by a treaty may be, the treaty is nothing more than an expression of the member states' until it is ratified and becomes binding. Indeed, ratification is the first step towards the achievement by the state parties of the policy goals and objectives enshrined in the treaty.

### 3.1 African versus UN treaty ratifications

One of the main obstacles to the ratification of OAU/AU treaties seems to be the preference for UN treaties on similar issues. It seems that AU treaties have simply ranked low on the priority of governments. For example, in 2002 when the Kenyan government promised that corruption would cease to be a way of life in the country, this promise was demonstrated to the international community, by having Kenya as the first country to ratify the UN Convention against Corruption (UNCAC) in 2003. Although it, within the same time frame, signed the AU Corruption Convention, it only got to ratify it 2007. This example undoubtedly explains the conviction of African citizens that greater awareness and a condition for aid as the major

reasons why countries are inclined towards ratifying and domesticating the AU treaties. Other reasons mentioned include: to ensure sustainable development and to improve local and national instruments to align with international partners.



In absolute terms, it is difficult to identify in an abstract and general way the reasons why African states choose to ratify one treaty rather than another. Arguments based on the theory of rationalism are rooted in the assumption that states follow consistent well-ordered preferences to engage in a cost-benefit analysis of their actions. When applied to treaty ratifications, rationalism suggests that an African state will ratify a treaty, universal or regional, only when ratification yields material benefits to it (economically, politically, diplomatically or otherwise), and if there is a clear objective reward or self-serving outcome. For Burkinabe CSOs, for example, the ratification of UN treaties to the detriment of African regional instruments is justified by the desire to attract the sympathy of technical and financial partners. Burkina Faso's adoption of international human rights protection treaties, in particular, is one of the conditions for obtaining foreign aid. The same opinion is shared in Sao Tome and Principe. For their part, Tunisian officials justify their country's ratification of the UN Convention on the Rights of the Child, and not the African Charter on the Rights and Welfare of the Child, on the grounds that the latter had no added value for the country's legislation. It does seem, in the words of one civil society actor, that many African governments do not yet measure the benefits of African integration.

In contrast, constructivists argue that a state may also ratify a treaty if it has a normative reason to do so. Concerning human rights treaties, for example, it has been argued by some observers

that it is perfectly possible for a state to ratify such treaties if it believes that it is normatively right to do so, even if there is no direct material benefit to be gained for protecting human rights domestically or, in some cases, even in the absence of any serious intention to implement the norms. Then some African states may be motivated to enhance their legitimacy, reputation and esteem among their peers or even in the wider international community, by also adopting the norm through their ratification of the treaty in question and avoiding the stigma of being left out as a non-ratifying state. There can therefore be both a sort of virtuous circle for UN legal instruments, with a race for ratification to present itself as respectful of the rule of law, and a vicious circle with African regional treaties where it is the opposite: the feeling that it is not infamous not to ratify them. A good example of this phenomenon is provided by the comparative ratification-signature data for the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The latter was adopted by the OAU within seven months of the adoption of the former, as a regional counterpart to the universal treaty. Yet while all AU member states have signed and, with the sole exception of Somalia, ratified the UN instrument, the African Charter has only secured 44 ratifications. Moreover, although two-thirds of AU member states were already signatories to the UN Convention, and a good number of them had ratified it, when it entered into force on 2 September 1990, within less than one year of its adoption, most of those states did not sign the African Charter, let alone ratify it, for a much longer period after its adoption. In fact, the latter only entered into force some nine years after its adoption and had attracted only 20 signatures and seven ratifications during the first five years of its existence.

The last reason could be the role of domestic politics and constituencies. A liberal theory of ratification predicts that African states will ratify treaties when powerful domestic actors lobby for ratification, and where those actors are more readily able to express preferences to their governments. The assumption here is that the more responsive states are to the preferences of their citizens and domestic interest groups, the greater the likelihood that they will ratify or not ratify the treaty in accordance with those preferences. But even as vital as this might seem, ratification is not the ultimate driver of change at the national level. Implementation and domestication is the core of translating instruments into tangible results.

### **3.2 Justification and rationale of African treaties**

The need to ratify African legal instruments is mainly justified by the fact that, beyond

appearances, these instruments do not duplicate UN instruments, even with similar titles. They have very often been adopted either to underline a cultural and ideological value to which African states are attached or to enshrine elements to which African states are attached and which were discarded during negotiations within the UN framework. It is therefore fundamental that governments become aware of this reality, of the specific and original logic which presided over the adoption of the OAU/AU conventions and which justifies their maintenance.

Thus, for example, the delicate balance between tradition and modernity achieved by the African Charter on Human and Peoples' Rights has been abundantly underlined, and there is no need to recall it here. By way of illustration, by laying down the principle of social solidarity, the African Charter on Human and Peoples' Rights indicates that each individual has duties towards the family, towards society, towards the State and other legally recognised communities, and towards the international community. The individual shall also preserve the harmonious development of the family; respect at all times his or her parents whom he or she shall nourish and assist; but he or she shall also ensure, in his or her relations with the Society, the preservation and strengthening of positive African cultural values in a spirit of tolerance, dialogue and consultation and, in general, contribute to the promotion of the moral health of the Society. The Charter thus wished, through the provisions thus recalled, to lay the foundation of the struggle for the respect of Human and Peoples' Rights based on the fundamental values of African Culture.

Another emblematic example is the African Charter on the Rights and Welfare of the Child. It was born as a reaction to certain facts criticized by the UN process on the issue: under-representation of Africa in the working group set up in 1979 to draft the United Nations Convention on the Rights of the Child (only three African states: Algeria, Morocco, Senegal); rejection of the Senegalese proposals for the inclusion of African particularities during the second reading of the draft Convention on the Rights of the Child; total ignorance of the African States on the UN process, many of which expect to speak about it for the first time only during a conference on children in armed conflicts in Africa (July 6-10, 1987).

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, by further "liberating" African women, has a socializing scope in that it aims at a better integration of this particular category of the African social body. Both incentive and emancipatory, the Protocol reflects the will of African states to de-dust African ancestral

cultures of all that could contribute to the denial of African women's rights.

The African Youth Charter is one of the only two international treaty instruments devoted to youth, and it is a response to the need to develop the Charter highlighted in the AU Strategic Plan 2004-2007 adopted by African states. This Charter underlines on the one hand that Africa's greatest wealth is the youth of its population and that through its full and active participation, Africans can overcome the difficulties they face; and on the other hand, youth represents a partner and an indispensable asset for the sustainable development, peace and prosperity of Africa with a unique contribution to make to present and future development. The Youth Charter thus indicates to African states the ways and means to ensure the full development of their youth, guarantor and motor of their development.

The African Charter on Democracy, Elections and Governance, a bold initiative that consolidates in the legal heritage of African peoples a right to democracy that is still in its infancy, enshrines the will of African states to break with an ugly past and marks a point of no return in Africa's commitment to the normalization of the principles of democracy and the rule of law.

By adopting the AU Convention against Corruption, African states aimed to show their commitment to fighting against a scourge that undermines the development of the countries of the continent and to establish a framework that would enable them to pool their efforts and define common strategies to deal with it. The annual African Dialogue on Corruption, organized by the African Union Advisory Council on Corruption (AUABC), is a framework for consultation, exchange and development of common policies against corruption, bringing together the various government and civil society actors involved in this fight. The adoption in 2019 of a Common Policy on Asset Recovery is an illustration of this pooling of efforts.

### **3.3 Domestication Experiences and Gaps**

Following from the above, there is a significant gap both in the public awareness of AU treaties and also an appreciation of their value in strengthening government policies, good governance, the respect for human rights and advancing national development agendas in a number of countries. This gap was confirmed in the survey which found that in 50% of cases, there is a lack of political goodwill and about 40% ignorance of treaty benefits. These inadvertently

result in weak public ownership and the slow pace of domestication. To change this course, the role of African citizens and their organisations in promoting and advocating for ratification, domestication and implementation of these key instruments is imperative. When citizens understand the commitments of their Heads of States and Governments they are best placed to call for and support their implementation. Thus far, the table below shows the status of Ratification of the six AU treaties under review.

Status of Ratification of the AU Treaties covered by the AU Treaties project						
Treaty	Date of Adoption	Date entry into force	Date of last update	Ratified by number of countries (by June 2017)	Ratified by number of countries (by December 2020)	Increase
African Charter on Human and Peoples' Rights	June 01, 1981	October 21, 1986	May 19, 2016	54	54	0
African Charter on the Rights and Welfare of the Child	July 01, 1990	November 29, 1999	June 27, 2019	48	49	+1
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	July 01, 2003	November 25, 2005	September 17, 2019	38	42	+4
African Union Convention on Preventing and Combating Corruption	July 01, 2003	August 05, 2006	February 10, 2020	37	44	+7
African Youth Charter	July 02, 2006	August 08, 2009	June 27, 2019	38	39	+1
African Charter on Democracy, Elections and Governance	January 30, 2007	February 15, 2012	June 27, 2019	30	34	+4

As such, following from the above, the sub-sections below showcase the current experience and state of domestication in the pilot countries.

### 3.1.1 Burkina Faso's Experience with Domestication of AU Treaties

The project on accelerating the ratification of AU treaties comes at a time when Burkina Faso had already ratified the said pilot 6 treaties. However, following advocacy and the awareness raised by the project, the government an inter-ministerial committee to monitor the ratifications of international treaties.

Among the things accomplished by Burkina Faso as a direct consequence of the convention on the prevention and the fight against corruption of July 11, 2003, we can mention the creation of the Higher Authority of State Control and Fight against Corruption (ASCE) in 2007. In 2015 this High Authority was constitutionalized and accorded a sizable degree of independence from the executive, stronger investigative powers and financial autonomy. Once operationalized, "the new authority will be more efficient in combatting corruption" said Prof. Luc Marius Ibriga, the State Controller-General, head of the ASCE. The same year two laws were adopted to strengthen the powers of the institution. These are organic law 082-2015 / CNT of 24 November 2015 on the attribution, composition, organization and functioning of the ASCE / LC and law 04-2015 / CNT of 3 March 2015 on the prevention and repression of corruption in Burkina Faso. The mission of this institution is to strengthen measures aimed at preventing and combating corruption in Burkina Faso, promoting integrity, accountability and transparency in the management of the public and private sectors. This measure was taken in response to the recommendation of the Convention of 11 July 2003 which, in its article 2(1), requires each member state to take the necessary measures to prevent, detect, repress and eradicate corruption and similar offenses in public and private sectors.

As for Protocol II to the African Charter on Human and Peoples' Rights, relating to the rights of women in Africa, it has led to the taking of concrete measures aimed at guaranteeing the principle of equality between men and women, measures to guarantee the basic rights of women, namely the right to education, the elimination of harmful practices such as early marriage of girls, excision, and so on. Women's right to health has been given special treatment through the adoption of a free healthcare measure for pregnant women and children under five since 2016. Women's right to participate in health care Political life has also experienced



special treatment through the adoption on January 22, 2020 of a law requiring compliance with a gender quota in favor of one or the other sex. In this case, it is women who are targeted by the favors of this law, since it is they whose inclusion in the composition of political governance bodies is always problematic. In a practical way, this law aims to arouse and encourage the political participation of women in political affairs. In addition to the law in favor of women's political participation, other laws are adopted to ensure the protection and promotion of women and young girls in Burkina Faso. These include, among others, Law 061-2015/CNT on the prevention, repression and reparation of violence against women and girls and the care of victims.

Concerning the well-being of the child, many laws and decrees are taken to ensure the effectiveness of the rights provided for in the Charter. Some notable examples include law n°15-2014 / AN of 13 May 2014 on the protection of children in conflict with the law or in danger ; of law n°11-2014 / AN repressing the sale of children, child prostitution and child pornography, of April 17, 2014 ; of law n°2003-038 / AN defining and repressing child trafficking ; etc. In the same dynamic, decree n°2014-328 / PRES / PM / MENA / MATS of 2 May 2014 on the creation, attributions, composition, organization and functioning of a National Council for the prevention of violence in school (CNPVE).

Finally, with regard to the Youth Charter, legislative measures are weak or inexistent. Rather, it is practical political arrangements that are observed. This is the case with the existence of a ministry specially dedicated to the cause of youth, their technical and vocational training, and their employment. All successive governments always contain a ministry dedicated to this cause.

Despite these concrete acts of execution by the administration, the question remains as to whether citizens or their legal representatives can go to court on the basis of African treaties duly ratified by Burkina Faso.

These measures notwithstanding, few citizens are aware of the existence of these treaties, and even rarer are those who have knowledge of the procedure applicable to invoke the benefit of these treaties. Consequently, it is extremely rare to see citizens invoke the benefit of these treaties before the courts. The rare exceptions are in electoral disputes where occasionally citizens from time to time refer to provisions drawn from the African Charter on Democracy, Elections and Good Governance of June 30, 2007. This is the case in the decision rendered by

the Constitutional Council following the request of Mr. DABIRE Ambaterdomon Angelin which pointed to the ECOWAS regional court's decision to exclude persons who previously supported an unconstitutional amendment which plunged the country into a crisis. Despite the Constitutional Council upholding the ECOWAS Court decision, one of the problems in this regard is citizen's lack of direct access to the constitutional judge who is the guarantor of most fundamental rights enshrined in Burkina Faso.

The above and more evidence of domestication are evidenced in the table below.

Treaty	Ratification Status	Domestication evidence	Status of implementation	Best practice	Areas support is needed
African Charter on Human and Peoples Rights	Ratified	<p>The constitution endorses the Bill of Rights and guarantees basic freedoms which are encapsulated in AU treaties.</p> <p>Other national legislation which guarantee the protection of Human Rights and promote good governance include:</p> <ul style="list-style-type: none"> <li>• The Personal and Family Code;</li> <li>• The Penal Code ;</li> <li>• The Code of Criminal Procedure;</li> <li>• Law No. 028-2008 / AN of May 13, 2008 on the Labor Code;</li> <li>• Law No. 001-2016 / AN of March 24, 2016 establishing the National Commission for Human Rights;</li> </ul> <p>At the institutional level, Burkina Faso has:</p> <ul style="list-style-type: none"> <li>• a ministry in charge of human rights;</li> <li>• a National Human Rights Commission;</li> </ul>	<p>Burkina Faso periodically submits reports to the African Commission on Human and Peoples' Rights.</p> <p>The 5th and 6th cumulative periodic reports 2015-2017 are being prepared and will soon be submitted to the African Commission on Human and Peoples' Rights.</p> <p>Burkina Faso civil society organizations present shadow reports and make statements to the African Commission on Human and Peoples' Rights.</p>	<p>The Charter is frequently invoked before the African Court on Human and Peoples' Rights.</p> <p>Some cases concerning Burkina Faso:</p> <ol style="list-style-type: none"> <li>1. Case of Issa Lohé Konaté v. Burkina Faso, Application No. 004/2013, violation of Article 9 of the Charter.</li> <li>2. Case of Norbert Zongo, Abdoulaye Nikiéma, Ernest Zongo, Blaise Ilboudo and MBDHP c. Burkina Faso, application n° 013/2011, violation of Articles 1 and 7 of the Charter.</li> </ol>	<p>There is a need to support the state in the preparation of its periodic reports in order to avoid delays in their transmission.</p> <p>There is also the need to support civil society organizations for the regular production and presentation of shadow reports to the African Commission on Human and Peoples' Rights.</p>
Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)	Ratified	<p>We have many laws protecting women's rights:</p> <ul style="list-style-type: none"> <li>• The 1989 Personal and Family Code;</li> <li>• The Penal Code which represses harmful traditional practices;</li> </ul>	<p>There is a toll free number (80 00 11 12) available to the population to denounce cases of excision;</p> <p>There are campaigns to popularize the</p>		

	<ul style="list-style-type: none"> <li>• Law No. 028-2008 / AN of May 13, 2008 on the Labor Code;</li> <li>• Law n ° 081-2015 of 24 November 2015 on the statute of the public service;</li> <li>• Law No. 061-2015 / CNT of September 6, 2015 on the prevention, repression and reparation of violence against women and girls and the care of victims;</li> <li>• Law n°15-2014 / AN of 13 May 2014 on the protection of children in conflict with the law or in danger;</li> <li>• Law n°11-2014 / AN repressing the sale of children, child prostitution and child pornography, of April 17, 2014;</li> <li>• Law n°2003-038 / AN defining and repressing child trafficking;</li> <li>• Law No. 003-2020 / AN of 22 January 2020 establishing the quota and modalities for the positioning of candidates for legislative and municipal elections in Burkina Faso;</li> <li>• Law n ° 049-2005 on reproductive health in 2005;</li> <li>• The law establishing the CNDH imposes the equitable representation of women and men in the composition of the commissioners (1/3 of one or the other) and gender parity in the composition of the board.</li> </ul> <p>We also have the existence of structures for the promotion of women's rights:</p> <ul style="list-style-type: none"> <li>• The gender caucus and the human rights and gender committee at the National Assembly;</li> <li>• The National Council for the Promotion of Gender (CONAP / genre);</li> <li>• The National Committee to Combat the Practice of Excision (CNLE);</li> </ul>	gender quota law and awareness campaigns on violence against women.		
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		<ul style="list-style-type: none"> <li>• The Ministry of Women, National Solidarity, Family and Humanitarian Action (MFSNFAH).</li> </ul>			
African Youth Charter	Ratified	Burkina Faso has a Ministry in charge of youth and a National Youth Council (CNJ) which acts as the leader of youth organizations.			
African Charter on the Rights and Welfare of the Child	Ratified	<p>Many laws promoting the rights of the child have been passed. We can cite:</p> <ul style="list-style-type: none"> <li>• Law 013-2007 on the orientation law of education</li> <li>• Law No. 15-2014 / AN on the protection of children in conflict with the law or in danger</li> <li>• Law establishing, attributions, composition and functioning of the National Coordinating Committee of the National Action Plan to Combat the Worst Forms of Child Labor (2014)</li> <li>• Law No. 011-2014 / AN of April 17, 2014 repressing the sale of children, child prostitution and child pornography</li> <li>• Law n ° 062-2015 / CNT on the status of the ward of the nation</li> <li>• Decree n ° 2009-365 of May 28, 2009 determining the list of hazardous work prohibited for children in Burkina Faso (decree reviewed)</li> </ul> <p>There are also several structures dealing with issues of children:</p> <ul style="list-style-type: none"> <li>• National Council for Children</li> <li>• Directorate of protection and fight against violence against children;</li> <li>• Directorate for the fight against child labor and its worst forms</li> <li>• Direction of placements, adoptions and sponsorships</li> <li>• National Council for the</li> </ul>	<ul style="list-style-type: none"> <li>• Presentation by Burkina Faso of periodic report on the implementation of the ACRWC;</li> <li>• Transmission of the 4th, 5th and 6th cumulative periodic reports of the BF on the implementation of the ACRWC, period 2011-2015;</li> <li>• Presentation by civil society organizations of alternative reports on the implementation of the ACRWC to the BF.</li> </ul>	Non-state actors such as civil society organizations are associated with the government report validation workshop.	<p>There is a need to support the state in the preparation of its periodic reports in order to avoid delays in their transmission.</p> <p>There is also the need to support civil society organizations for the regular production and presentation of shadow reports to the African Commission on Human and Peoples' Rights.</p>

		<p>Prevention of Violence in Schools</p> <ul style="list-style-type: none"> <li>• School management committee</li> <li>• National coordinating committee of the national action plan to combat the worst forms of labor</li> <li>• Child protection working group etc.</li> </ul>			
African Charter on Democracy, Elections and Governance	Ratified	<p>Burkina Faso has a law on the electoral code, namely Law No. 014-2001 / AN of July 3, 2001, and an Independent National Electoral Commission (CENI) responsible for regulating the elections. There are also the judicial bodies responsible for settling electoral disputes. These are the administrative courts, the Council of State and the Constitutional Council.</p>	ACDEG was internalized in the Transition Charter in Burkina Faso from 2014 to 2015.	There is a regular holding of elections in a peaceful atmosphere;	It would be interesting to support Burkina Faso in the process of appropriating this Charter because there are still efforts to be made in this area.
AU Convention on Preventing and Combating Corruption	Ratified	<p>Suffice to mention the creation of the Higher Authority of State Control and Fight against Corruption (ASCE) in 2007. In 2015 this High Authority was constitutionalized and granted a sizable degree of independence from the executive, stronger investigative powers and financial autonomy. These are organic law 082-2015 / CNT of 24 November 2015 on the attribution, composition, organization and functioning of the ASCE / LC and law 04-2015 / CNT of 3 March 2015 on the prevention and repression of corruption in Burkina Faso. There is also :</p> <ul style="list-style-type: none"> <li>• Law 025-2018 / AN of May 31, 2018 on the penal code;</li> <li>• The law on the code of criminal procedure;</li> <li>• The law on the fight against money laundering</li> </ul>		<p>Each year, UNDP Burkina supports ASCE-LC in the celebration of the international day against corruption; The declaration of assets before taking up office for certain responsibilities. UNDP also supports anti-corruption civil society organizations.</p>	Corruption is a growing scourge in Burkina Faso. To this end, support from the Region could help to fight this scourge.

		and the financing of terrorism; Regarding the Burkinabè institutional anti-corruption mechanism, we have: <ul style="list-style-type: none"> <li>• Administrative bodies</li> <li>- The Higher State and Anti-Corruption Authority (ASCE-LC);</li> <li>- The National Financial Information Processing Unit (CENTIF) and</li> <li>- The National Coordination for the Control of Police Forces (CONACFP)</li> <li>• Judicial bodies</li> <li>- Judicial centers specializing in the fight against economic and financial offenses;</li> <li>- The Court of Auditors</li> <li>- The High Court of Justice</li> </ul> Non-state actors: the National Anti-Corruption Network (REN-LAC); investigative journalists;			
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Following from the above, there is an even greater need to focus advocacy towards the popularization of AU treaties as an impetus for domestication and implementation. This conclusion is predicated on the fact that, surprisingly as key stakeholders in the implementation of AU treaties, most judges interviewed in view of this study were little informed about AU treaties broadly and the six focus treaties in particular. As such, it is highly recommended that, the project in Burkina Faso focuses on domestication and implementation; and should consider working with local actors in the following areas:

- a. Human Rights - supporting the implementation of human rights charters (Africa Charter on Human and Peoples Rights with specific accent to provisions relating to the rights of women and welfare of children which read alongside these treaties would inadvertently popularize them.
- b. Anti-corruption – supporting implementation of the African Charter on Preventing and Combating Corruption while leaning on the work commenced by the United

Nations Office on Drugs and Crimes in furtherance of the drive towards the implementation of the United Nations Convention against Corruption (UNCAC)

- c. Supporting the implementation of the African Charter on Democracy, Elections and Governance (ACDEG) which has gained currency in political circles but needs to be expanded to youth forums for purposes of expanding the political space and broadening the circumference of persons who hold governments accountable.

### 3.1.2 Kenya's Experience with the implementation of AU Treaties

For Kenya, the benefits to treaty ratification are far reaching primarily because upon ratification they automatically become part of the laws of Kenya and will be readily cited by practitioners within the legal system. The courts have observed that the relationship between international instruments that Kenya has ratified and legislation that lacks clarity. Some courts are of the view that although it is generally expected that the government through its executive ratifies international instruments in good faith on the behalf of and in the best interests of the citizens, it would not have been that the framers of the Constitution would have intended that international conventions and treaties should be superior to local legislation and take precedence over laws enacted by their chosen representatives. As a consequence, these courts hold the view that, the nature and extent of application of treaties must be determined on the basis of the subject matter and whether there is domestic legislation dealing with the specific issue at hand bearing in mind of the legislative authority, which is derived from the people of Kenya. So far only one court has ruled on this matter. Another declined to make a ruling on the same when it was called upon to. The ruling weakens the position of AU treaties and other international conventions and unless overturned it precedent to subordinate courts and persuasive within the High Court. Academics and research institutions should research further on this subject. Furthermore, development partners could support this research and engagements between researchers and the judiciary, as well as supporting public interest litigations through non-governmental (NGOs).

This notwithstanding, increasingly in almost all petitions to the courts for the enforcement of the Bill of Rights, the ACHPRs and other AU instruments feature prominently alongside the UN Bill of Rights. Additionally, in Kenya, there are some public interest litigations whose judgments have contributed to the enforcement of human rights. For instance, in the judicial

interpretation of the rights of intersex persons, the Court in ‘Baby A’ (Suing through the Mother E A) & another v Attorney General & 6 others directed the Government to consider developing an appropriate legal framework governing issues related to intersex children based on internationally acceptable guidelines. Pursuant to the Ruling in ‘Baby A,’ the Attorney-General constituted the Taskforce on Policy, Legal, Institutional and Administrative Reforms Regarding Intersex Persons in Kenya. The Taskforce in its deliberations relied on the following AU instruments: the ACHPR which safeguards all people against discrimination and sets out the right to equal treatment and protection before the law for all individuals, and the inviolability of a person’s physical integrity; the Child Charter that commits Member States to the protection of all children against discrimination, child abuse and torture, harmful social and cultural practices and sexual exploitation among others; the African Commission Principles and Guidelines that explicitly recognise intersex people as a vulnerable and disadvantaged group of people, who face or continue to face significant impediments to their enjoyment of economic, social and cultural rights; and a panel discussion ‘Intersex human rights: Challenges and opportunities’ convened in Banjul, the Gambia on the sidelines of the 61st Ordinary Session of the African Commission on Human and Peoples’ Rights. As a result of these deliberations far-reaching recommendations were made that contributed to the enumeration of the intersex people as a special category during the 2019 national population census. Kenya became the first country in Africa to formally recognize people who identify their gender as intersex.

In the performance of its tasks and to enhance its efficiency, the ACHPRs makes provision for the Commission to work with other partners in the field of human rights in Africa. The Commission has granted observer status to some Kenyan NGOs. NGOs with observer status have participated directly in the Commission's activities (public sessions of the Commission and its subsidiary bodies) and further are involved in the preparation of “shadow” reports on the human rights situation in Kenya, thus keeping government on its toes. Some NGOs have litigated at the African Commission and the African Court and as a result enhanced the access to justice by communities and individuals in Kenya. In 2017, the African Court on Human and Peoples’ Rights (African Court) delivered its ruling in the matter of the African Commission on Human and Peoples’ Rights v Kenya which revolved on the expulsion of the Ogiek people, a Kenyan hunter-gatherer community, from their ancestral lands in the Mau forest. This resulted from the fact that the African Commission had not managed to settle the conflict, and therefore transferred it to the African Court in 2012. The Court widely followed the African



Commission's application and found that the eviction of the Ogiek without consultation amounted to several rights violations under the ACHPRs: the right to non-discrimination, culture, religion, property, natural resources and development. Kenya's argument that the eviction was justified by the need to protect the Mau forest was dismissed by the Court. In 2003, the Centre for Minority Rights and Development (CEMIRIDE) took a case to the African Union Commission on behalf of the Endorois Community involving the displacement of the Endorois Community, an indigenous people, from their ancestral land, the failure to adequately compensate them for their loss of property, the disruption of the community's pastoral enterprise and violations of the right to practice its religion and culture, as well as the overall process of development of the Endorois people. The Commission found the Republic of Kenya to be in violation of provisions of the African Charter and made recommendations for restitution and compensation. The Federation of Women Lawyers, Kenya and International Center for the Protection of Human Rights represented Priscilla Njeri Echaria in a case against Kenya filed in September 2009. The prayers were that the African Commission would find Kenya in violation of ACHPRs and recommend that she enacts legislation aimed at effecting the property rights of married women before a specific time. The African Commission was satisfied that a prima facie case existed as the matter hinged on the interpretation and application of particular provisions of the African Charter with regards to the Victim's case, and it could determine without the necessity to require a systematic pattern of violations. The case was however determined on the Commission's finding that the complainants had failed to explain the wide interval between exhaustion of local remedies and the Communication to the African Commission. These cases have been impactful. Although the Government is yet to implement the Ogiek judgement, the decisions of the African Commission, have time and again been referenced by the national courts and have contributed to legal and policy changes.

The AU treaties have contributed to EAC's concerted efforts in transnational crimes. Drug trafficking, trafficking of persons, human smuggling, insurgencies and terrorism, corruption, smuggling of weapons and other commodities, and cybercrimes, are some of the crimes that traverse boundaries and which need a concerted effort by states. The AU Corruption Convention, has provisions requiring State Parties to provide each other with cooperation and assistance to prevent, detect, investigate and punish for corruption and related offences. The Child Charter requires State Parties to take appropriate measures to prevent the abduction, sale of, or trafficking of children for any purpose or in any form, by any person including parents or legal guardians of the child. In the East African region, EALA passed *The East African*

*Community Counter Trafficking in Persons Bill, 2016*. The Act provides a legal framework at the EAC level to prevent the counter-trafficking in persons, paying particular attention to women and children, and vulnerable members of the society. It calls for the protection and assistance of victims of trafficking in persons in a manner that respects their human rights, and, the promotion of cooperation and harmonized action among the Partner States in order to prosecute perpetrators and comprehensively counter trafficking in persons. In deliberating the Bill EALA referenced the Maputo Protocol whose Article 2 (4) (g) calls on Member States to prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk.<sup>39</sup>

An additional impact to AU treaties and other international conventions is the progressive change of Kenya's human rights approach to governance. The over two-decade reform process in Kenya has seen matters of human rights come to the fore. The Human Rights Approach cuts across the entire COK,2010. Over and above the progressive provisions in the Bill of Rights, entitlements for the citizenry are reinforced in Chapters on citizenship, land and environment, representation of the people, commissions and independent offices and others. The devolved structure of government rides on the need that all citizens should access services from Government. Through recognition of the rights of communities to manage their own affairs and further their development, devolution works towards the equitable share of national and local resources throughout the country. The framework addresses historical injustices and puts in place mechanisms that enable citizens to access justice. The Human Rights Approach is buttressed in the National Policy and Action Plan on Human Rights in which the Government makes a firm commitment to human rights as embodied in CoK,2010 and international and regional human rights instruments that Kenya is a state party, and further commits to a strict accountability for the implementation of human rights. The implementation process is clear and is a collaborative effort between the Government Ministries, Departments and Agencies, civil society, private sector, academic institutions and all other stakeholders. It includes the formation of focal points in Government Ministries, Departments and Agencies – Human Rights Units. Constitutional Commissions in particular KNHRC, NGEC and CAJ are expected to carry out their mandates under their respective Acts to monitor and evaluate the implementation of this policy. To this they continuously advise on suitable human rights indicators. Human rights indicators help gauge the human rights impact of government

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<sup>39</sup> The Official Report of the Proceedings of the East African Legislative Assembly 149<sup>th</sup> Sitting – Third Assembly: Second Meeting – Fifth Session, Tuesday, 18 October 2016

programmes as well as the degree to which the processes used adhere to human rights principles. Because a stable budgetary support is needed in the enforcement of human rights, Government is to ensure that resources are mobilized in its budgetary plans to support the mainstreaming of human rights in planning and budgetary process in the various Government Ministries, Departments and Agencies. Every Ministry and Agency is required to provide for human rights realization in its budgets so that adequate resources are provided for the implementation of specific projects aimed at promoting human rights. In as much as Government continues enlisting the support of its development partners in the implementation of human rights initiatives, it has committed to providing the bulk of the budgetary support. Moreover, it recognizes the role of non-governmental organizations in human rights promotion. A few CSOs have developed clear engagement strategies that encompass programmes and projects that contribute to Kenya's compliance to AU and other international treaty obligations. More CSOs need to be involved and more funding for programmes for litigating human rights is needed. Some CSOs also have oversight programmes aimed at ensuring that sector issues get government budgetary allocations (for example, gender responsive budgeting), programmes that enable lobbying and advocacy, and programmes that contribute to the capacity building of officials in state departments, among others. With additional support the involvement of CSOs in AU treaties projects could contribute to Kenya's ratification process and implementation of AU treaties.

Consequent to the above, the two tables below offers an overview of Kenya's ratification trajectory in so far as the six pilot AU treaties are concerned and the status of domestication. And although not specific, despite growing awareness, there is a need for increased advocacy around key AU treaties.

<b>Treaty</b>	<b>Date of adoption</b>	<b>Date of Entry into Force</b>	<b>Date of Kenya's Signature</b>	<b>Date of Kenya's Ratification/ Accession</b>
African Charter on Human and Peoples' Rights (ACHPRs)	01.06.1981	21.10.1986	-	23.01.1992
Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)	01.07.2003	25.11.2005	17.12.2003	06.10.2010
African Charter on the Rights and Welfare of the Child (Child Charter)	01.07.1990	29.11.1999	-	25.07.2000
African Youth Charter	02.07.2006	08.08.2009	28.06.2008	23.01.2014
AU Convention on Preventing and Combating Corruption (AU Corruption Convention)	01.07.2003	05.08.2006	17.12.2003	03.02.2007

African Charter on Democracy, Elections and Governance (ACDEG)	30.01.2007	15.02.2012	28.06.2008	Pending
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Treaty	Ratification status	Domestication Status	Status of implementation	Best practice	Areas support is needed
African Charter on Human and Peoples Rights	Ratified	Pursuant to Art. 2(6) Constitution of Kenya, 'international treaties and conventions ratified by Kenya on ratification or accession become part of the laws of Kenya.' An indicative article however is on art.21 of the Constitution which requires enactment of legislation to enable realization by Kenya of its full international obligations in respect of human rights and fundamental freedoms.	<ul style="list-style-type: none"> <li>- Expansion of space for the enjoyment of civil, political, economic, social, and cultural freedoms and participatory democracy progressively being realized. (notable judicial pronouncements on: Settlement of squatters, protection from arbitrary arrests and persecution, expansion of recognition of the rights of LGBTQI+, Recognition and protection of marginalized communities (Intersex, women, children, and elderly)</li> <li>- Recognition of justiciability of economic, social, and cultural rights in Kenya (notable court cases)</li> </ul>	ACHPR has been utilized in the advancement of fundamental rights and freedoms through the court's reliance and reference to the charter. E.g., for example, in the recognition of the intersex community in the 2019 population census; Civil society groups utilization of the available mechanisms of the African Court on Human and Peoples' Rights (African Court) and the African Commission in the advancement of the rights of indigenous People's in Kenya (2017 Ogiek Judgement)	<p>Resourcing, Institutional Capacity building and technical capacity strengthening of Kenya National Commission on Human Rights to enhance its compliance monitoring and reporting capabilities of Governments fulfillment of commitments under the Charter.</p> <p>Technical capacity building of duty bearers (Government Officials and Government Institutions concerned)</p>
Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)	Ratified	Pursuant to art.2(6) Constitution of Kenya, 'international treaties and conventions ratified by Kenya on ratification or accession become part of the laws of Kenya.' An indicative article however is on art.21 of the Constitution which requires enactment of legislation to enable realization by Kenya of its full international obligations in respect of human rights and fundamental freedoms.	<ul style="list-style-type: none"> <li>- Expansion of space for the enjoyment of civil, political, economic, social, and cultural freedoms and participatory democracy progressively being realized for women.</li> </ul>	Notably, women representation in parliament, inclusivity regarding sexual reproductive health and rights, and inclusive educational policies of re-entry of teenage mothers to learning institutions, establishment of safe centers and shelters from forced early marriage and domestic violence.	<p>Resourcing, Institutional Capacity building and technical capacity strengthening of Kenya National Commission on Human Rights to enhance its compliance monitoring and reporting capabilities of Governments fulfillment of commitments under the Charter.</p> <p>Technical capacity building of duty bearers (of Government Officials and Government Institutions concerned)</p>
African Youth	Ratified	Pursuant to art.2(6) Constitution of Kenya, 'international treaties	- Decentralized and coherent youth engagement platforms	The ratification of this Charter in 2014 enabled	Resourcing, Institutional

Charter		and conventions ratified by Kenya on ratification or accession become part of the laws of Kenya.'	promoted, formulated, and strengthened, including youth participation in governance.	development of the Kenya Youth Development Policy by government and which has contributed to milestones in development of youth development policies.	Capacity building and technical capacity strengthening for CSOs, NGOs, Academia and think tanks to engage with Government of Kenya, Parliament, and Judiciary on youth centric, solution-oriented policy issues.
African Charter on the Rights and Welfare of the Child	Ratified	Pursuant to art.2(6) Constitution of Kenya, 'international treaties and conventions ratified by Kenya on ratification or accession become part of the laws of Kenya.' An indicative article however is on art.21 of the Constitution which requires enactment of legislation to enable realization by Kenya of its full international obligations in respect of human rights and fundamental freedoms.	- Expansion of space for the enjoyment of civil, political, economic, social, and cultural freedoms of children and by children including increased awareness of protection measures, mechanism, and tools for protection by public.	ACRC has been utilized in the advancement of fundamental rights and freedoms through the court's reliance and reference to the charter including through advocacy for coherent mechanism, and tools for the rights of the child protection, respect, and fulfillment.  Kenya is among the group of African countries that have adopted laws, "continuation" or "reentry" policies, and national strategies, to ensure that pregnant students can resume their education after giving birth	Sensitization and training of rights holders and duty bearers on Charter for expanded understanding, interpretation and monitoring by Judiciary, Parliament and stakeholders
African Charter on Democracy, Elections and Governance	Ratified	Pursuant to art.2(6) Constitution of Kenya, 'international treaties and conventions ratified by Kenya on ratification or accession become part of the laws of Kenya.' An indicative article however is on art.21 of the Constitution which requires enactment of legislation to enable realization by Kenya of its full international obligations in respect of human rights and fundamental freedoms.	- Government of Kenya just acceded to ACDEG on 7 January 2021. - Notable, Kenya has several policies and legal frameworks giving effect to ACDEG.	Best practices pursuant to Kenya's accession to ACDEG are yet to be documented.	Capacity building and technical capacity strengthening of all actors and stakeholders on ACDEG application, and reporting.
AU Convention on Preventing and Combating Corruption	Ratified	Pursuant to art.2(6) Constitution of Kenya, 'international treaties and conventions ratified by Kenya on ratification or accession become part of the laws of Kenya.'	Kenya has several legislations directly and indirectly addressing concerns of corruption including the Ethics and Anti-Corruption Commission Act , 2003 which establishes the anti-corruption agency, its functioning, independence and oversight; Provides for its regulation, management, expenditure and accountability of election-campaign funds during elections; Enables it to enforce standards of ethics and integrity among public officers; and provides for the criminalisation of	Kenya has been measuring corruption since the 2007, in the context of on-going performance contracting reforms that were introduced. It has developed Corruption eradication performance indicators and tasked the Ethics and Anti-Corruption Commission (EACC) to monitor and evaluate their implementation.	Resourcing, Institutional Capacity building and technical capacity strengthening of Government Officials and Institutions concerned. to increase public safe access, and engagement; investigative and prosecution capacities;

			money laundering; Provides for the protection, rights and welfare of victims of offences; and provides for the right to access public information.	Laws enacted to compliment Kenya's international obligations regarding the AUCPCC include: Leadership And Integrity Act, 2012 The Bribery Act, 2016 The Public Officer Ethics Act, 2003  The Anti-Corruption and Economic Crimes Act, 2003 The Public Finance Management Act, 2012	resourcing on public sensitization and awareness and building of effective communication infrastructure.
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Consequently to the above, in Kenya the project would garner much impact in the next phase with a focus on:

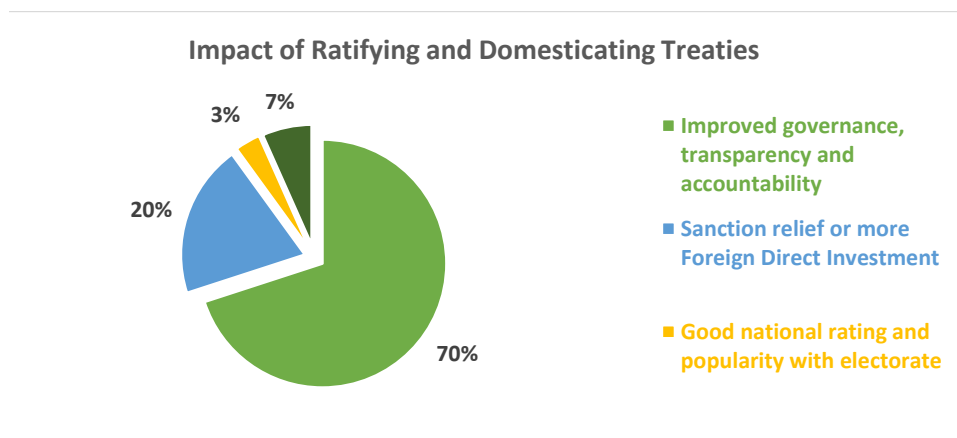
- a. Human Rights - supporting the implementation of human rights charters (Africa Charter on Human and Peoples Rights with specific accent to provisions relating to the rights of women and welfare of children which read alongside these treaties would inadvertently popularize them.
- b. Supporting the ratification and implementation of the African Charter on Democracy, Elections and Governance (ACDEG) which has gained currency in political circles but needs to be expanded to youth forums for purposes of expanding the political space and broadening the circumference of persons who hold governments accountable. This is particularly important for Kenya which has made significant strides following the 2008 election-related violence. The gains in the last decade need constitutional and treaty safeguarding and the need for multi-stakeholder coalition to advocate for the ratification and implementation of the ACDEG is timely and urgent particularly in the light of elections billed for 2022.

### 3.1.3 Mozambique's experience with Implementation of Au Treaties

For the specific case of Mozambique, the impacts of ratification and domestication of international treaties, with special focus on those of the African Union, under analysis have had positive impacts on improving governance, transparency and State responsibility (70%), as evidenced in the graph below which shows responses from key informants who responded to this study's questionnaire. In addition, the ratification of instruments related to the fight

against corruption and good governance contributed to attract foreign investment, such as the extractive industry, the exploitation of coal and natural gas.

#### Impacts of Ratification and Domestication of Treaties



Despite the work done by the Ministry of Foreign Affairs, the Ministry of Justice and the First Commission of the Assembly of the Republic, in analyzing and discussing the potential and limits of international legal instruments in Mozambican domestic law, there is still an enormous challenge to “design laws substantial changes that add structural aspects to the treaties signed and ratified by Mozambique”<sup>40</sup>. This causes some of the instruments under analysis to require adjustments to the internal legal framework of which the staff working on these are junior to expeditiously affect the kinds of changes required domestically to trigger domestication and implementation of the AU and other international treaties. As such, there is a need to create teams of experts and jurists specialized in International Law and Constitutional Rights to address the needs and demands of interpretation and legal production, since there is a huge lack

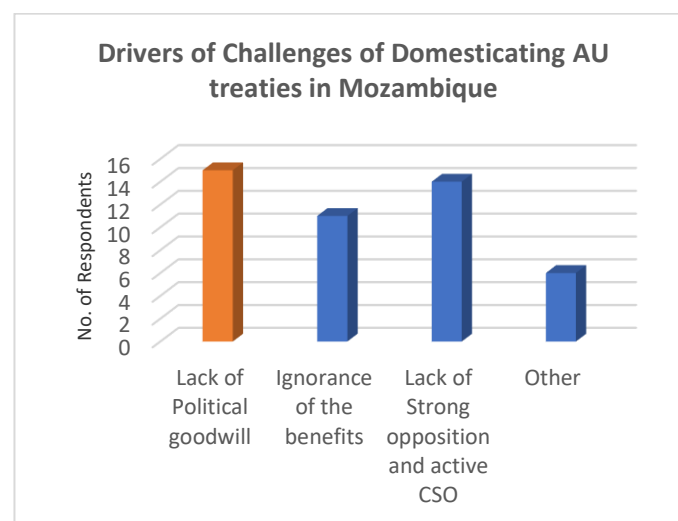
<sup>40</sup> MATHE, Cláudio (2020). Jurista e Funcionário da Direcção dos Assuntos Jurídicos e Consulares do Ministério dos Negócios Estrangeiros e Cooperação da República de Moçambique – MINEC. Entrevistado no dia 14 de Agosto de 2020. Maputo.



of knowledge of international treaties. These would be able to raise awareness around AU treaties and trigger national level debates of the best forms of domestication and implementation taking into account the Mozambican national context and its weak dissemination process.

The study found that in the case of Mozambique, the imperatives and haste related to the need to sign and ratify international instruments often competes with domestic political agendas of political figures who often prioritise pleasing the people who elected them. Consequently, treaties suffer because of the lack of political will and also because politicians fail to see the correlation between their politics and treaty provisions. This ignorance, coupled with the lack of strong political opposition and active civil society that advocates for the domestication of AU treaties is the reason why in Mozambique AU treaties are less known.

#### Causes for Constraints to Accelerate the Domestication of African Union Treaties in Mozambique



In other instances where the government has signed a treaty, ratification and domestication take time because the government still faces the challenge of harmonizing the provisions of these treaties with national legislation, since in several cases there are clashes between these with Mozambican constitutional, cultural and religious norms. And since several cultural practices are repugnant to natural justice, equity, good conscience and human rights, when seized with matters of grave human rights concerns, the national institutional and legal leaning is towards common acceptable cultural practices.

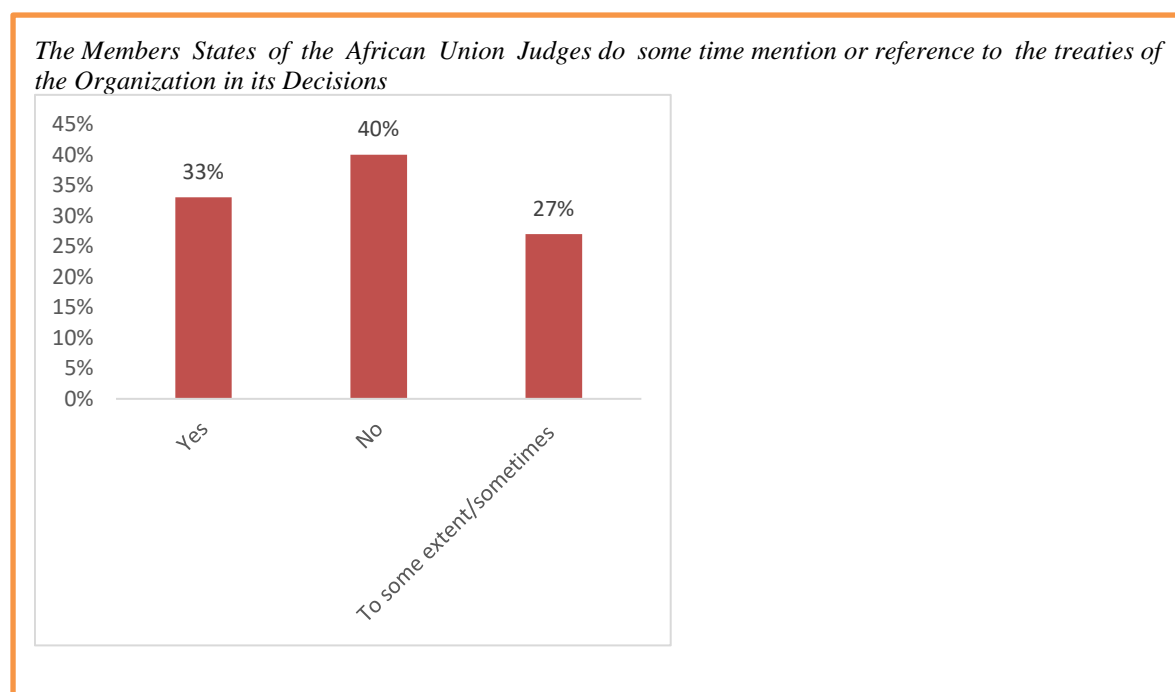


Regarding the cases of citizens or their legal representatives being able to go to court based on African treaties duly ratified by the State, in Mozambique, there is a case of two citizens who filed a complaint with the African Commission on Human and Peoples' Rights, against the Mozambican State and another case of an attempt to bring a complaint that has not yet materialized. The first is the case of José Eugêncio Zitha and Pacelli Zitha who lodged a petition with African Commission on Human and Peoples 'Rights against the state of Mozambique for violation of Articles 2,4, 5, 6 and 7(1) (d) of the Charter.<sup>41</sup>

The second case was an intention that the Center for Democracy and Development - CDD presented, in January 2020, through its Director, Adriano Nuvunga, in suing the Mozambican State before the African Commission on Human Rights, for the delay in the trial of police officers involved in the murder of an election observer and social activist, Atanásio Matavel, on the eve of the Sixth Local Elections in Mozambique, which took place on October 15, 2019.

When lead stakeholders in these cases were interviewed, they advised that, the African Courts rigorous “exhaustion of local remedies” principle could serve as a deterrence to even the few Africans cognizant of this supra national court process from bringing matters to the court. As such states are more likely to get away with human rights violations even those they have duly ratified and domesticated.

When asked if judges in pilot countries ever draw inspiration from African jurisprudence or allude to AU treaties in their judgments, 40% respond negatively. Only 33% responded positively, as can be included in the chart below.



As a microcosm of the African reality, in the specific case of Mozambique, the judges and other legal practitioners make very little use of the instruments ratified by the State of Mozambique. Issues related to the promotion of human rights have been incorporated very recently into law training curricula. In addition, even at the university level, little is covered on the issue of human rights, law of treaties and international organizations. This creates a huge *deficit* in terms of knowledge about the contours of the treaties.

Treaty	Ratification Status	Domestication status	Status of implementation	Best practice	Areas support is needed
African Charter on Human and Peoples' Rights (ACHPR)	Ratified on 22/02/1989	<p>-The provisions placed in the Banjul Charter can be found in Mozambican Constitution of 2018; National Laws, National Plans, Legislations, the Republic Bulletin</p> <p>- Creation and operationalization of the NHRI's:</p> <p>1. NHRC Law n° 33/2009 of 22 December</p> <p>2. Ombudsman Law n. 15/2012 of 14 August</p> <p>The Code of Criminal Procedure; Penal code; Policies and National Development Strategies; Family Law, Decrees, Creation of Proposal of National Plan for Human Rights, Creation of Prison Legislation. In addition to that, the right to non-discrimination and equality fixed in ACHPR were placed within the National Laws; Adoption of the Employment Policy that clear protect the to work under equitable and good conditions, equal payment for equal work enshrined by the Charter; The Freedom of</p>	<p>The state is trying to move from the theory to practice. Challenges with the knowledge of the charter remain. A recent study carried out by the CSO of Mozambique has disclosed that only 21% of the respondents is knowledgeable about this treaty. This calls upon the government on invest on a strong advocacy policy on human rights.</p> <p>On the hand, the same application of the Charter remains the case. The Justice system strives to improve the protection of human rights in the delivery of justice services. The national legal framework addressing the work of the judiciary is mainly aligned with the standards of human rights and ongoing efforts are being made to align operational guidelines and documents for the work of the judiciary. However, access to legal remains quite below the minimum international standards. The same study, indeed, shows</p>	<p>Constitution and other laws were designed and inspired by the principles enshrined in ACHPR.</p> <p>So far, the realization of workshops involving multiple stakeholders such government officials, members of NHRI's, CSO's and NGO's with collaboration of cooperation partners has been one of big gains in the promotion, protection and realization of human rights</p>	<p>Make the implementation of this Key instrument a reality;</p> <p>This includes capacity building of the judiciary on the jurisprudence of regional and international human rights mechanisms, capacity building for members of parliament, law-enforcement agents and security agents. It also calls upon strengthening NHRI's, financial independence of the Ombudsman and revision of the framework of the NHRC towards aligning with the Paris Principles, as well as their technical capacity on human rights issues.</p> <p>There is a need to create one legislation through the one law; and one</p>

		expression law; Press Law; The Right to information law;	that most of the respondents believes that the lack of protection of human rights in the country is due to the weak performance of the judiciary. NHRIs regularly perform monitoring exercises in the spirit of their mandate, however they lack of full institutional capacity and independence. A recent assessment carried out by NANHRI has demonstrated that the NHRC of Mozambique is far from having all requirement to be duly operational for the mandate it was set forth for.		National Plan that protects the rights of people with Albinism, this includes the amendment of the Constitution
Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)	9/12/2005	Provisions enshrined in Maputo Protocol can be seen in national laws such as the Mozambican Constitution of 2018 in Articles 36 and 122; and many laws, plans and legislations established at national level to promote and protect women rights. Below are the evidences: Land Law, Law n. 19/97 of 1 October - Family Law, Law n. 22/2019 of 11 December, in substitution of Law n. n.º 10/2004, of 25 of August: - Law on Domestic Violence of 2009; - Law on Human Trafficking, Law N. 6/2008 of 9 July - Succession Law - Revision of the Penal Code, although some articulate remains discriminatory - Law to Prevent and Combat Premature Unions; - National Strategy of Basic Social Security of 2016-2024;	To date, Mozambique has registered improvements in the legal framework. • Resolution no. 36/2018 of 12 December • October - Approval of the Gender and Implementation Strategy • IV National Plan for the Advancement of Women (2018-2024) • National Plan for Prevention and Combating Violence Based on Gender (2018-2021) • National Strategy for Prevention and Combating Premature Marriages in Mozambique (2016-20198); • Planning approach and Budgeting from a Gender Perspective in the state. • Sectoral promotion strategies of gender equality in health, education, higher education, employment and social security, agriculture and food security, youth and sports and interior. • Office for the Advancement of Women / Assistance to Women and Child Victims of Domestic	Many legislations and operational documents were established to protect the rights of women. The government has also mobilized substantive resources and programmatic commitments with international development partners to improve the wellbeing and protection of the rights of women and girls, through large scale projects such as the EU/UN Spotlight Initiative.	Despite of great progress in terms of creation of laws, plans and legislations, the Implementation <b>and Dissemination of Maputo Protocol is needed</b> , women don't feel protected by the laws, rules and regulations placed in the Maputo Protocol. The poor and vulnerable women don't feel served by the Constitution because of lack of knowledge about their rights. Every day we have violations against women in communities including the rural places of te country

		<ul style="list-style-type: none"> <li>- The Gender Police;</li> <li>- IV National Plan for the Advancement of Women of 2018 to 2024;</li> <li>- Creation of National Plan on Women, Peace and Security; National Strategy on Food Security and Nutrition;</li> <li>- Labor Law that advocates for equal rights between men and women, in terms of legal treatment, same remuneration and same right to work, within this law no woman should be discriminated;</li> <li>- Office for Assistance to Women Victims of Domestic Violence were created;</li> <li>- The National Policy on Gender.</li> <li>- Created the National Plan to Combat Violence against Women;</li> </ul>	<p>Violence.</p> <p>However, there is still substantive evidence of domestic violence and violence against women in the rural area and in the context of COVID-19.</p>		
African Youth Charter	Ratified on 29/07/2008	<p>Some Provisions of the Youth Charter were domesticated within the Mozambican Constitution in Article 123.</p> <ul style="list-style-type: none"> <li>- Creation of the National Youth Counsel</li> <li>- National Policy of Youth;</li> <li>- Decree n. 40/2009 approved to support the development of Youths.</li> </ul>	Same with Youths Charter.		Ensure full implementation of Youth Charter Capacity building for members of NHRC and the ombudsman to increase capacities to solve and address cases of human rights violations and better protect human rights at national level
African Charter on the Rights and Welfare of the Child (ACRWC)	15/07/1998	<p>The only Articles that protects the child are the Art 47 and Art 121. These principles were placed within the Constitution based on the AU Charter. Please, see the Mozambican Constitution of 2018.</p> <p>In addition the government of Mozambique created and</p>	More work should be done to make the implementation of Children's Charter a reality in Mozambique.	Despite the low dissemination and implementation, the ACRWC. Progress has been made in Mozambique. At national level many laws were established to protect the children's rights.	In Mozambique, almost half of the total population are children. The Constitution is considered the main law of the state. Due to relevance of these, the government should increase their efforts and capacities to

		<p>approved the laws below:</p> <ul style="list-style-type: none"> <li>- Family Law, Law n. 22/2019 of 11 December, in substitution of Law n. n. 10/2004, de 25 de Agosto</li> <li>- Law n. 12/2004 of 8 December on the Civil Registry Code of 2004 of, revised by Law. 12/2018 of 4 December;</li> <li>- National Action Plan for Combat Worst Forms of Child Labor in Mozambique of 2017 to 2022 ; Law of promotion and protection of children's rights of 2008, Decree n. 38/2015 that provides special protection to children's; Law n. 6/2008 of 15 July, the law was established to Prevent and Combat Trafficking of Persons with focus on Women and Children's</li> </ul>		<p>Recently, the Assembly of the Republic approved the <i>'Law to Prevent and Combat Premature Unions in Mozambique'</i> to mitigate and combat Child marriages.</p>	<p>_first implement laws already ratified and domesticated. Second, in my understanding the Constitution should be amended to clear protect children as stated in the ACRWC. Some principles were placed in the National Plan for Children, Policies and legislations. However, this should be amended to incorporate certain principles of ACRWC within the Mozambican Constitution. For e.g. there is no section that clear protects the right to food and nutrition for children and other rights related specific to the child. The Right that protects children from hunger and malnutrition is in most of the case interpreted based on Article 47. In addition to this, the Constitution should be amended to protect the rules and laws placed in the Charter to ensure the rights of children in war and armed conflicts &amp; same with IDP's children as stated in the AU Convention.</p>
African Charter on Democracy, Elections and Governance	24/04/2018	<p>Few principles were placed in the Constitution, Republic Bulletin, Policy and legislations</p> <ul style="list-style-type: none"> <li>- Law n. 1/2018 of 12 June on the Punctual Revision of the</li> </ul>	Same with African Charter on Democracy, Elections and Governance. Very little is mentioned at national level		Implementation is needed

		Constitution of the Republic - Law n. 8 and 9/2014 of 12 March on the Electoral Juridical Framework			
AU Convention on Preventing and Combating Corruption	2/08/2006	Little is said about Anti-Corruption Laws within the Mozambican Constitution - Law n. 6/2004 of 17 June on the fight to corruption - Law n. 16/2012 of 14 August; - Creation of Central Office for Combating Corruption through the approval of law n. 4/2017 of 18 January that precedes the amendment of the law 22/2007 at central level; - Elaboration of Strategy Plan to the Central office for Combating Corruption for the period of 2018 to 2022; - Elaboration of Action Plan of Strategy of Reform of Public Administration; - Creation of Regulation to Combat Corruption in access to work; Law to combat Corruption; Decree n. 22/2005 of 22 June that creates Offices for combating Corruption in Sofala and Nampula provinces & Decree n.18/2010 of 27 May that created the provincial Office for combating corruption in Inhambane.	The AU Convention on Corruption should be disseminated and make this Treaty reality to help the CGCC in their daily work. Campaigns about the Treaty should be made.		Implementation is needed, Amended of Mozambican Constitution is recommended to accommodate some crucial principles of AU Convention against Corruption

Following from the above, it is recommended that, project in Mozambique focuses on:

- a. Human Rights - supporting the implementation of human rights charters (Africa Charter on Human and Peoples Rights with specific accent to provisions relating to the

rights of women and welfare of children which read alongside these treaties would inadvertently popularize them.

- b. Supporting the ratification and implementation of the Maputo protocol at the bane of which are critical human rights that are culturally denied to Mozambican women and young girls.

#### 3.1.4 Sao Tome and Principe's experience with Implementation of AU Treaties

The signature, ratification and domestication of treaties by states have direct implications for the national order since on the one hand, they are integrated into the legal system and become part of the prevailing legislative collection available to legal practitioners and society in general. And on the other hand, by virtue of principles such as *pacta sunt servanda*, the principle of legality, that of good faith and that of the imperative of *jus cogens* norms, the international commitments assumed by the state **MUST** be fulfilled. Consequently, it is generally understood that the states that have willingly ratified international treaties are committed not to obstruct the invocation and claims of rights enshrined in them. In STP's experience therefore, taking necessary measures for the implementation of duly ratified AU treaties is a legal obligation not subject to debate or contestation. As such, the government in STP's case is bound to create objective conditions for the promotion, protection and effective realization of what is established in these instruments. Specifically, the realization, promotion and protection of the rights and guarantees in AU treaties relating to the rights of women and welfare of children which read alongside those that foster good governance, eliminate corruption and promote youth initiatives are critical set-pieces that STP recently committed itself to, and should therefore be assisted in the design of an implementation plan.

As far as claiming for rights enshrined in treaties is concerned, having established that ratification and domestication follow each other in a linear process, Article 20 of the STP constitution entitled: Access to the Courts, stipulates,

*“[t] all citizens have the right to appeal to the courts against acts that violate their rights recognized by the Constitution and the law, and cannot justice to be denied due to insufficient economic means.”*



This right of access is further guaranteed in the Basic Law of the Judicial System. This instrument establishes in Article 7 that

*“[all] access to the courts is guaranteed as one of the means of defense of their legally protected rights and interests, and justice cannot be denied due to insufficient economic means”*

Paragraph 2 of this same article relegates access to the courts to another document in case of insufficient economic means. So much so, that it is the lawyer's duty to the community, among others, “[c] to work on access to the law [accepting] unofficial nominations” and “[p] to protest against human rights violations” (article 56) of the Legal Practice Statute of STP promulgated in Law n.º 10/2006, 22/12). In this context, the Presidential Decree No. 8/2014, of 12/29, ratified the Resolution of the National Assembly No. 106/2014, of 12/29, both instruments published in DR no. 181, of 12/29, which approves the *“Agreement on the Benefit of Free Justice and Full and Free Legal Assistance among Members of the Meeting of Public Institutions of Legal Assistance in Portuguese Speaking Countries.”* This further measure guarantees access to courts to all citizens and has been supported by other state legislation such as Law No. 9/2012, of 28/12 on Access to Law and Legal Aid (DR No. 159, of 28/2012) which stipulates that *“no one is hampered or prevented due to their social, cultural or insufficient economic means, to know, assert or defend their rights”*.

In conclusion, having fairly recently ratified all six pilot AU treaties, STP faces a challenge of implementing these treaties which whilst all remain important, perhaps as a starting point, the project should consider:

- a. supporting implementation of the African Charter on Preventing and Combating Corruption which threatens to derail the state from its basic service delivery function
- b. Supporting implementation of the African Charter on the Rights and welfare of the Child because till date, cultural practices that children are exposed to are at odds with AU treaties.

### 3.1.5 Senegal's experience with the implementation of AU Treaties



Senegal has made significant strides in raising awareness about AU treaties and hosted a number of AU-led initiatives which put peace and security; governance, human rights and development at the forefront of regional and continental conversation. However, like STP and Mozambique with ethno-religious similarities, the plight of women and young girls could benefit a boost with advocacy which ends discriminatory practices against women and exploits the girl-child. At the forefront of ensuring the implementation of the Maputo protocol are women's groups such as the Association of Senegalese Jurists (AJS) and the Senegalese Council of Women (COSEF). These run a number of seminars and workshops on topical issues bedeviling women and in so doing flag women's rights which the state has inadvertently acceded to despite nefarious cultural and religious practices which down-classify women.

By way of examples, in 2001, a collective of women's groups in collaboration with other civil society stakeholders: COSEF, the Network *Siggil Jigeen* (RSJ), the AJS, the Civil Forum (FC) and the Association of African Communication Professionals (APAC) launched a campaign on equality at the national level with the slogan " *Voters are good, elected women are even better.*" The advocacy from these women groups culminated in significant changes ahead of the 2001 parliamentary elections. Ahead of the said elections, political parties reconstituted their lists in a manner never seen before – For instance, 33% of candidates put forward by the *Sopi* Coalition of the Senegalese Democratic Party (PDS) of President Abdoulaye Wade were women; the Alliance for Progressive Forces known in French as Alliance des forces de progress of Moustapha Niasse, former Prime Minister had 29% of its candidates being women; while, Union for Democratic Renewal (URD) of Djibô Leyti Ka listed 30% of women to its list. PARENA (Party for African Renaissance) fielded more women (64%) than men in its list while several parties such as the PIT (Party for the Independence of Labor), the Socialist Party (PS), And-Jëf PADS (African Party for Democracy and Socialism) and the National Democratic Rally (RND) also made women participation the central effigy of the political campaign.

In 2005, a national petition was put into circulation to demand equality as a criterion for the admissibility of electoral lists. A campaign was launched on June 8, 2005 at the Dakar Chamber of Commerce, under the leadership of Aminata Diaw Cissé, then Secretary General of COSEF. A sit-in was organized on December 1, 2006 at the National Assembly, to demand parity in the Electoral Code. Following the request of COSEF, a model law was drawn up by a team of lawyers made up of Professors Amsatou Sow Sidibé, Ndiaw Diouf, El Hadj Mbodj

and Ismaila Madior Fall. The law was submitted to the former Minister for Women, Aïda Mbodji .

A decisive step forward in the achievement of COSEF's objectives is the adoption of Law No. 23/2007 introducing equality on the list of candidates for the proportional representation ballot on March 27, 2007 at the National Assembly. The law on parity was passed on May 28, 2010, and provided with implementing decree n ° 2011-819 of June 16, 2011. This, together with other actions taken by the state in furtherance of domestication and implementation is evidenced in the table below.

Treaty	Ratification status	Domestication status	Status of implementation	Best practice	Areas support is needed
African Charter on Human and Peoples Rights	Ratified on 27 December 2004	<p>1. The Constitution of 22 January 2001 in its Title 2 "Fundamental Rights and Freedoms and Duties of Citizens" provides, through 16 articles, for a set of fundamental rights and freedoms included in the ACHPR.</p> <p>2. Article 1 of the Senegalese Constitution is based on non-discrimination (Art. 2 of the ACHPR).</p> <p>3. Creation of Law No. 81-77 of 10 December 1981 on racial, religious and ethnic non-discrimination.</p> <p>4. The Social Orientation Law No. 2010-15 of 6 July 2010 provides for the establishment of an equal opportunities card for people with disabilities (Art. 18 of the ACHPR).</p> <p>5. Decree No. 2010-99 of 27 January 2010 provides for the accessibility of public and private establishments for the disabled.</p> <p>6. Constitutionalisation of the right of peoples to "the free disposal of their natural wealth and resources" by Law No. 2016-10 of 5 April 2016 (Art. 21 of the ACHPR).</p>	<p>1. Creation of a National Observatory of Places of Deprivation of Liberty (art. 5 of the ACHPR).</p> <p>2. Establishment of legal aid to support the poor (protection of the rights of the defence - art. 7 of the ACHPR).</p> <p>3. Establishment of 676 mutual health insurance companies in the 552 municipalities and 45 departmental unions of mutual health insurance companies on 31 December 2017 (Health law - art 16 of the ACHPR).</p> <p>4. Creation of new health structures by the Ministry of Health and Social Action for the benefit of people with disabilities.</p>	1. Adoption of a set of legislative or other measures for the application of the rights and freedoms contained in the Charter.	<p>1. Strengthen initiatives for the promotion and economic, social and professional integration of people with disabilities.</p> <p>2. Strengthen the health system for people on low incomes.</p> <p>3. Promote the popularisation of the Charter.</p>

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)	Ratified on 27 December 2004	<p>1. Creation of the National Observatory for Women's Rights (ONDF) through Decree No. 2008-1047 of 15 September 2008.</p> <p>2. Elaboration of the National Strategy for Gender Equality and Equity (SNEEG) 2016-2026 by the Ministry of Women, Family, Gender and Child Protection.</p> <p>3. Creation of Law No. 2010-11 of 28 May 2010 instituting parity between men and women in all fully or partially elective institutions.</p> <p>4. Modification of Law No. 2008-01 of 8 January 2008 abolishing joint taxation in the couple and ensuring the wife's complete fiscal autonomy (Art. 2 of the PM).</p> <p>5. Decree No. 2006-515/PR of 9 June 2006 gives women the possibility of access to the gendarmerie.</p> <p>6. The primatorial circular n° 009159 of 26 March 2013 invites the sectoral ministries to integrate gender in their interventions, the application of which has encouraged the establishment of 22 gender units in the public administration.</p> <p>7. Adoption of Law No. 99-05 of 29 January 1999 prohibiting the practice of genital mutilation.</p>	<p>1. Creation of a parity observatory (Art. 9 of the MP).</p> <p>2. Implementation of several social protection policies to strengthen the capacities of vulnerable households: between 2014 and 2017, 300,000 households benefited from the national social security grant program, with a budget of 30 billion.</p> <p>3. Implementation of United Nations Resolution 1325: creation of the Women's Platform for Peace in Casamance (PFPC) which has 210 women's associations and organizations with a total of 25,000 members.</p> <p>4. Implementation of the Sesame Plan, which enables people aged 60 and over to receive eligible health care in public facilities.</p> <p>5. Creation of the national unit to combat trafficking in persons, particularly women and children.</p> <p>6. Establishment of an action plan to combat gender-based violence.</p>	<p>1. National launch of a campaign on parity: the Sopi Coalition of the Senegalese Democratic Party (PDS) invested 33% of women on its lists, AFP (Alliance des forces de progrès) 29%, URD (Union pour le renouveau démocratique) 30%, and PARENA (Parti pour la renaissance africaine) 64%.</p> <p>2. Vote on the parity law on 28 May 2010.</p> <p>4. Promulgation of law n°2020-05 criminalising rape and paedophilia on 10 January 2020.</p>	<p>1. Strengthen initiatives in favour of the enrolment of girls in secondary education and their learning conditions (Art. 12 of the PM).</p> <p>2. Strengthen the legal protection of women regarding their right to marriage (acquisition of marriage certificates, inheritance rights, rights of widows).</p> <p>3. Strengthen the rights of elderly, distressed and disabled women.</p>
African Youth Charter	Ratified on 17 September 2009	<p>1. Establishment of the "Fund for Financing Professional and Technical Training", created by Decree No. 2014-1264 of 7 October 2014 (art.13 of the AYC).</p> <p>2. Article 15 of Social Orientation Act No. 2010-15 of 6 July 2010 recognises the right of disabled children and adolescents to free education.</p> <p>3. Establishment of the</p>	<p>1. Creation of the National Youth Council of Senegal (CNJS), which brings together all youth associations in Senegal and helps to involve them in the decision-making process.</p> <p>2. Participation of young people in politics, particularly on issues related to democracy and the rule of law.</p> <p>3. Establishment of Adolescent Counselling Centres that provide young</p>	<p>1. Strong presence and political involvement of young people: many are elected as councillors in local authorities and are active in political parties (art. 11 of the AYC).</p> <p>2. Promotion of youth entrepreneurship and self-entrepreneurship through the mobilisation of funding of 30 billion F CFA by</p>	<p>1. Fighting youth unemployment, which is 16.9% in the fourth quarter of 2019.</p> <p>2. Promote the popularisation of the Charter.</p>

		<p>National Agency for Youth Employment (ANPEJ) by Decree No. 2014-29 of 9 January 2014.</p>	<p>people with a medical-psycho-social service (art 16 of the AYC).</p> <p>4. Creation of 45 Youth and Culture Houses.</p> <p>5. Establishment of Citizen's Digital Houses in 45 departments of Senegal, offering local public services.</p> <p>6. Promotion of youth employment through the establishment of Higher Institutes of Vocational Studies (ISEP) and a Senegalese Youth Entrepreneurship Programme (PSE-J).</p> <p>7. Establishment of several mechanisms for poverty alleviation and socio-economic integration (art. 14 of the AYC), sustainable livelihoods and youth employment (art. 15 of the AYC).</p>	<p>the General Delegation for the rapid entrepreneurship of women and young people (DER/FJ).</p>	
African Charter on the Rights and Welfare of the Child	Ratified on 29 September 1998	<p>1. Law 2004-37 of 15 December 2004 guarantees free education.</p> <p>2. Law No. 91-22 of 16 February 1991 on the orientation of national education guarantees compulsory education for children aged 6 to 16 years.</p> <p>3. Prohibition of the Worst Forms of Child Labour (WFCL) through the introduction of decree 0003749 of 06 June 2003.</p> <p>4. Introduction of Law No. 2008-11 of 25 January 2008, which punishes child pornography with a sentence of five to ten years' imprisonment and/or a fine of 500,000 to 15,000,000 CFA.</p> <p>5. Law 2005-06 incriminates and punishes the exploitation of the begging of others.</p>	<p>1. Free care for children aged 0 to 5 years.</p> <p>2. Establishment of normative and institutional mechanisms to fight against the sale, trafficking, abduction and begging of children (art. 29 of the ACRWC), but also sexual exploitation (art. 27 of the ACRWC), abuse and mistreatment (art. 16 of the ACRWC).</p> <p>3. Establishment of assistance and psychosocial support for street children, but also for those who are victims of abuse, mistreatment and/or exploitation, by the Ministry of Women, Family, Gender and Child Protection.</p> <p>4. Establishment of a national unit to fight against trafficking in persons, particularly women and children.</p> <p>5. Establishment of external services by the "Directorate of Supervised Education and Social Protection" (DESPS) of the Ministry of Justice that receive by judicial decision minors in</p>	<p>1. Several associations and NGOs are active in the promotion of children's rights. The same applies to members of local communities who raise awareness on issues related to maternal and child mortality.</p>	<p>1. Strengthening the quality of the education system.</p> <p>2. Strengthening the human and financial resources of special education institutions for children with disabilities.</p> <p>3. Strengthen advocacy to raise the legal age of marriage for girls to 18 years old.</p> <p>4. Develop initiatives for the registration of children at birth.</p> <p>5. Develop awareness-raising actions to fight against begging of children.</p> <p>6. Promote the popularisation of the Charter.</p>

			danger, victims or in conflict with the law.		
African Charter on Democracy, Elections and Governance	Not Ratified	N/A	N/A	N/A	1. Support government efforts to ratify the Charter. 2. Promote the popularisation of the Charter.
AU Convention on Preventing and Combating Corruption	Ratified on 12 April 2007	1. Fight against money laundering with the creation of the CENTIF (National Financial Information Processing Unit) - Decree No. 2004-1150 of 30 July 2004. 2. Adoption of the Code of Transparency in Public Financial Management by Law No. 2012-22 of 27 December 2012. 3. Creation of OFNAC (National Office for the Fight against Fraud and Corruption) by Law No. 2012-30 of 19 December 2012. 4. Creation of Law No. 2014-17 of 02 April 2014 on the declaration of assets. 5. Creation of the Court of Auditors by Organic Law No. 2012-23 of 27 December 2012.	1. Creation of the ARMP (Autorité de régulation des marchés publics), which regulates the system for awarding public contracts and public service delegation agreements. 2. Senegal joins the EITI (Extractive Industries Transparency Initiative) in October 2013. The country produced six reports between 2013 and 2019. 3. Reactivation of the Court for the Repression of Illicit Enrichment (CREI), which in 2012 organised an anti-corruption operation called "Tracing ill-gotten gains".	1. Several measures to fight against corruption and related offences have been put in place by the government.	1. Promote the popularisation of the Convention with the full participation of the media and civil society. 2. Creating an enabling environment that enables civil society and the media to bring governments to demonstrate maximum transparency and accountability in the management of public affairs.

These strides notwithstanding the relegation of women is just one area which is a blind-spot in Senegal's democratic journey. More broadly, there is the acute need for similar such projects to focus on:

- a. Human Rights - supporting the implementation of human rights charters (Africa Charter on Human and Peoples Rights with specific accent to provisions relating to the rights of women and welfare of children which read alongside these treaties would inadvertently popularize them.
- b. supporting implementation of the African Charter on Preventing and Combating Corruption which threatens to derail the state from its basic service delivery function
- c. Supporting the ratification and implementation of the African Charter on Democracy, Elections and Governance (ACDEG) which has gained currency in political circles but needs to be expanded to youth forums for purposes of expanding the political space and broadening the circumference of persons who hold governments accountable. This is

particularly important for Senegal which has made significant strides consolidating democratic stability and delivered in key development projects thanks to unrivalled political will in a turbulent sub-region where election theft and unconstitutional conservation of power are commonplace.

### 3.1.6 Tunisia's experience with the Implementation of AU Treaties

Thus far, of the six pilot treaties, Tunisia has ratified four – namely: the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, the African Youth Charter and the African Union Convention on Preventing and Combating Corruption. This notwithstanding, the harmonization which should follow ratification has not happened and as such, there is hardly ever any mention of AU treaties in the Tunisia legal system.

Nonetheless, it seems that this trend can be altered with sufficient advocacy on AU treaties particularly the Protocol establishing the African Court on Human and Peoples' Rights which Tunisia ratified in 2017, individuals can now sue the government before the African court upon exhaustion of local remedies.

That the African Charter does not make domestication a necessity for access is particularly encouraging from individuals and civil society organisations that can seek judicial recourse directly from the continental court should local remedies be unduly delayed or denied. With this sort of awareness, the Tunisian authorities (including judges) risk by non-observance of the provisions of these treaties to engage the international responsibility of Tunisia which will be implemented by the African Court.

In addition, an important caveat worth mentioning is that, pursuant to that Article 20 of the Tunisian constitution, domestic law is subservient to international treaties. This inadvertently means that in the event of a conflict of law, citizens can invoke the unconstitutionality of legislative provisions which contradict international conventions.

After extensive research in the case law in the Tunisian court registry and the Administrative Tribunal, no reference to AU conventions was found. This shocking revelation which calls for even greater advocacy was confirmed by with Mr. Hmed Souab ex vice-president of the administrative tribunal and Ms. Nazek Keda, Vice President of the *Court de Cassation*,

confirmed this finding. After more than thirty-five years in the legal system Mr. Souab and 30 years for Ms. Keda in the judicial system, they opined that in no case had they heard mention of AU treaties. Although this position was later corrected by Mr. Ahmed Yahyaoui, director of the Haute École de la Magistrature who opined that several UN initiatives and trainings changed this conundrum after 2008. Some of these are evidenced in the table below.

Treaty	Ratification Status	Domestication status	Status of implementation	Best practice	Areas support is needed
African Charter on Human and Peoples Rights	Ratified	Integrated by in the Tunisian legal system by the Law n° 82-64, August 6, 1982	Implementation is done indirectly: respect for the majority of the rights contained in the African Charter which are also protected by the Tunisian constitution and international treaties ratified by Tunisia Case law makes no mention of AU treaties, including the Charter on Human and Peoples Rights	For AU Organs Facilitate accessibility to AU treaties Development of AU treaty implementation manuals For the Tunisian authorities The National Committee for the Harmonization of Legal Texts relating to Human Rights with the provisions of the Constitution and with ratified international conventions is a key player in accelerating the domestication of AU treaties. Judicial or administrative justice is a key player in the domestication of AU treaties. A training cycle for judges in AU law should be launched by the Ministry of Justice for judicial judges and the Presidency of the Government for administrative judges in order to allow citizens to fully enjoy their rights provided for in the treaties of the	Communication between the Tunisian Authorities and the Commission on Human and Peoples Rights. According to Article 62 of the Charter, each Member State must submit periodic reports related to the implementation of the Charter and the measures taken to domesticate it.



				AU before the various courts and above all to prevent the responsibility of the Tunisian State from being engaged by the African Court of Human Rights.	
Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)	Ratified on August 23, 2018		Tunisia has an important protective legal system for women's rights. Implementation of the Protocol should not in principle pose any particular problems	For AU Organs Facilitate accessibility to AU treaties Development of AU treaty implementation manuals For the Tunisian authorities The National Committee for the Harmonization of Legal Texts relating to Human Rights with the provisions of the Constitution and with ratified international conventions is a key player in accelerating the domestication of AU treaties. Judicial or administrative justice is a key player in the domestication of AU treaties. A training cycle for judges in AU law should be launched by the Ministry of Justice for judicial judges and the Presidency of the Government for administrative judges in order to allow citizens to fully enjoy their rights provided for in the treaties of the AU before the various courts and above all to prevent the responsibility of the Tunisian State	The issue of inheritance is the only fiend which favors men over women in Tunisia (Inspired by Islamic laws, the brother is entitled to double the inheritance compared to his sister). Apart from this area, there is perfect equality between men and women in Tunisia



				from being engaged by the African Court of Human Rights.	
African Youth Charter	Ratified	Integrated by in the Tunisian legal system by the Law n° 2010-48, October 25, 2010		For AU Organs Facilitate accessibility to AU treaties Development of AU treaty implementation manuals For the Tunisian authorities The National Committee for the Harmonization of Legal Texts relating to Human Rights with the provisions of the Constitution and with ratified international conventions is a key player in accelerating the domestication of AU treaties. Judicial or administrative justice is a key player in the domestication of AU treaties. A training cycle for judges in AU law should be launched by the Ministry of Justice for judicial judges and the Presidency of the Government for administrative judges in order to allow citizens to fully enjoy their rights provided for in the treaties of the AU before the various courts and above all to prevent the responsibility of the Tunisian State from being engaged by the African Court of Human Rights.	
African Charter on	Not Ratified	—	—	—	Acceleration of the

the Rights and Welfare of the Child					Ratification
African Charter on Democracy, Elections and Governance	Not Ratified	–	–	–	Acceleration of the Ratification
AU Convention on Preventing and Combating Corruption	Ratified	Ratified on February 10 <sup>th</sup> , 2020	Too soon to evaluate	For AU Organs Facilitate accessibility to AU treaties Development of AU treaty implementation manuals For the Tunisian authorities The National Committee for the Harmonization of Legal Texts relating to Human Rights with the provisions of the Constitution and with ratified international conventions is a key player in accelerating the domestication of AU treaties. Judicial or administrative justice is a key player in the domestication of AU treaties. A training cycle for judges in AU law should be launched by the Ministry of Justice for judicial judges and the Presidency of the Government for administrative judges in order to allow citizens to fully enjoy their rights provided for in the treaties of the AU before the various courts and above all to prevent the responsibility of the Tunisian State from being engaged	Too soon to evaluate

				by the African Court of Human Rights.	
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The above notwithstanding, there remains significant room for more focused and target advocacy in the areas of:

- a. Anti-corruption – supporting implementation of the African Charter on Preventing and Combating Corruption
- b. Maputo Protocol
- c. Supporting efforts to ratify, domesticate and implement the African Charter on the Rights and Welfare of the Child and the African Charter on Democracy, Elections and Governance (ACDEG).

## **Chapter 4**

### **Understanding State Ratification and Domestication or Implementation Challenges**

The fast-changing international environment coupled with new challenges to peace and security has prompted state institutions to be cautionary in the adoption or implementation of policies that open up their democratic spaces or frontiers with other nations. Most AU human rights, good governance and democracy instruments have a tendency to open up the democratic space (including amongst others to foreign influence). Amidst experiences of terrorist attacks, influx of counterfeit goods, leakage of official secrets, in Kenya, one key informant observed that the country will always seek to protect its interests and government “will not be very willing” to ratify treaties that threaten it and threaten the security of the nation. Burkina Faso like, Mozambique and Sao Tome and Principe have ratified all six AU treaties selected for the UNDP project. So, ratification is not so much a problem as is implementation which is strained by a cocktail of political, financial, operational challenges.

#### **4.1 Political constraints to Domestication and Implementation of AU challenges**

Across the board, the decision on when to ratify, domesticate or implement AU treaties is neither founded in policy nor practice. It is the express preserve of the government of the day to ratify and domesticate treaties which advance its cause or political agenda. For instance, in Burkina Faso, law N° 005-2015 was adopted pursuant to amendment of the law N° 014-2001 which gave effect to the July 3, 2001 electoral code. The amendment sought to justify the dispensation of exclusions in Article 166 of the said code which barred persons who had been a part of any unconstitutional change of government. In this instance, the amendment was carefully designed to disfavor former associates of the former president whose attempt to get a third term was foiled by protests that led to his stepping down from office. And such a law and amendment found expression in the African Union Constitutive Act which frowns at unconstitutional changes of government.

In Kenya as well, the early 1990s decision to liberalise the political space and move from a one party state was a political decision predicated on the need to be seen to be democratic and following global trends. It was not a decision that the government willed for the sake of the people, but it did so to embellish its international image which was crushing under heavy

international scrutiny and condemnation.

Last but not the least, African governments including those that have ratified the Youth Charter feet-drag the implementation of the charter because of the force of mobilization that youth have been associated with since the Arab Spring uprisings which swept away a number of stayist political leaders whose regimes had practically made the pathway of change through the ballot nearly unimaginable.

In conclusion therefore the fear of political reprisal prompts states to ratify treaties and the domestication is propelled by what would be gainful to them. The messaging that treaties are primarily gainful to citizens may be at odds with governments that see citizenry activism as a threat to their leadership.

#### **4.2 Financial Constraints to Domestication and Implementation of AU challenges**

In domestic norm setting as with international relations, power dynamics and interest groups play critical roles in guiding legislative process of states and governments. Interest group influence may lead to administrative bribery, political corruption, undue influence and state capture which inhibit smooth functioning of governance structures and lead to under-table malperformance which adversely affects the behavior of certain policymakers in governance. While this is prevalent in literature, the study did not find direct evidence of this in the countries. Nonetheless, the role of lobbyist groups cannot be discountenanced in understanding why ratification and domestication remain low in Africa. Certain African countries such as Uganda and Zimbabwe resisted aid which was conditioned in policies which liberalise and recognize LGBTs despite domestic legislation which criminalize gay-lesbian sexual relations. Many states yielded to such conditions and as such, one can only infer that the withholding of financing for key projects by development partners and others suggests that financial considerations can sometimes negatively or positively drive states behavior towards treaties. In the case of Uganda, gay and lesbian relations are criminalized till date and treaties supportive of such advocacy are simply discountenanced.

The process of treaty making can sometimes be onerous. The reporting requirement which comes with treaties is often time burdensome to states that do not have sufficient human and intellectual capital or agency for such demands. In the case of Kenya as well as Mozambique,

the treaty offices are woefully understaffed and the few staff concentrate on responding to demands of their principles which might be everything but the need to accelerate and domesticate treaties. Such constraints which the state has or experiences need to be looked into with the view of offering the requisite support that can dispense of any holds on treaty domestication and implementation.

To summarise, in the global war against corruption, the AU Convention on Preventing and Combating Corruption (AU Corruption Convention) and the UN Convention against Corruption (UNCAC) are the main instruments calling for cooperation among the State Parties in ensuring the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption. On the inauguration of President Mwai Kibaki's government in 2002 there was the promise to the country that corruption would cease to be a way of life in the country. In 2003, the government demonstrated this commitment through a premier signature and ratification of UNCAC. Even so, although it did sign the AU Corruption Convention, it failed to ratify it until five years later, in 2007. Arguably, any benefits that Kenya could have reaped from an early ratification of the AU treaty were lost during the five years and as often happens with unchecked corruption, kingpins were able to consolidate their corrupt practices trans-nationally, a challenge that requires more resources to surmount.

#### **4.3 Operational Challenges to Domestication and Implementation of AU treaties**

One key challenge to treaty ratification has been the notion that the treaty may be infringing on state sovereignty. As such, cultural proclivities have stood as a challenge to several states' ratification of the Maputo Protocol – most particularly, in deliberations leading to ratification, concerns over the clause specifying that women and men will enjoy equal rights and are to be regarded as equal partners in marriage (Article 6) often births feelings which propel patriarchs to abandon the treaty or its implementation. Quite significantly, the concern that Article 10 (3) of the Protocol requires State Parties to take the necessary measures to reduce military expenditure in favour of spending on social development in general, and the promotion of women in particular. The exact meaning and impact of the term 'significant' as used in this provision was in Kenya deemed to be overreaching on state sovereignty. Mindful of its own constitutional developments and advancement of the role of women in legislative bodies, it was

unexpected that Kenya would ratify the Protocol, although the ensuing ratification of the Protocol in October 2010 was with reservations to Article 10(3) and Article 14(2)(c). An environmental analysis shows that the moment was simply ripe for ratification which was well within the euphoria of the promulgation of a progressive new constitution – the political, legal and institutional climate was right. The 2010 Kenyan Constitution is widely considered as a big gain for women and furthermore, is categorical that, *‘the life of a person begins at conception and abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law’*<sup>42</sup> - so much so that, the heat generated by the Protocol’s opponents around their main rallying point – abortion rights – was decimated and the pressure from proponent lobby groups gained currency. The old stereotypes on women and gender roles that the Protocol challenges continue to stand in the way of Kenya as well as Senegal’s and Mozambique’s realization of women’s human rights, as depicted at least by court judgments<sup>43</sup> and discussions in the political space in relation to the constitutional requirement that not more than two-thirds of the members of elective public bodies are of the same gender. It is possible that if Kenya has ratified the Maputo Protocol before 2010, a more prescriptive proposal to this principle might have been contemplated. Comparatively, Kenya had acceded to the Child Charter in 2000 and COK,2010 has a specific provision on protection from harmful traditional practices, which is a key continental call in the Child Charter.

The Child Charter was advised by some of the unique positions that African children have found themselves in as occasioned by armed conflict. A month upon the adoption of the Child Charter by AU Member States, Kenya ratified the UN Convention on the Rights of the Child (CRC), but waited ten (10) years to accede to the Child Charter. At the time, the then Constitution of Kenya did not provide anything specific to children, and statutes had glaring gaps. As exemplified above, key informants supported the allegation that African States place greater significance to the UN Conventions than to those under the AU and the 10-year period of non-ratification of the Child Charter by Kenya is indicative. Sensitisation of the value of that AU treaties have over UN treaties is needed for Kenya’s state institutions.

As relates to the African Youth Charter, it is worthwhile to increasingly, African governments of the six countries are yielding to the AU’s call for the constructive involvement of youth in

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<sup>42</sup> COK, 2010, Article 26

<sup>43</sup> Supreme Court of Kenya Advisory Opinion 2 of 2012 [2012] eKLR para 79

the development agenda of Africa and their effective participation in the debates and decision-making processes in the development of the continent. Kenya's ratification of the AU Youth Charter in 2014 and the consequential development of the Kenya Youth Development Policy was given impetus by the fact that the government considers youth enterprise as a strategic area of growth for the country—a turning point which needs encouraging.

The African Charter on Democracy, Elections and Governance (ACDEG) is grounded on the the significance of good governance, popular participation, the rule of law and human rights, and the need to deepen and consolidate the rule of law, peace, security and development in African states. Premised on the fact that unconstitutional changes of governments are one of the essential causes of insecurity, instability and violent conflict in Africa, this Charter seeks to entrench in the Continent a political culture of change of power based on the holding of regular, free, fair and transparent elections conducted by competent, independent and impartial national electoral bodies. The Charter is very progressive in that it is one of the few AU Treaties that provides for sanctions – in this case, sanctions where there are unconstitutional changes of government. State Parties commit to promote and deepen democratic governance by implementing the principles and core values of the New Partnership for Africa's Development (NEPAD), Declaration on Democracy, Political, Economic and Corporate Governance and, the African Peer Review Mechanism (APRM).

Kenya's signature on ACDEG (28<sup>th</sup> June 2008) came after the 2007/2008 post-election violence and spoke of the country's commitment to sustained constitutionalism and adherence to the rule of law. Although ACDEG does not form part of the Kenya's legal system, the Independent Review Commission (IREC) constituted to inquire into all aspects of the 27 December 2007 elections made reference to it and other international instruments and it was useful to developing recommendations under that process.<sup>44</sup> Following this report, Kenya overhauled its electoral laws and reconstituted its electoral management body. The recommendations were instrumental to CoK,2010 provisions in the Bill of Rights, on the electoral system and processes, the Independent Electoral and Boundaries Commission (IEBC), delimitation of electoral lists and political parties.

In interrogating the inhibitors to the ratification of the African Charter on Democracy, Elections

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<sup>44</sup> Report of the Independent Review Commission on the General Elections held in Kenya on 27th December 2007. Dated 17 September 2008. Unpublished.



and Governance (ACDEG) by Kenya and what will aid ratification, one key informant observed that ACDEG's timing has simply been inopportune for the country. During signature in June 2008, the country was yet in a tumultuous time. The 2007/2008 post-election violence had exposed Kenya to the deep-seated weaknesses on the political front and governance institutions. Following enactment of COK,2010 and various legislation on electoral management, politically, ACDEG has not been a priority agenda item for the country. Informants have also indicated that Cabinet has now approved the ratification of ACDEG and it should be expected that the same will soon be presented to Parliament for approval. However, having been highlighted as a low priority treaty, amidst Covid-19 and other national interests. Policymakers at the executive and national assembly should bear in mind that Kenya in not ratifying ACDEG : (a) losing on its position as an active and key player within the AU – by ratifying ACDEG, Kenya could offer leadership on the African stage on democratic governance and rule of law and denounce unconstitutional changes of government, including military take-over or coups or people circumventing the rule of law; (b) failing the East African Legislative Assembly (EALA) which in January 2015, made a Resolution that urges the EAC Council of Ministers to mainstream the ACDEG provisions in the EAC Charter and urged Parliaments of the Partner States to domesticate ACDEG in Partner States laws and policies; and, (c) losing the gains that novel provisions in ACDEG on sanctions for unconstitutional changes of government would give particularly in disputed elections – these include the instillation of confidence amongst politicians and citizenry that over and above the role of the judiciary in solving election disputes, the country has at its disposal an additional mechanism at the continental level, that buttresses constitutionalism, democracy and rule of law and that safeguards against the collapse of the state. The political environment currently prevailing in the country centers around the call for a referendum that, if carried will allow the amendment of COK,2010. Already, some politicians have declared that they will offer their candidature for presidency in the 2022 general elections and a look at the alignments and party politics shows that these elections are likely to be very contentious. ACDEG offers some safeguards to peace and security and it is therefore recommended that MOF endeavours to have ratified well ahead of elections and preferably before the end of 2021.

Key informants were of the view that the legal and institutional framework that supports the implementation of ACDEG is already in place. Over and above the CoK,2010 provisions, this framework includes the Elections Act, 2011, the Election Laws (Amendment) Act, 2016, Elections Offenses Act, 2016, the Political Parties Act, 2011, and the Independent Electoral

and Boundaries Commission Act, 2011. The Independent Electoral and Boundaries Commission (IEBC) is already in place as the institutional framework for its implementation. With IEBC working in partnership with the MFA, OAG&DOJ, for purposes of meeting reporting obligations, it is unlikely that there will be significant budgetary implications in ensuring compliance to ACDEG. Nevertheless, research is needed to ascertain any possible implications and the UNDP AU treaties project could partner with MFA and IEBC to oversee this research ahead of the tabling of the treaty in Parliament. The UNDP AU treaties project could support the sensitisation of the National Assembly Committee on Justice and Legal Affairs on the provisions of the treaty. Upon transmission of ACDEG to the National Assembly, it will be committed to the Committee on Justice and Legal Affairs. An advance sensitization of the Committee on the provisions of the Charter will ensure that the Committee can facilitate focused and fruitful deliberations with stakeholders. The civil society and all stakeholders on ACDEG should support civic education activities as the conclusion of the ratification process must entail public participation. To guarantee useful input to the process the public should be educated on the treaty. Input should be sought from key stakeholders, including political parties, but they should be well informed of the Charter provisions ahead of these consultations. In this regard, civil society organisations could partner with government to offer the requisite civic education. The MOF should encourage the AU Commission on International Law (AUCIL) to organize a promotional visit with Kenya, targeting cabinet secretaries and the Speaker of the National Assembly, for purposes of encouraging the speedy ratification of ACDEG.

#### **4.4 Impact of ratification and domestication of treaties**

As has been emphasized above, the benefits of treaty ratification are far reaching primarily because upon ratification they automatically become part of a country's laws and practitioners can readily invoke them. The study found that, certain legal practitioners question the superiority of international laws such as treaties over their countries' constitution and legislation. The courts opined that, although it is generally expected that the government through its executive ratifies international instruments in good faith on the behalf of and in the best interests of citizens, it would not have been that the framers of the Constitution would have intended that international conventions and treaties should be superior to local legislation

and take precedence over laws enacted by their chosen representatives. With the exception of international and human rights lawyers, constitutional lawyers and specialist of various aspects of domestic laws are of the view that, the nature and extent of application of treaties must be determined on the basis of the subject matter and whether there is domestic legislation dealing with the specific issue at hand. As such, such perceptions pervade the country and place doubts in the minds of persons tasked with accelerating treaties as to what treaty to prioritise if they have to. Such perceptions weaken the position of AU treaties and other international conventions and unless dispensed with through advocacy and other tools would continue to be a setback to promoters of AU treaties. As such, academics and research institutions should research further on this subject. Furthermore, development partners could support this research and engagements between researchers and the judiciary, as well as supporting public interest litigations through non-governmental (NGOs).

This notwithstanding, increasingly in almost all petitions to the courts for the enforcement of the Bill of Rights, the ACHPRs and other AU instruments feature prominently alongside the UN Bill of Rights. In a judicial interpretation of the rights of intersex persons, the Kenyan High Court in ‘Baby A’ (Suing through the Mother E A) & another v Attorney General & 6 others directed the Government to consider developing an appropriate legal framework governing issues related to intersex children **based on internationally acceptable guidelines**. Pursuant to the Ruling in ‘Baby A,’ the Attorney-General constituted the Taskforce on Policy, Legal, Institutional and Administrative Reforms Regarding Intersex Persons in Kenya. The Taskforce in its deliberations relied on the following AU instruments: the ACHPR which safeguards all people against discrimination and sets out the right to equal treatment and protection before the law for all individuals, and the inviolability of a person’s physical integrity; the Child Charter that commits Member States to the protection of all children against discrimination, child abuse and torture, harmful social and cultural practices and sexual exploitation among others; the African Commission Principles and Guidelines that explicitly recognise intersex people as a vulnerable and disadvantaged group of people, who face or continue to face significant impediments to their enjoyment of economic, social and cultural rights; and a panel discussion ‘Intersex human rights: Challenges and opportunities’ convened in Banjul, the Gambia on the sidelines of the 61st Ordinary Session of the African Commission on Human and Peoples’ Rights. As a result of these deliberations far-reaching recommendations were made that contributed to the enumeration of the intersex people as a special category during the 2019 national population census. Kenya become the first country in Africa to formally

recognize people who identify their gender as intersex.

In the performance of its tasks and to enhance its efficiency, the ACHPRs makes provision for the Commission to work with other partners in the field of human rights in Africa. The Commission has granted observer status to some Kenyan NGOs. NGOs with observer status have participated directly in the Commission's activities (public sessions of the Commission and its subsidiary bodies) and further are involved in the preparation of “shadow” reports on the human rights situation in Kenya, thus keeping government on its toes. Some NGOs have litigated at the African Commission and the African Court and as a result enhanced the access to justice by communities and individuals in Kenya. In 2017, the African Court on Human and Peoples’ Rights (African Court) delivered its ruling in the matter of the African Commission on Human and Peoples’ Rights v Kenya which revolved on the expulsion of the Ogiek people, a Kenyan hunter-gatherer community, from their ancestral lands in the Mau forest. This resulted from the fact that the African Commission had not managed to settle the conflict, and therefore transferred it to the African Court in 2012. The Court widely followed the African Commission’s application and found that the eviction of the Ogiek without consultation amounted to several rights violations under the ACHPRs: the right to non-discrimination, culture, religion, property, natural resources and development. Kenya’s argument that the eviction was justified by the need to protect the Mau forest was dismissed by the Court. In 2003, the Centre for Minority Rights and Development (CEMIRIDE) took a case to the African Union Commission on behalf of the Endorois Community involving the displacement of the Endorois Community, an indigenous people, from their ancestral land, the failure to adequately compensate them for their loss of property, the disruption of the community's pastoral enterprise and violations of the right to practice its religion and culture, as well as the overall process of development of the Endorois people. The Commission found the Republic of Kenya to be in violation of provisions of the African Charter and made recommendations for restitution and compensation. The Federation of Women Lawyers, Kenya and International Center for the Protection of Human Rights represented Priscilla Njeri Echaria in a case against Kenya filed in September 2009. The prayers were that the African Commission would find Kenya in violation of ACHPRs and recommend that she enacts legislation aimed at effecting the property rights of married women before a specific time. The African Commission was satisfied that a prima facie case existed as the matter hinged on the interpretation and application of particular provisions of the African Charter with regards to the Victim’s case, and it could determine without the necessity to require a systematic pattern of violations. The

case was however determined on the Commission's finding that the complainants had failed to explain the wide interval between exhaustion of local remedies and the Communication to the African Commission. These cases have been impactful. Although the Government is yet to implement the Ogiek judgement, the decisions of the African Commission, have time and again been referenced by the national courts and have contributed to legal and policy changes.

The AU treaties have contributed to EAC's concerted efforts in transnational crimes. Drug trafficking, trafficking of persons, human smuggling, insurgencies and terrorism, corruption, smuggling of weapons and other commodities, and cybercrimes, are some of the crimes that traverse boundaries and which need a concerted effort by states. The AU Corruption Convention, has provisions requiring State Parties to provide each other with cooperation and assistance to prevent, detect, investigate and punish for corruption and related offences. The Child Charter requires State Parties to take appropriate measures to prevent the abduction, sale of, or trafficking of children for any purpose or in any form, by any person including parents or legal guardians of the child. In the East African region, EALA passed *The East African Community Counter Trafficking in Persons Bill, 2016*. The Act provides a legal framework at the EAC level to prevent the counter-trafficking in persons, paying particular attention to women and children, and vulnerable members of the society. It calls for the protection and assistance of victims of trafficking in persons in a manner that respects their human rights, and, the promotion of cooperation and harmonized action among the Partner States in order to prosecute perpetrators and comprehensively counter trafficking in persons. In deliberating the Bill EALA referenced the Maputo Protocol whose Article 2 (4) (g) calls on Member States to prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk.<sup>45</sup>

An additional impact to AU treaties and other international conventions is the progressive change of Kenya's human rights approach to governance. The over two-decade reform process in Kenya has seen matters of human rights come to the fore. The Human Rights Approach cuts across the entire COK, 2010. Over and above the progressive provisions in the Bill of Rights, entitlements for the citizenry are reinforced in Chapters on citizenship, land and environment, representation of the people, commissions and independent offices and others. The devolved structure of government rides on the need that all citizens should access services from

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<sup>45</sup> The Official Report of the Proceedings of the East African Legislative Assembly 149<sup>th</sup> Sitting – Third Assembly: Second Meeting – Fifth Session, Tuesday, 18 October 2016

Government. Through recognition of the rights of communities to manage their own affairs and further their development, devolution works towards the equitable share of national and local resources throughout the country. The framework addresses historical injustices and puts in place mechanisms that enable citizens to access justice. The Human Rights Approach is buttressed in the National Policy and Action Plan on Human Rights in which the Government makes a firm commitment to human rights as embodied in CoK,2010 and international and regional human rights instruments that Kenya is a state party, and further commits to a strict accountability for the implementation of human rights. The implementation process is clear and is a collaborative effort between the Government Ministries, Departments and Agencies, civil society, private sector, academic institutions and all other stakeholders. It includes the formation of focal points in Government Ministries, Departments and Agencies – Human Rights Units. Constitutional Commissions in particular KNHRC, NGEK and CAJ are expected to carry out their mandates under their respective Acts to monitor and evaluate the implementation of this policy. To this they continuously advise on suitable human rights indicators. Human rights indicators help gauge the human rights impact of government programmes as well as the degree to which the processes used adhere to human rights principles. Because a stable budgetary support is needed in the enforcement of human rights, Government is to ensure that resources are mobilized in its budgetary plans to support the mainstreaming of human rights in planning and budgetary process in the various Government Ministries, Departments and Agencies. Every Ministry and Agency is required to provide for human rights realization in its budgets so that adequate resources are provided for the implementation of specific projects aimed at promoting human rights. In as much as Government continues enlisting the support of its development partners in the implementation of human rights initiatives, it has committed to providing the bulk of the budgetary support. Moreover, it recognizes the role of non-governmental organizations in human rights promotion. A few CSOs have developed clear engagement strategies that encompass programmes and projects that contribute to Kenya's compliance to AU and other international treaty obligations. More CSOs need to be involved and more funding for programmes for litigating human rights is needed. Some CSOs also have oversight programmes aimed at ensuring that sector issues get government budgetary allocations (for example, gender responsive budgeting), programmes that enable lobbying and advocacy, and programmes that contribute to the capacity building of officials in state departments, among others. With additional support the involvement of CSOs in AU treaties projects could contribute to Kenya's ratification process and implementation of AU treaties.

## **Chapter 5**

### **Conclusion and Policy Recommendations**

The African Union has formulated treaties and policies that provide the framework for implementing international conventions and advancing Africa's development agenda. In fact, the AU has been praised world over for formulating comprehensive legal instruments and policy frameworks that speak to the very aspirations of the African citizen. As such, they would have tremendous impact on the lives of Africans if their provisions are fully implemented by AU member states and governments. But the enthusiasm with which the Heads of State and Government sign and ratify these instruments does not match performance at the national level. On the whole, domestication and implementation is still very low.

Major areas of slow progress are in the Charter on Democracy and Elections, the Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women, the Convention on the Rights and Welfare of the Child, and the Maputo Plan of Action. Indeed, there is need for fresh thinking on how to strengthen democracy and women and children's rights. There still remains a glaring gap between universal values and the negative cultural practices in these three areas around the continent: The acceptance of child marriages across the board in the countries is clear testimony to this.

The AU has formulated many policies which, if fully implemented, can lift the continent out of conflict, poverty, ignorance and disease. While there is need for more policies and treaties, it may be helpful to seek the implementation of those already in place before producing new ones.

#### **General factors inhibiting implementation**

This study found that, some of the factors that inhibit implementation of AU legal instruments and policy frameworks include:

1. Limited levels of popular participation.
2. Shrinking space for CSOs – they speak but their voices do not translate to policy.
3. Unclear responsibilities between parliaments and the executive in some countries.

Where Cabinet ministers are at the same time Members of Parliament, the legislature cannot push the executive to effectively take action.

4. Lack of verifiable reliable statistics and information for policy formulation, learning and implementation.
5. Limited capacity for data and information processing especially at local level.
6. Low capacity for formulation and drafting of policy into laws.
7. Low capacity for monitoring and evaluating policies. It is, thus, not easy to establish whether policies are working or not.
8. Most societies are patriarchal and women representation in decision working is still low and gender inequality persists.

### **Policy recommendations**

In order to strengthen and hasten compliance with AU instruments, the following policy actions and strategies need to be considered and given attention:

1. AU member states should **establish stable and consultative mechanisms for monitoring compliance to AU instruments**. There have been mechanisms in place before, some interstate – e.g. Africa Peer Review Mechanism (APRM) - while a majority are civil society-led. The latter, while well designed, have not yielded the expected results, partly because they are not state-led and as such their structures are not owned by respective governments. One way would be to assess existing state-led monitoring mechanisms of best practice both within and outside the AU and Africa in order to establish their contribution to evidence-based policy making; analyse their applicability in monitoring compliance, and from the lessons develop new mechanisms that will be effective in tracking compliance with the requirements of AU instruments.
2. There is also a need for **improved policy coordination among government arms and agencies** that are charged with implementing policies formulated at the AU. The executive could, for instance, play a more proactive role in clarifying key concepts before forwarding Bills to the legislature for their domestication into national law.
3. The AU and its member states should encourage citizens' opinions on the state of



governance in their respective countries and communities. They should do so by **investing in the popularisation of AU instruments** among the African citizenry. 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.

4. The AU, member states, CSOs, private sector, and other stakeholders should also **invest in research and develop a broad consensus on the key components and indicators** of good governance in a consultative manner.

5. AU member states should commit to **increase the autonomy of electoral commissions** and give them resources, security and accessibility of opposition parties.

6. Establishing quality institutional frameworks at the national level for realising policy objectives of AU instruments is important. But this is not sufficient: **Institutions need to be empowered (have ‘teeth’) to design, formulate, and implement policies** that fulfil these objectives. This empowerment should include the ability to sanction or prosecute actions that contravene set policy courses. Governments should also complement the existing institutions with laws that are not open to self-serving interpretations and collusion, but laws that are elaborate, stable, and backed by the national constitutions. The stronger the anti-corruption laws and institutions, for instance, the lower the levels of corruption.

7. Governments should incorporate AU instruments obligations into their constitutions, backed by - and not contrary to or separate from ‘- independent national legislation. **National law should be seamlessly applied in relation to the already ratified AU instruments.** A country’s extradition laws should, for instance, allow extradition for offences of universal jurisdiction under international treaties and conventions (e.g. AU Convention on the Fight Against Corruption) ratified by that country.

8. **Enact laws that will ensure women empowerment and inclusive political participation and representation** in order to address conflicts and crises, as well as ensure

democracy. Policy and legal commitments are required. Further, resources should be mobilised to strengthen the gender equality and inclusion

9. AU member states should **harness innovation, which has the potential to increase skill formation, enhance productivity, and create youth employment** opportunities. They should also build institutional quality so that individuals and organisations are effective in responding to the needs of the youth.

Presented per constituency involved in treaty making,

**To the AU, African Union Commission Office of the Legal Counsel and Treaty bodies**

- Should focus its treaty attention on subject areas addressing ways in which the AU and its organs can act as agents of change or reform.
- Undertake an audit of all OAU/AU treaties, with the aim of identifying treaties that require targeted advocacy and ratification campaigns to maximise their ratification.
- Identify the policy context to ensure that before a draft text is laid before the AU Assembly for adoption, debates at both the formal and informal levels have taken place, including consultations with relevant sub-regional organisations, relevant NGOs and other institutions and entities in both the private and public sectors.
- Request periodically those member states that have not ratified certain OAU/AU treaties to forward relevant information about the circumstances which have prevented or delayed their acceptance or ratification of those treaties.
- Build synergy with the Regional Economic Communities on elaboration and ratification of treaties.
- Sensitisation of state institutions, and not only government, on the value of OAU/AU treaties.
- Identify resources to provide technical assistance to Member States facing obscure challenges to the ratification or domestication of certain treaties.
- Develop and disseminate manuals on the implementation of OAU/AU treaties.
- Encourage and support research and outreach activities on AU legal instruments.

**To development partners including United Nations and its agencies**

- Encourage and support research and outreach activities on AU legal instruments.

- Support improved awareness of the OAU/AU treaties for the purpose increasing capacities of the citizens and civil society to marshal support for speedy ratification of treaties.
- Support member states to ratify, domesticate and implement the treaties

### **To African States**

- Should develop national policies and strategies to address the obstacles that stand in the way of expeditious ratification of the treaties they have signed up to.
- Review on a continuous and periodic basis, the factors delaying or preventing their ratification of those treaties that they have signed as well as their accession to treaties already in force.
- Initiate national dialogue with relevant domestic stakeholders, including political leaders, parliamentarians, and civil society in general, to sensitise them to the significance of particular OAU/AU treaties and the importance of ratifying them as part of each individual nation's commitment to join with other member states in advancing the policy goals adopted collectively under the aegis of the organisation.
- Improve coordination between the different actors involved in the treaty ratification process.
- Familiarise staff and judicial actors (magistrates, lawyers, etc.) with the OAU/AU treaties so that they can rely on these instruments in their work. This will be achieved through the establishment and/or enhancement of courses in international law, and specifically AU law, in universities and training schools for the judiciary.

### **To African Civil Society and Civil Society Organisations**

- Become familiar with the OAU/AU treaties in order to popularise them among citizens.
- Develop more strategic interventions on AU treaties in order there are tangible outputs.
- Develop media programs that popularize OAU/AU treaties and highlight the salient features of those treaties.

## Bibliography

- Committee of Legal Advisers on Public International Law (CAHDI). (2001). Expression of Consent by States to be Bound by a Treaty: Analytical Report and Country Reports. Secretariat memorandum Prepared by the Directorate General of Legal Affairs – CAHDI.
- Constitution of Kenya 2010
- Malcom Shaw (1997). International Law. 4th edition, Cambridge University Press: Melbourne.
- Maluwa, Tiyanjana (2012). Ratification of African Union Treaties by Member States: Law, Policy and Practice. *Journal of International Law*, 636.
- MATHE, Cláudio (2020). Jurista e Funcionário da Direcção dos Assuntos Jurídicos e Consulares do Ministério dos Negócios Estrangeiros e Cooperação da República de Moçambique – MINEC. Entrevistado no dia 14 de Agosto de 2020. Maputo.
- Nakhjavanii, Salim A (2010). Rules for our country, rules for our world: Prospects for enhancing Parliamentary oversight of treaty-making and implementation in South Africa. A briefing paper prepared at the request of the Portfolio Committee on International Relations and Cooperation
- Stanford Law School & American University of Iraq (2016). Public International Law: Treaties and International Organizations Pub. Available at: <https://law.stanford.edu/wp-content/uploads/2018/04/ILEI-Treaties-and-Intl-Orgs-2016.pdf>
- Sheirer I.A. (1994). *Starke's International Law*. 11<sup>th</sup> edition, London: Butterworths
- United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: <https://www.refworld.org/docid/3ae6b3a10.html> [accessed 28 August 2020]
- Weiss, Edith Brown (editor). (1992). Environmental change and international law: New challenges and dimensions. United Nations University Press: Tokyo, Japan.

## Appendixes

### 4.5 Questionnaire/Sample Survey Used for Data Collection<sup>46</sup>

English	Arabic
<p>Introduction...</p> <p>Dear Sir/Madam:</p> <p>You are hereby invited to participate in this online survey titled "Accelerating, Ratifying and Domesticating African Union Treaties" which is being conducted by the UNDP Regional Service Centre for Africa and led by Charles Nyuykonge the International Consultant (nyuykonge@gmail.com). This survey is being conducted in Kenya, Mozambique, Tunisia, Burkina Faso, Sao Tome and Principe and Senegal and with development partners and AUC in Ethiopia. You have been selected to take part in this survey because of your knowledge, experience and understanding of treaties in your country.</p> <p>The purpose of this survey is to assess the levels and extent of ratification and domestication of the following six African Union Treaties:</p> <ul style="list-style-type: none"> <li>• African Charter on Human and People's Rights, adopted in 1981</li> <li>• Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), adopted in 2003</li> <li>• African Youth Charter, adopted in 2006</li> <li>• African Charter on the Rights and Welfare of the Child adopted in 1990</li> <li>• African Charter on Democracy, Elections and Governance, adopted in 2007</li> <li>• AU Convention on Preventing and Combating Corruption, adopted in 2003</li> </ul> <p>The survey will help the African Union Office the Legal Counsel (OLC) the UNDP and other Development Partners to elaborate appropriate strategies and recommendations for the effective domestication and implementation of the AU treaties.</p> <p>Participation in this survey is voluntary and you may decline to answer any question. You also have the right to withdraw from participation at any time. The information collected will be confidential and used only for the purposes of this study. To keep information confidential, stating your name is optional. We estimate that it will take between 5- 10 minutes of your time to complete the questionnaire. If you have further questions on this survey, feel free to contact the International Consultant at the</p>	<p>المقدمة...</p> <p>سيدتي العزيزة، سيدي العزيز</p> <p>نحن ندعوك للمشاركة في هذا الاستطلاع عبر الإنترنت والذي يحمل عنوان "تسريع التصديق على معاهدات الاتحاد الأفريقي وإدماجها" والذي يديره مركز الخدمات الإقليمي لبرنامج الأمم المتحدة الإنمائي لأفريقيا. ويدير هذا الاستطلاع المستشار الدولي تشارلز نيوكونج (nyuykonge@gmail.com). يُجرى هذا المسح في كل من كينيا وموزمبيق وتونس وبوركينا فاسو وساو تومي وبرينسيبي والسنغال ومع شركاء التنمية ومفوضية الاتحاد الأفريقي في إثيوبيا. لقد تم اختيارك للمشاركة في هذا الاستبيان بسبب معرفتك وخبرتك وفهمك للمعاهدات في بلدك.</p> <p>الهدف من هذا الاستطلاع هو تقييم مستويات التصديق على معاهدات الاتحاد الأفريقي الست التالية وإدماجها محليا:</p> <ul style="list-style-type: none"> <li>• الميثاق الأفريقي لحقوق الإنسان والشعوب، تم تبنيه عام 1981</li> <li>• بروتوكول الميثاق الأفريقي لحقوق الإنسان والشعوب بشأن حقوق المرأة في أفريقيا (بروتوكول مابوتو)، المعتمد في عام 2003</li> <li>• ميثاق الشباب الأفريقي المعتمد عام 2006</li> <li>• الميثاق الأفريقي لحقوق ورفاهية الطفل، اعتمد في عام 1990</li> <li>• الميثاق الأفريقي للديمقراطية والانتخابات والحكم، المعتمد عام 2007</li> <li>• اتفاقية الاتحاد الأفريقي لمنع الفساد ومكافحته، المعتمدة في عام 2003</li> </ul> <p>هذا الاستطلاع سيساعد مكتب المستشار القانوني للاتحاد الأفريقي، برنامج الأمم المتحدة الإنمائي وشركاء التنمية الآخرين على وضع استراتيجيات وتوصيات مناسبة لإدماج معاهدات الاتحاد الأفريقي محليا وتفعيلها.</p> <p>المشاركة في هذا الاستطلاع طوعية ويمكنك رفض الإجابة على أي سؤال لديك أيضاً الحق في الانسحاب من المشاركة في أي وقت. تبقى المعلومات التي يتم جمعها سرية وتستخدم فقط لأغراض هذه الدراسة. للحفاظ على سرية المعلومات، يعد ذكر اسمك أمراً اختيارياً. سيستغرق إكمال هذا الاستبيان ما بين 5 إلى 10 دقائق. إذا كانت لديك أسئلة أخرى حول هذا الاستبيان، فلا تتردد في الاتصال بالمستشار الدولي على عنوان البريد الإلكتروني المذكور أعلاه.</p> <p>إذا وافقت على المشاركة، يرجى الضغط على "متابعة".</p> <p>شكراً!</p>

<sup>46</sup> Please note that the survey was deployed in English, French, Portuguese and Arabic which are the 4 official languages of the African Union

above-mentioned email address.	
If you agree to participate please press continue.	
Thank you.	
Continue to survey questionnaire?	
Demographic Data	البيانات الديموغرافية
What is your name? (Optional)	ما اسمك؟ (اختياري)
Gender <ul style="list-style-type: none"> <li>Male</li> <li>Female</li> <li>Prefer not to say</li> </ul>	الجنس <ul style="list-style-type: none"> <li>ذكر</li> <li>أنثى</li> <li>أفضل عدم القول</li> </ul>
Age <ul style="list-style-type: none"> <li>18 – 30 years</li> <li>31 – 40 years</li> <li>41 – 50 years</li> <li>51 – 60 years</li> <li>61+ years</li> </ul>	العمر <ul style="list-style-type: none"> <li>18 - 30 سنة</li> <li>31 - 40 سنة</li> <li>41 - 50 سنة</li> <li>51 - 60 سنة</li> <li>61+ سنة</li> </ul>
Country <ul style="list-style-type: none"> <li>Kenya</li> <li>Senegal</li> <li>Mozambique</li> <li>Sao Tome and Principe</li> <li>Tunisia</li> <li>Burkina Faso</li> <li>Ethiopia (AUC)</li> <li>Ethiopia (UNDP)</li> </ul>	البلد <ul style="list-style-type: none"> <li>كينيا</li> <li>السنغال</li> <li>موزمبيق</li> <li>ساو تومي وبرينسيبي</li> <li>تونس</li> <li>بوركينافاسو</li> <li>إثيوبيا (مفوضية الاتحاد الأفريقي)</li> <li>إثيوبيا (برنامج الأمم المتحدة الإنمائي)</li> </ul>
What organisation do you work for? <ul style="list-style-type: none"> <li>Government (Judiciary)</li> <li>Government (Legislature)</li> <li>Government (Executive)</li> <li>Regional Economic Commissions (RECs)</li> <li>Development Partner</li> <li>Constitutional Bodies</li> <li>Civil Society Organisation (CSOs)</li> <li>Other (Specify)</li> </ul>	ما هي المنظمة التي تعمل من أجلها؟ <ul style="list-style-type: none"> <li>الحكومة (السلطة القضائية)</li> <li>الحكومة (السلطة التشريعية)</li> <li>الحكومة (السلطة التنفيذية)</li> <li>اللجان الاقتصادية الإقليمية (RECs)</li> <li>شركاء التنمية</li> <li>الهيئات الدستورية</li> <li>منظمات المجتمع المدني (CSOs)</li> <li>أخرى (حدد)</li> </ul>
(Specify Other) What organisation do you work for?	(أخرى) ما هي المنظمة التي تعمل فيها؟
Knowledge of the 6 treaties	المعرفة بالمعاهدات الست
In this section, we are going to ask you about your knowledge of the 6 treaties	في هذا القسم، نتركز الأسئلة حول معرفتك بالمعاهدات الست
Which of these treaties are you familiar with? (Select all that applies) <ul style="list-style-type: none"> <li>African Charter on Human and People's Rights, adopted in 1981</li> <li>Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), adopted in 2003</li> <li>African Youth Charter, adopted in 2006</li> <li>African Charter on the Rights and Welfare of the Child, adopted in 1990</li> <li>African Charter on Democracy, Elections and Governance, adopted in 2007</li> <li>AU Convention on Preventing and Combating Corruption, adopted in 2003</li> </ul>	أي من هذه المعاهدات تعرفها؟ (حدد كل ما ينطبق) <ul style="list-style-type: none"> <li>الميثاق الأفريقي لحقوق الإنسان والشعوب، تم تبنيه عام 1981</li> <li>بروتوكول الميثاق الأفريقي لحقوق الإنسان والشعوب بشأن حقوق المرأة في أفريقيا (بروتوكول مابوتو)، المعتمد في عام 2003</li> <li>ميثاق الشباب الأفريقي المعتمد عام 2006</li> <li>الميثاق الأفريقي لحقوق ورفاهية الطفل، اعتمد في عام 1990</li> <li>الميثاق الأفريقي للديمقراطية والانتخابات والحكم الصادر عام 2007</li> <li>اتفاقية الاتحاد الأفريقي لمنع الفساد ومكافحته، المعتمدة في عام 2003</li> </ul>
What benefits are there for countries to sign, ratify and domesticate treaties in general? (Select all that applies)	ما الفوائد التي تعود على البلدان من توقيع المعاهدات والتصديق عليها وإدماجها بشكل عام؟ (حدد كل ما ينطبق)

<ul style="list-style-type: none"> <li>• Broaden the rights of their citizens</li> <li>• Promote regional &amp; continental integration</li> <li>• Promote African Best Practices</li> <li>• Gain Foreign Aid and Trade</li> <li>• Other (Explain)</li> </ul>	<ul style="list-style-type: none"> <li>• توسيع حقوق مواطنيها</li> <li>• تعزيز التكامل الإقليمي والقاري</li> <li>• تعزيز أفضل الممارسات الأفريقية</li> <li>• المساعدات الخارجية والمكاسب التجارية</li> <li>• أخرى (حدد)</li> </ul>
(Explain Other) Benefits for countries to sign, ratify and domesticate treaties	(وضح غير ذلك) الفوائد التي تعود على الدول للتوقيع والتصديق عليها وإضفاء الطابع المحلي على المعاهدات
In your opinion, have the following treaties been ratified domesticated in your country?	برأيك، هل تم التصديق على المعاهدات التالية في بلدك؟
African Charter on Human and People's Rights, adopted in 1981 <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> <li>• Somehow (does it mean here: I am not sure?) Somehow = In some way</li> </ul>	الميثاق الأفريقي لحقوق الإنسان والشعوب، تم تبنيه عام 1981 <ul style="list-style-type: none"> <li>• نعم</li> <li>• لا</li> <li>• غير متأكد (ة)</li> </ul>
Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), adopted in 2003 <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> <li>• Somehow</li> </ul>	بروتوكول الميثاق الأفريقي لحقوق الإنسان والشعوب بشأن حقوق المرأة في أفريقيا (بروتوكول مابوتو)، المعتمد في عام 2003 <ul style="list-style-type: none"> <li>• نعم</li> <li>• لا</li> <li>• غير متأكد (ة)</li> </ul>
African Youth Charter, adopted in 2006 <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> <li>• Somehow</li> </ul>	ميثاق الشباب الأفريقي، اعتمد في 2006 <ul style="list-style-type: none"> <li>• نعم</li> <li>• لا</li> <li>• غير متأكد (ة)</li> </ul>
African Charter on the Rights and Welfare of the Child, adopted in 1990 <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> <li>• Somehow</li> </ul>	الميثاق الأفريقي لحقوق ورفاهية الطفل، اعتمد في عام 1990 <ul style="list-style-type: none"> <li>• نعم</li> <li>• لا</li> <li>• غير متأكد (ة)</li> </ul>
African Charter on Democracy, Elections and Governance, adopted in 2007 <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> <li>• Somehow</li> </ul>	الميثاق الأفريقي للديمقراطية والانتخابات والحكم، المعتمد في عام 2007 <ul style="list-style-type: none"> <li>• نعم</li> <li>• لا</li> <li>• غير متأكد (ة)</li> </ul>
AU Convention on Preventing and Combating Corruption, adopted in 2003 <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> <li>• Somehow</li> </ul>	اتفاقية الاتحاد الأفريقي لمنع الفساد ومكافحته، المعتمدة في عام 2003 <ul style="list-style-type: none"> <li>• نعم</li> <li>• لا</li> <li>• غير متأكد (ة)</li> </ul>
In your observation, why are AU member states inclined towards ratifying some treaties (international/UN) and not AU treaties? <ul style="list-style-type: none"> <li>• Ratification as a condition of Aid</li> <li>• Deterrence from sanctions</li> <li>• Beneficial to the member</li> <li>• Greater awareness to ratify those instruments</li> <li>• Public relations – the look good effect</li> <li>• Other (Explain)</li> </ul>	حسب رأيك، لماذا تميل الدول الأعضاء في الاتحاد الأفريقي نحو التصديق على بعض المعاهدات (الدولية / الأمم المتحدة) وليس معاهدات الاتحاد الأفريقي؟ <ul style="list-style-type: none"> <li>• التصديق كشرط للمساعدة</li> <li>• الردع عن العقوبات</li> <li>• يعود بالنفع على الدولة العضو</li> <li>• زيادة الوعي بالتصديق على وثائق المعاهدات</li> <li>• التأثير الجيد في العلاقات العامة</li> <li>• أخرى (حدد)</li> </ul>
(Explain Other) Why are AU member states inclined towards ratifying some treaties (international/UN) and not AU treaties?	(وضح غير ذلك) لماذا تميل الدول الأعضاء في الاتحاد الإفريقي إلى التصديق على بعض المعاهدات (الدولية / الأمم المتحدة) وليس معاهدات الاتحاد الإفريقي؟
Challenges and opportunities for treaty ratification and domestication	التحديات والفرص المتاحة للتصديق على المعاهدة وإدماجها على المستوى المحلي
In this section, we are going to ask you about challenges and opportunities for treaty ratification and domestication in your country	في هذا القسم، نتركز الأسئلة حول التحديات والفرص المتاحة للتصديق على المعاهدة وإدماجها على المستوى المحلي في بلدك
In your experience, what have been the challenges in your	في تجربتك، ما هي التحديات في بلدك لإدماج المعاهدات الست؟ (حدد كل ما



country to domesticate the 6 treaties? (Select all that applies)	ينطبق) • الافتقار إلى الإرادة السياسية • المسائل التي يغطيها القانون والتشريعات الوطنية • قلة المعرفة بالمعاهدات وأهميتها • الافتقار إلى القدرات الكافية للتصديق والاندماج • أخرى (حدد)
(Explain Other) What have been the challenges in your country to domesticate the 6 treaties	(وضح غير ذلك) ما هي التحديات في بلدك لإدماج المعاهدات الست
In your perspective, what has been the cause/driver of these challenges in your country?	من وجهة نظرك، ما هو سبب / دافع هذه التحديات في بلدك؟ • الافتقار إلى الإرادة السياسية • عدم وجود معارضة قوية ومنظمات المجتمع المدني النشطة • الجهل بأهمية المعاهدات • أخرى (حدد)
(Explain Other) Cause/driver of these challenges of domestication the 6 treaties in your country?	(اشرح غير ذلك) سبب / دافع هذه التحديات المتمثلة في ادماج المعاهدات الست في بلدك؟
What opportunities/incentives are there to encourage your country to ratify and domesticate treaties? (Select all that applies)	ما هي الفرص / الحوافز المتوفرة لتشجيع بلدك على التصديق على المعاهدات وإضفاء الطابع المحلي عليها؟ (حدد كل ما ينطبق) • القدرة على فهم وأدراك الالتزام بحقوق الإنسان • كسب المساعدات الخارجية / تخفيف العقوبات • تصنيف وطني جيد وشعبية لدى الناخبين • أخرى (حدد)
(Explain Other) What opportunities/incentives are there to encourage your country to ratify and domesticate treaties?	(وضح غير ذلك) ما هي الفرص / الحوافز المتوفرة لتشجيع بلدك على التصديق على المعاهدات وإدماجها على المستوى المحلي؟
Impact of treaty ratification and domestication	أثر التصديق على المعاهدة وإدماجها محليا
In this section, we are to ask you about the impact of treaty ratification and domestication	في هذا القسم، نتركز الأسئلة حول تأثير التصديق على المعاهدة وإدماجها محليا
What has been the impact of ratifying and domesticating treaties?	ما هو تأثير المصادقة على المعاهدات وإدماجها محليا؟ • تدعيم الحوكمة والشفافية والمساءلة • تخفيف العقوبات الدولية أو المزيد من الاستثمار الأجنبي المباشر • تصنيف وطني جيد وشعبية لدى الناخبين • أخرى (حدد)
(Explain Other) What has been the impact of ratifying and domesticating treaties?	(وضح غير ذلك) ما هو تأثير التصديق على المعاهدات وإدماجها؟
Who has felt the most impact in your opinion?	من كان الأكثر تأثيراً في رأيك؟ • الحكومة • المواطنين • شركاء التنمية • المجموعات الاقتصادية الإقليمية • لا أحد
Are citizens able to hold governments accountable based on their treaty commitments?	هل المواطنون قادرون على مساءلة الحكومات على أساس التزاماتها بموجب المعاهدة؟ • نعم • لا • إلى حد ما (يرجى التوضيح أكثر)
(Explain Further) Are citizens able to hold governments accountable based on their treaty commitments?	(وضح المزيد) هل المواطنون قادرون على مساءلة الحكومات بناءً على التزاماتها بموجب المعاهدة؟
Do judges draw inspiration from treaties or base their ratio descedendi on treaties duly ratified by the government?	هل يستلهم القضاة من المعاهدات أم يبنون نسبهم إلى المعاهدات التي صادقت عليها الحكومة حسب الأصول؟ (Ratio descedendi = سيادة القانون التي يستند إليها القرار القضائي) • نعم • لا



<ul style="list-style-type: none"> <li>To some extent/sometimes (With examples, please explain further)</li> </ul>	<ul style="list-style-type: none"> <li>إلى حد ما / في بعض الأحيان (مع أمثلة، يرجى التوضيح أكثر)</li> </ul>
(Explain Further) Do judges draw inspiration from treaties or base their ratio descedendi on treaties duly ratified by the government?	(وضح المزيد) هل يستلهم القضاة من المعاهدات أو يبنون نسبهم إلى المعاهدات التي صدقت عليها الحكومة حسب الأصول؟
Recommendations	التوصيات
What can be done to support african countries ratify and domesticate AU treaties?	ما الذي يمكن فعله لدعم الدول الأفريقية المصادقة على معاهدات الاتحاد الأفريقي وإدماجها؟
Whose responsibility is it? <ul style="list-style-type: none"> <li>AU member states</li> <li>AU</li> <li>Development Partners</li> <li>CSOs</li> </ul>	هذه مسؤولية؟ <ul style="list-style-type: none"> <li>الدول الأعضاء في الاتحاد الأفريقي</li> <li>الاتحاد الأفريقي</li> <li>شركاء التنمية</li> <li>منظمات المجتمع المدني</li> </ul>
End of the Questionnaire and thank you for your time.	شكرا على مشاركتك.

#### 4.6 List of Questionnaire Respondents & Interviewees

Index	Name of Respondent	Gender	Age	Country	Organisation of Respondent
1	Daoud Wafa	Female	41 - 50 years	Tunisia	Other (Specify)
2	DIOP	Male	31 - 40 years	Senegal	Government (Executive)
3	MARIE	Female	51 - 60 years	Senegal	Government (Executive)
4		Female	18 - 30 years	Tunisia	Civil Society Organizastions (CSOs)
5		Male	41 - 50 years	Kenya	Constitutional Bodies
6		Female	41 - 50 years	Kenya	Government (Judiciary)
7		Female	31 - 40 years	Kenya	Constitutional Bodies
8	MOMO Ibaranté	Male	41 - 50 years	Burkina Faso	Civil Society Organizastions (CSOs)
9	DJIGA	Male	31 - 40 years	Burkina Faso	Other (Specify)
10	HARBAOUI Zouhour	Female	41 - 50 years	Tunisia	Other (Specify)
11	Samba gaye	Male	41 - 50 years	Senegal	Government (Executive)
12	Fatim TOURÉ	Female	31 - 40 years	Burkina Faso	Other (Specify)
13	Gnanou	Male	31 - 40 years	Burkina Faso	Government (Judiciary)
14		Female	61+ years	Tunisia	Other (Specify)
15	Hajer Gueldich	Female	41 - 50 years	Tunisia	Other (Specify)
16		Male	31 - 40 years	Burkina Faso	Government (Executive)
17		Male	41 - 50 years	Burkina Faso	Other (Specify)
18	NABALOUM Adama	Male	31 - 40 years	Burkina Faso	Civil Society Organizastions (CSOs)
19		Female	61+ years	Tunisia	Other (Specify)
20	KERE Goudouma Bruno	Male	31 - 40 years	Burkina Faso	Civil Society Organizastions (CSOs)

21	Dr Boucounta Mendy	Male	41 - 50 years	Senegal	Government (Executive)
22	Thialy faye	Male	31 - 40 years	Senegal	Civil Society Organizastions (CSOs)
23	FALL	Male	51 - 60 years	Senegal	Government (Executive)
24	BADO Christoph Regawoyi	Male	31 - 40 years	Burkina Faso	Civil Society Organizastions (CSOs)
25	Wanjiku Mbugua	Female	51 - 60 years	Kenya	Other (Specify)
26	Jamila Debbech Ksiksi	Female	51 - 60 years	Tunisia	Government (Legislature)
27	Badiane	Male	61+ years	Senegal	Civil Society Organizastions (CSOs)
28		Female	31 - 40 years	Kenya	Constitutional Bodies
29	OUEDRAOGO Wend-zoodo Julie Rose	Female	41 - 50 years	Burkina Faso	Civil Society Organizastions (CSOs)
30	Bambara Jean de Dieu	Male	41 - 50 years	Burkina Faso	Government (Legislature)
31	Urbain K. YAMEOGO	Male	31 - 40 years	Burkina Faso	Civil Society Organizastions (CSOs)
32		Female	61+ years	Burkina Faso	Civil Society Organizastions (CSOs)
33	Rafaâ BEN ACHOUR	Male	61+ years	Tunisia	Other (Specify)
34	Ismâil Ben Khalifa	Male	18 - 30 years	Tunisia	Civil Society Organizastions (CSOs)
35	El gatri malak	Female	18 - 30 years	Tunisia	Other (Specify)
36	El hadj Abdoulaye SECK	Male	41 - 50 years	Senegal	Civil Society Organizastions (CSOs)
37	Dieynaba TOURE BATHILY	Female	31 - 40 years	Senegal	Government (Executive)
38	G.K.Ndungu	Male	41 - 50 years	Kenya	Development Partner
39		Male	41 - 50 years	Kenya	Government (Executive)
40	Chris Mbiti	Male	41 - 50 years	Kenya	Civil Society Organizastions (CSOs)
41	VIVIAN MWENDE WAMBUA	Female	18 - 30 years	Kenya	Civil Society Organizastions (CSOs)
42	Jonesmus Sanga	Male	18 - 30 years	Kenya	Other (Specify)
43	David Kaboro	Male	41 - 50 years	Kenya	Government (Executive)
44	Samson Orao	Male	31 - 40 years	Kenya	Civil Society Organizastions (CSOs)
45	GAYE Samba	Male	41 - 50 years	Senegal	Government (Executive)
46		Female	31 - 40 years	Senegal	Government (Judiciary)
47	BADIANE	Male	61+ years	Senegal	Civil Society Organizastions (CSOs)
48	Rokhiatou Gassama	Female	61+ years	Senegal	Civil Society Organizastions (CSOs)
49	Seynabou Ndiaye Diakhate	Female	51 - 60 years	Senegal	Government (Executive)

50		Male	61+ years	Senegal	Development Partner
51	Doudou DIA	Male	41 - 50 years	Senegal	Civil Society Organizastions (CSOs)
52	Guilherme Tembe	Male	31 - 40 years	Mozambique	Government (Executive)
53	Ms. Ibraimo	Female	18 - 30 years	Mozambique	Development Partner
54	Tobias Miguel Zacarias	Male	31 - 40 years	Mozambique	Other (Specify)
55		Female	31 - 40 years	Mozambique	Government (Legislature)
56	Nerik Salvaterra	Male	31 - 40 years	Sao Tome and Principe	Other (Specify)
57	Pedro Jr	Male	41 - 50 years	Mozambique	Government (Executive)
58	Hernane Santiago	Male	51 - 60 years	Sao Tome and Principe	Government (Executive)
59		Male	31 - 40 years	Mozambique	Other (Specify)
60		Female	18 - 30 years	Sao Tome and Principe	Government (Executive)
61		Female	31 - 40 years	Mozambique	Government (Executive)
62	Neusa Carvalho	Female	41 - 50 years	Sao Tome and Principe	Other (Specify)
63	Carlos Victorino Abudala	Male	51 - 60 years	Mozambique	Civil Society Organizastions (CSOs)
64	Jose Bernardo Rafael	Male	31 - 40 years	Mozambique	Civil Society Organizastions (CSOs)
65	Carvalho Cumbi	Male	31 - 40 years	Mozambique	Civil Society Organizastions (CSOs)
66		Female	18 - 30 years	Mozambique	Development Partner
67	Sabina Fernandes Nobre dos Ramos	Female	51 - 60 years	Sao Tome and Principe	Development Partner
68		Female	31 - 40 years	Mozambique	Other (Specify)
69		Male	31 - 40 years	Mozambique	Government (Executive)
70		Female	31 - 40 years	Sao Tome and Principe	Government (Executive)
71	Gisela Madeira	Female	31 - 40 years	Mozambique	Other (Specify)
72	Alissandra Varela dos Ramos	Female	18 - 30 years	Sao Tome and Principe	Development Partner
73		Female	31 - 40 years	Mozambique	Government (Judiciary)
74	Andre	Male	18 - 30 years	Sao Tome and Principe	Civil Society Organizastions (CSOs)
75	Moises Mahavene	Male	41 - 50 years	Mozambique	Other (Specify)
76	Gregório Cardoso Santiago	Male	51 - 60 years	Sao Tome and Principe	Government (Executive)
77	Egna Sidumo	Female	31 - 40 years	Mozambique	Other (Specify)
78		Female	41 - 50 years	Mozambique	Civil Society Organizastions (CSOs)

79	Isac Matola	Male	51 - 60 years	Mozambique	Government (Executive)
80	Albachir Macassar	Male	41 - 50 years	Mozambique	Government (Executive)
81	Julieta Cristo Jordão	Female	31 - 40 years	Sao Tome and Principe	Other (Specify)
82		Female	51 - 60 years	Mozambique	Government (Legislature)
83	Neto Joaquim Diquissone	Male	31 - 40 years	Mozambique	Government (Executive)
84	Sonia J. Nhachungue	Female	31 - 40 years	Mozambique	Government (Executive)
85		Female	51 - 60 years	Sao Tome and Principe	Other (Specify)
86		Male	31 - 40 years	Sao Tome and Principe	Civil Society Organizastions (CSOs)
87	Moussa MBAYE	Male	51 - 60 years	Senegal	Civil Society Organizastions (CSOs)
88		Female	41 - 50 years	Sao Tome and Principe	Development Partner
89	Egide Tamele	Male	31 - 40 years	Mozambique	Government (Judiciary)
90	Alberto Manhique	Male	61+ years	Mozambique	Government (Executive)
91	Filomena Motiane	Female	41 - 50 years	Mozambique	Civil Society Organizastions (CSOs)
92		Female	31 - 40 years	Mozambique	Other (Specify)
93	João Baptista Henrique Fenhane	Male	51 - 60 years	Mozambique	Government (Executive)
94	Deodato Capela	Male	41 - 50 years	Sao Tome and Principe	Civil Society Organizastions (CSOs)
95	Fredibel Umbelina	Male	31 - 40 years	Sao Tome and Principe	Government (Executive)
96	Silvestre da Fonseca Leite	Male	61+ years	Sao Tome and Principe	Constitutional Bodies
97	Constancio Samuel Paulo Nguja	Male	31 - 40 years	Mozambique	Government (Executive)
98		Female	41 - 50 years	Mozambique	Development Partner
99	Ngane NDOUR	Male	41 - 50 years	Senegal	Government (Judiciary)
100		Female	31 - 40 years	Kenya	Civil Society Organizastions (CSOs)