

# THE RESPONSIVITY OF THE MECHANISM OF THE SPECIAL RAPPOREUR ON THE RIGHTS OF WOMEN IN AFRICA IN COMBATING VIOLENCE AGAINST WOMEN

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## Abstract

*By using the mechanism of the Special Rapporteur on the Rights of Women in Africa (SRRWA) as a matrix, this article assesses the responsivity of the mechanism of the SRRWA in combating violence against women (“VAW”). The article argues that the mechanism of the SRRWA has taken up the challenge of contributing, in a substantive manner, to norms development relating to VAW. It finds that although VAW is not an explicit thematic area in the mandate of the SRRWA, compared to the United Nations Human Rights Council’s special rapporteur on violence against women, its causes and consequences, in practice it features quite distinctly in the work of the mechanism. This is indicative of the modest focus, response and contribution of the mechanism to this intractable human rights issue.*

**Keywords:** *Africa, women, violence against women, special procedures, Special Rapporteur on the Rights of Women in Africa*

## 1 Introduction

The African human rights system is often criticised for its weak protection and inadequate promotion of women’s rights.<sup>1</sup> These criticisms range from normative shortcomings, institutional neglect, states’ failure to domesticate and implement women’s rights and the general gender insensitive nature of the system. This notwithstanding, efforts have been made to pay particular attention to the plight of African women. One of these efforts can be traced to the creation of the mechanism of the Special Rapporteur on the Rights of Women in Africa (“SRRWA”).

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<sup>1</sup> See generally, A Rudman “Women’s access to regional justice as a fundamental element of the rule of law: The effect of the absence of a women’s rights committee on the enforcement of the African Women’s Protocol” (2018) 18 *African Human Rights Law Journal* 319-345; F Viljoen “An introduction to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa” (2009) 16 *Washington and Lee Journal of Civil Rights and Social Justice* 11-46; F Banda “Protocol to the African Charter on the Rights of Women in Africa” in M Evans & R Murray (eds) *The African Charter on Human and Peoples’ Rights: The System in Practice, 1986-2006* (2008) 445; F Banda “Blazing a trail: The African Protocol on Women’s Rights comes into force” (2006) 50 *Journal of African Law* 74-76; A Budoo “Analysing the monitoring mechanisms of the African Women’s Protocol at the level of the African Union” (2018) 18 *African Human Rights Law Journal* 58-74.

Being the only mechanism with a categorical mandate on women's rights, the SRRWA has through its working modalities and standard operating procedures advanced the cause of women on the African continent. Despite its broad mandate, generally oriented towards women's rights, the SRRWA has focused specifically on issues pertaining to violence against women ("VAW"). This is not to suggest that the SRRWA focuses exclusively on VAW. On the contrary, it carries out a wide range of initiatives and measures, whether promotional or protective, on a variety of thematic issues relating to women's rights. Informed by the prevalence of VAW on the continent, the various mandate holders of this mechanism continue to prioritise VAW as a thematic determinant in the working modalities and standard operating procedures of the mechanism.

The creation of the mechanism of the SRRWA was an important step in ensuring that women's rights, including protection against violence, find a permanent scope within the human rights architecture of the African human rights system. Moreover, it ensures that women's issues are consistently viewed through the prism of human rights and states' obligations. Within the context of VAW, the mechanism remains important in addressing states and holding them accountable for violations as well as in monitoring that they act with due diligence to prevent and respond to VAW. The SRRWA is arguably well-positioned as a response mechanism in the fight against gendered forms of violence experienced by women on the continent. To this end, this article considers the responsivity of the SRRWA in the fight against violence perpetrated against women based on their gender. Responsivity in this context bears reference to the general reactions, measures, engagements, interventions, and initiatives undertaken under the auspices of the mechanism of the SRRWA in combating VAW.

The article argues that the mechanism of the SRRWA has contributed, in a positive manner, to norm development relating to VAW, both in terms of hard and soft law. The responsivity of the mechanism of the SRRWA in norms development relating to VAW provided a much-needed framework to states to tailor their measures aimed at addressing VAW in terms of required international standards. This argument is depicted throughout the various parts of this article, which is divided into four parts. In addition to this introduction, the next part sets out the mandate of the mechanism of the SRRWA. As a precursor to the substantive discussion on the role of the responsivity of the SRRW, part 2 provides a general context by setting out the determinants that gave rise to its establishment and broad mandate, which includes *inter alia* VAW. The third part presents the contributions of the mechanism to norms development relating to VAW. This is followed by the concluding part that sets out the conclusions and recommendations.

## **2 Establishment and mandate of the mechanism of the Special Rapporteur on the Rights of Women in Africa**

The SRRWA is one of fifteen of the African Commission's special procedure mechanisms. Being amongst the first generation of special

procedure mechanisms of the African Commission, it has endured the test of time, having remained unaltered since its initiation in 1998. The continued durability and consistency of this mechanism arguably speaks of its model nature for the African Commission's other special procedure mechanisms, if not, its success as an apparatus for human rights promotion and protection within the African Commission.

The mechanism of the SRRWA has its own historical context that marked its establishment. Its creations were, as is the case with most human rights mechanisms, necessitated by prevailing historical circumstances.<sup>2</sup> In the case of the mechanism of the SRRWA, historical events with specific reference to the then prevailing women's rights developments on the continent and beyond had some significant influence on its initiation. Within a geopolitical context, the early 1990s saw the entrenchment of a global women's rights movement, eager to promote and affirm women's rights as human rights. The Vienna Conference on Human Rights of 1993 set the tone for states' affirmation of women as subjects worthy of the clothing of the law, including its normative and institutional framework as well as its processes and mechanisms.<sup>3</sup> This was followed by the Beijing Conference of 1995, which not only confirmed women's rights as human rights but also adopted the Beijing Declaration and Platform for Action resulting in the initiation of the United Nations ("UN") Special Rapporteur on violence against women, its causes and consequences.<sup>4</sup>

Although global conferences such as the Vienna and Beijing Conferences served as an antecedent to subsequent developments concerning the advancement of women's rights, it was rather regional and local developments pertaining to women on the African continent that gave the African Commission the much-needed thrust to create the mechanism of the SRRWA. One such development was the seminar on the Rights of Women in Africa and the African Charter on Human and Peoples' Rights ("African Charter"),<sup>5</sup> held

<sup>2</sup> See generally, C Heyns "A struggle approach to human rights" in C Heyns & K Stefiszyn (eds) *Human Rights, Peace and Justice in Africa: A Reader* (2006) 15-16. Such an argument may be cogent when one has regard to the creation of the African Commission's first thematic special mechanism on extrajudicial, summary, or arbitrary executions created in 1994 which was largely birthed out of the political developments of the time. Historically, the political unrest in Southern Africa, particularly apartheid in South Africa (and, to a lesser extent South-West Africa (now Namibia) and the systematic killings of Tutsi and Pygmy Batwa in Rwanda, were typical developments to which the African Commission could not respond through its existing working methods. However, this was not the only political reality. In fact, since the inception of the Organisation of African Unity ("OAU") in 1963, civilian unrest marked the continent from almost all corners. This was even to a greater extent corroborated by colonialism that was still prevalent on the continent. A notable development worth mentioning that left an imprint on the state of human rights protection on the continent were the erratic atrocities of the Amin regime in Uganda (1971-1979) which was marked by political repression, ethnic cleansing and the general commission of crimes against humanity. Events of this nature not only shed light on the dire state of human rights on the continent but equally placed pressure on the stakeholders of the OAU to act on atrocious human rights situations without delay.

<sup>3</sup> See generally the outcome document of this conference, namely the Vienna Declaration and Programme of Action 12 July 1993, UN Doc A/CONF.157/23, which equivocally declared women's rights as human rights.

<sup>4</sup> Special Rapporteur on violence against women, its causes and consequences <<https://www.ohchr.org/en/issues/women/srwomen/pages/srwomenindex.aspx>> (accessed 22-02-2022).

<sup>5</sup> Adopted 27 June 1981, entered into force 21 October 1986.

in the wake of the 17th Ordinary Session of the African Commission,<sup>6</sup> from 8 to 9 March 1995 in Lomé, Togo, by the African non-governmental organisation (“NGO”), Women in Law and Development in Africa (“WiLDAF”). This seminar not only proposed the introduction of an additional Protocol on the Rights of Women but also called for a Special Rapporteur on the Rights of Women.<sup>7</sup> These proposals from the Lomé seminar were raised at the African Commission’s 17th Ordinary Session by the (then) Commissioner, Vera Duarte Martins, who had been an active participant in the seminar. While the African Commission positively responded to the proposal,<sup>8</sup> the actual materialisation of the mechanism only bore fruit much later in 1999 when the African Commission adopted Resolution 38 On the Designation of the Special Rapporteur on the Rights of Women in Africa, on 5 May 1999, on the occasion of its 25th Ordinary Session held in Bujumbura, Burundi.<sup>9</sup> This resolution sets out the mandate of the mechanism obligating the SRRWA to amongst others assist African governments to promote and protect women’s rights. Since its inception, the mandate of the SRRWA has been renewed four times equating to the number of individual special rapporteurs that have headed the mandate.<sup>10</sup>

One of the most striking features of the mandate of the SRRWA is its generic nature.<sup>11</sup> For example, there is no explicit mention of any concrete human rights issue in the mandate of the SRRWA. On closer scrutiny of the mandate, it is self-evident that VAW is not explicitly stated in the SRRWA’s mandate. In fact, no specific women’s rights issue is expressly stated. The assumption is that the mechanism broadly has to cover every aspect relating to women’s lives, especially the rights and issues covered in the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (“Maputo Protocol”).<sup>12</sup> One of these is the right of women to be free from gendered forms of violence.

<sup>6</sup> The 17th Ordinary Session of the African Commission on Human and Peoples’ Rights took place from 13-22 March 1995, at Lomé, Togo, three days after the seminar.

<sup>7</sup> J Geng “Maputo Protocol and the reconciliation of gender and culture in Africa” in SH Rimmer & K Kate Ogg (eds) *Research Handbook on Feminist Engagement with International Law* (2019) 12; See also M Nsibirwa “A brief analysis of the Draft Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa” (2001) 1 *African Human Rights Law Journal* 41.

<sup>8</sup> The African Commission entrusted Commissioners Vera Duarte Martins and Victor Dankwa with the task of starting work on the drafting of an additional Protocol on the Rights of Women, and the initiation of a special rapporteur, including the identification of a suitable candidate to fill the rapporteurship.

<sup>9</sup> See generally, Resolution 38: Resolution on the Designation of the Special Rapporteur on the Rights of Women in Africa, adopted on 5th May 1999, on the occasion of its 25th Ordinary Session held in Bujumbura, Burundi ACHPR/Res.38(XXV)99. The Resolution appointed the first Special Rapporteur in May 1999 retroactively as from 31 October 1998. The mandate of the first mandate holder of the mechanism of the SRRWA expired in 2002 and has since been renewed four times.

<sup>10</sup> The mandate was renewed four times with the adoption of Resolution 63 at the 34th Ordinary Session; Resolution 78 at the 38th Ordinary Session; Resolution 112 at the 42nd Ordinary Session and Resolution 154 at the 46th Ordinary Session.

<sup>11</sup> In principle, the overtly wide nature of the above terms of reference of the SRRWA, implies that the holder may be flexible and innovative in meeting the terms of the mandate. Thus, in the discharge of the mandate the SRRWA may receive and transmit urgent appeals and communications to States regarding alleged cases of violations against women, undertake country visits, conduct thematic studies relating to the mandate, and engage in general promotional activities such as campaigns and sensitisation workshops and seminars, although these are not expressly provided for in its terms of reference.

<sup>12</sup> Adopted 13 September, entered into force 25 November 2005.

### 3 Norms development on violence against women and the mechanism of the Special Rapporteur on the Rights of Women in Africa

#### 3 1 The Maputo Protocol

There is a close connection between the mechanism of the SRRWA and the Maputo Protocol. The causal link between the two can be discerned in two aspects.<sup>13</sup> First, is the peculiar role of the SRRWA in the drafting and eventual adoption of the Maputo Protocol; the second has to do with the role of the SRRWA in popularising the instrument and capacitating states in meeting their obligations in terms of this instrument.

The idea of an African regional instrument addressing explicitly the rights of women began in the early 1990s. As indicated before, the 1995 meeting organised by the NGO, WiLDAF, called for the conceptualisation of the instrument.<sup>14</sup> It was at this meeting that the delegates called for the development of a specific Protocol to the African Charter to address the rights of women in Africa.<sup>15</sup> This was given thrust when the Organisation of African Unity (“OAU”) Assembly of Heads of State and Governments at its 31st Ordinary Session held in June of the same year, adopted Resolution 240 (XXXI), mandating the African Commission to develop such a protocol.<sup>16</sup> In line with the directives of Resolution 240 (XXXI), a draft protocol was produced by a three-panel expert working group of the African Commission, of which (then) Commissioner Julienne Ondziel-Gnelenga, the African Commission’s first SRRWA was part of right from the onset. Thus, one can argue that the mechanism of the SRRWA has been at the epicentre and progressive evolution of what later became the Maputo Protocol. When (then) Commissioner Julienne Ondziel-Gnelenga was formally appointed as the first SRRWA at the African Commission’s 23rd Ordinary Session in April 1998, she was given a directive to work towards the adoption of the draft protocol.<sup>17</sup> This development not only made the SRRWA a focal point of the draft protocol but also marked a direct link between the mechanism of the SRRWA and the draft protocol.

Given this directive, the SRRWA immediately reacted, beginning with thorough engagements and consultations with NGOs relating to the substantive content of the proposed draft protocol.<sup>18</sup> This was however a continuation of the work the SRRWA did as a member of the three-panel

<sup>13</sup> J Mujuzi “The Protocol to the African Charter on Human and Peoples’ Rights of Women in Africa” (2008) *Law, Democracy and Development Law Journal* 44; M d’Almeida “African women’s organising for ratification and implementation of the Maputo Protocol: Interview with Faiza Jama Mohamed” (2011) *AWID* 1 <<https://www.awid.org/news-and-analysis/african-womens-organizing-ratification-and-implementation-maputo-protocol>> (accessed 10-01-2022).

<sup>14</sup> M Wandia “Rights of women in Africa: Launch of a petition to the African Union” in F Manji & P Burnett (eds) *African Voices on Development and Social Justice: Editorials from Pambazuka News* (2005) 96.

<sup>15</sup> 96.

<sup>16</sup> See generally Resolution on the African Commission on Human and Peoples’ Rights AHG/Res 240 (XXXI).

<sup>17</sup> Wandia “Rights of women in Africa” in *African Voices on Development and Social Justice* 97.

<sup>18</sup> 97.

expert group that was tasked to draft the initial protocol.<sup>19</sup> The consultative process therefore aimed to gain as much stakeholder input and involvement as possible. Moreover, it gave leverage and legitimacy to the process ensuring that the voices of women were heard and incorporated. While the mobilisation for a women's rights protocol can be attributed to the strength of women's organisations in Africa, as some scholars have correctly argued,<sup>20</sup> one should be mindful not to understate the intricate role of the African Commission in coming up with the first drafts of the proposed Protocol with the support and assistance of such organisations. Without the meaningful involvement of the African Commission, the proposed Protocol would not have been set off, since it was the African Commission that was given the primary mandate for the development of the instrument. This is not to diminish the crucial role that the NGOs played in supporting the African Commission.

Soon after the drafts by the African Commission and women's organisations and the draft by the Inter-African Committee on Harmful Traditional Practices Affecting Women's and Children's Health was merged, the African Commission embarked upon the establishment of a focal point that would coordinate and spearhead this process and increase mobilisation for the eventual adoption of the protocol by African governments. This focal point was the mechanism of the SRRWA. It was therefore the continued mobilisation, coordination and popularisation of the draft protocol by the SRRWA that eventually resulted in the adoption of the protocol in 2003.<sup>21</sup>

The adoption of the Maputo Protocol crafted new ground for the rooting of women's rights within the framework of the African regional human rights system. The Maputo Protocol, unlike the norm with existing international women's rights instruments, explicitly refers to several fundamental rights that have much been neglected in the protection and promotion of the rights of women. For instance, the instrument refers to the protection of women from violence,<sup>22</sup> the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS,<sup>23</sup> the right to control their fertility,<sup>24</sup> and widowhood rights.<sup>25</sup> Some of the rights also covered under other women's rights international instruments are elaborated and given more specificity such as the elimination of harmful practices, and protection of women from armed conflict. The inclusion of these rights provides women with much needed human rights protection given the historical vulnerability

<sup>19</sup> For instance, in 1997 a group meeting was organised by the African Commission and the International Commission of Jurists in Nouakchott, Mauritania, consisting of representatives from NGOs and international observers to discuss the first draft of the (then) proposed Protocol.

<sup>20</sup> Viljoen (2009) *Washington & Lee Civil Rights & Social Justice Journal* 12; R Murray "Womens rights and the Organisation of African Unity and African Union" in D Buss & D Manji (eds) *International Law: Modern Feminist Approaches* (2005) 262.

<sup>21</sup> See *Inter-session Report, Commissioner Soyata Maiga*, 52nd Ordinary session of the African Commission, Yamoussoukro, Cote d' Ivoire (2010) 5 <[https://www.achpr.org/public/Document/file/English/achpr48\\_comrep\\_2010\\_maiga\\_eng.pdf](https://www.achpr.org/public/Document/file/English/achpr48_comrep_2010_maiga_eng.pdf)> (accessed 12-02-2022).

<sup>22</sup> See Article 3(4) read with Article 4 (2) of the Maputo Protocol.

<sup>23</sup> Article 14(1)(d).

<sup>24</sup> Article 14(1)(a).

<sup>25</sup> Article 20.

and marginalisation of women from mainstream international protection mechanisms, processes and instruments.

Within the context of VAW, the instrument makes several inroads. It obligates states under Article 4 to respect the life, integrity and security of the person, specifically that of women. As far as specific interventions are concerned the Maputo Protocol requires states *inter alia* to enact and enforce laws to prohibit all forms of VAW including unwanted or forced sex whether the violence takes place in private or public;<sup>26</sup> adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of VAW;<sup>27</sup> identify the causes and consequences of VAW and take appropriate measures to prevent and eliminate such violence;<sup>28</sup> actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of VAW;<sup>29</sup> punish the perpetrators of VAW and implement programmes for the rehabilitation of women victims;<sup>30</sup> establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of VAW;<sup>31</sup> and prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk.<sup>32</sup> In addition, and within the context of VAW, the Maputo Protocol obligates states to “prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards”<sup>33</sup>.

In its role as the focal mechanism for women’s protection, the SRRWA has increasingly taken it as part of its mandate to popularise the Maputo Protocol. One of the means of doing this is by encouraging states to ratify the instrument. To speed up the ratification of the Maputo Protocol, the mechanism of the SRRWA engages mobilisation campaigns with Ministries of Foreign affairs and Parliaments of African Union (“AU”) member states either through country missions, *notes verbales* to diplomatic missions, or during the presentation of State Periodic Reports before the African Commission.<sup>34</sup> These engagements are aimed at encouraging states to ratify the Maputo Protocol and has proved effective over the years as ratifications increase, albeit slowly. To date, the total ratification of the instrument stands

<sup>26</sup> Article 4(2)(a).

<sup>27</sup> Article 4(2)(b).

<sup>28</sup> Article 4(2)(c).

<sup>29</sup> Article 4(2)(d).

<sup>30</sup> Article 4(2)(e).

<sup>31</sup> Article 4(2)(f).

<sup>32</sup> Article 4(2)(g).

<sup>33</sup> See Article 5.

<sup>34</sup> L Asuagbor *Address on the Status of Implementation of the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa* (2006) 10 <<https://reliefweb.int/sites/reliefweb.int/files/resources/special-rapporteur-on-rights-of-women-in-africa-presentation-for-csw-implementation.pdf>> (accessed 12-02-2022).

at 42,<sup>35</sup> with thirteen countries still lagging behind.<sup>36</sup> Three of these have neither signed nor ratified the instrument.<sup>37</sup>

Pursuant to Article 26(1) of the Maputo Protocol, states parties are required to submit every two years a report indicating measures taken to materialise the provisions of the instrument. This provision aims to ensure that states account for their commitments to protect the fundamental rights of its women and girls. The SRRWA has capacitated several states in fulfilment of this requirement.<sup>38</sup> This the SRRWA does in two respects. First, by providing states with a reporting framework that will assist states in their accounting of the measures taken in pursuit of the provisions of the instrument. Second, the SRRWA provides capacity to states parties to account using the reporting framework on their implementation of the provisions of the Maputo Protocol.

State reporting is a tiresome process often leaving states fatigued because of the numerous reporting that they must undertake in terms of the various international instruments they ratify. It is also a process that requires resources, both financially and in terms of capacity on the part of states. The technical and procedural nature of the process also sometimes deters states from fulfilling their commitments report. It is precisely because of these shortcomings that the SRRWA with the assistance of NGOs has engaged in assisting states in reporting in terms of Article 26 of the Maputo Protocol. With the input and assistance of African NGOs, the SRRWA was instrumental in the development of Guidelines for State Reporting under the Protocol to the African Charter on the Rights of Women in Africa (“Reporting Guidelines”).<sup>39</sup>

The mechanism of the SRRWA has often utilised the state reporting process to raise issues pertaining to VAW with state delegates. An example may be drawn from Nigeria’s 6th periodic report by the African Commission, during the African Commission’s 62nd Ordinary Session, held from 25 April to 9 May 2018 at Nouakchott, Mauritania. This state reporting process offers insight into the pertinent role of the mechanism of the SRRWA in raising and addressing issues pertinent to women’s rights, including VAW. Nigeria’s report to the Commission included an extensive report on Article 18 of the African Charter as well as on measures taken to implement the Maputo Protocol.<sup>40</sup> In terms of this report, the Nigerian government indicated that it had adopted

<sup>35</sup> See generally the ratification table to the Protocol to the African Charter on the Rights of Women in Africa (2021) <<https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf>> (accessed 12-02-2022) .

<sup>36</sup> These are, Botswana, Burundi, Central African Republic, Chad, Egypt, Eritrea, Ethiopia, Madagascar, Morocco, Niger, Sahrawi Arab Democratic Republic, Sao Tome and Principe, Somalia, South Sudan, Sudan and Tunisia.

<sup>37</sup> These are Botswana, Egypt and Morocco.

<sup>38</sup> Asuagbor *Address on the Status of Implementation of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa* 11.

<sup>39</sup> Asuagbor *Address on the Status of Implementation of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa* 11. See also E Durojaye “The Special Rapporteur on the Rights of Women in Africa (SRRWA) 2007-2015” (2018) 16 *Gender and Behaviour* 10710.

<sup>40</sup> See generally, African Charter on Human and Peoples’ Rights/ACHPR. 2017. *6th Periodic Report of the Federal Republic of Nigeria to the African Commission 2015-2016*. Banjul: ACHPR, 122-132 <[https://www.achpr.org/public/Document/file/English/nigeria\\_state\\_report\\_6th\\_2015\\_2016\\_eng.pdf](https://www.achpr.org/public/Document/file/English/nigeria_state_report_6th_2015_2016_eng.pdf)> (accessed 12-02-2022).

and was implementing the Violence Against Persons (Prohibition) Act, 2015 (“VAPP”), which *inter alia* prohibits VAW in private and public life. However, during the questions and answers session, the SRRWA noted the limited application of this Act, especially in the Northern States of Nigeria where the Nigeria Penal Code allows a man to physically abuse his wife as long as it does not amount to grievous bodily harm in terms of section 55.<sup>41</sup> The SRRWA, therefore, asked the Nigerian delegation what measures, if any it had taken to advance the nationwide adoption of the VAPP, including measures taken to sufficiently implement the Act.<sup>42</sup> During the same state reporting session the SRRWA also noted that apart from physical, sexual and emotional abuse, many women in Nigeria experience female genital mutilation/circumcision (“FGM/c”), forceful ejection from home, and other harmful traditional practices stemming from long-held cultural beliefs.<sup>43</sup> Furthermore, the SRRWA also inquired from the delegation what steps were being taken to protect women and girls from GBV and abuse in healthcare facilities and how its government proposes to ensure that women are able to report and seek redress for such abuses?<sup>44</sup>

The above state reporting session of Nigeria not only highlights the nature or quality of questions put forward by the SRRWA in response to states reports, but also serves as an indication of the role of the mechanism of the SRRWA in filling the gaps left in the states reports on pertinent issues affecting women. Considering how the SRRWA has been engaging states, it can generally be argued that this has been done appreciably, including on the issue of VAW. There are however limitations to this process. The questions posed during this session are carried out under the helm of the African Commission. In other words, the dialogue is between a state representative and a country rapporteur acting in their capacity as a Commissioner of the African Commission, as opposed to as a thematic rapporteur. It is also a time-bound process, with both state representatives and (country) commissioners having limited time to comprehensively address the issues at stake. Moreover, and this is a point repetitively raised by the Commissioners of the African Commission, state representatives do not provide conclusive and comprehensive responses to the questions raised. The state reporting process is therefore an appreciable but limited avenue for the mechanism of the SRRWA, as it is generally also for other mechanisms of the African Commission.

### 3 2 Guidelines on Combating Sexual Violence and the Consequences in Africa

In 2012, the mechanism of the SRRWA took on the role of conducting research on sexual violence and its consequences for women together with

<sup>41</sup> Section 55(1)(d) of the Northern Nigeria Penal Code.

<sup>42</sup> See Report of the African Commission on Human and Peoples’ Rights/ACHPR. 2018. *6th Periodic Report of the Federal Republic of Nigeria to the African Commission 2015-2016: Specific Questions from Special Mechanisms*, 14 (on file with author) (“Report of the African Commission on Human and Peoples; Rights/ACHPR, 2018”).

<sup>43</sup> Report of the African Commission on Human and Peoples’ Rights/ACHPR. 2018.

<sup>44</sup> Report of the African Commission on Human and Peoples’ Rights/ACHPR. 2018.

the International Federation for Human Rights (“FIDH”) and Lawyers for Human Rights. This research was predicated only much later by an African Commission resolution,<sup>45</sup> welcoming the initiative by the mechanism of the SRRWA to develop a set of guidelines to combat sexual violence and its consequences culminating in guidelines for states parties. In its depth, the resolution recalls the need for a study of the nature purported by the SRRWA because of the widespread nature of sexual violence in Africa, both during times of war and peace.<sup>46</sup> Moreover, the resolution remain cognisant of the lack of adequate national laws by the African states in addressing sexual violence and its consequences.<sup>47</sup> To comprehensively appreciate the contributions of the SRRWA to this important work, one need not only refer to the role of the mechanism as the initiator but also point to the “added value” of the guidelines themselves.

The Guidelines provides for a wide range of measures. It identifies five prevention strategies, namely awareness-raising,<sup>48</sup> educational programmes,<sup>49</sup> training of professionals,<sup>50</sup> urban and rural planning,<sup>51</sup> as well as cooperation with local stakeholders and civil society organisations.<sup>52</sup> The Guidelines further calls for specific measures protecting and supporting victims of sexual violence;<sup>53</sup> investigation and prosecuting sexual violence crimes in situations of conflict and crisis as international crimes (including reparations);<sup>54</sup> and implementing and harmonising domestic laws and policies in line with states’ regional and international obligations.<sup>55</sup>

There are also some essential contributions these Guidelines make to the existing regional and international framework on sexual violence, its causes and consequences. First, the Guidelines contextualises and integrates sexual violence within the peace and security agenda, thus ensuring that no distinction is made between sexual violence constituted during peace and those committed during crisis times. Rather by contextualising sexual violence through this lens, sexual violence is seen as a pattern of discrimination and the additional violence that may come across as a result of conflict is rather viewed as exacerbating.<sup>56</sup> Second, the Guidelines are gender-sensitive in as far

<sup>45</sup> Resolution on Developing Guidelines on Combatting Sexual Violence and its Consequences ACHPR/ Res.365 (EXT.OS/XXI) 2017, adopted at the African Commission’s 21st Extraordinary session held from 23 February to 4 March 2017, Banjul, The Gambia (“Resolution 365”).

<sup>46</sup> Clause 6 of Resolution 365. See also generally, World Health Organisation *Global Status Report on Violence Prevention* (2014) 76-77.

<sup>47</sup> Clause 8 of Resolution 365.

<sup>48</sup> African Commission on Human and Peoples’ Rights ACHPR *Guidelines on Combatting Sexual Violence and its Consequences* (2017) 20-21.

<sup>49</sup> 21.

<sup>50</sup> 22.

<sup>51</sup> 22.

<sup>52</sup> 23-24.

<sup>53</sup> 24-29.

<sup>54</sup> 30 -37.

<sup>55</sup> 44-51.

<sup>56</sup> See generally on this point the statement by Statement by Dubravka Simonovic, UN Special Rapporteur on violence against women at the 61st Ordinary Session of the African Commission on Human and Peoples’ Rights Banjul, The Gambia on the 4 November 2017, during the launch of the Guidelines <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22357&LangID=E>> (accessed 12-02-2022).

as it recognises the actual and potential reality that such offences can also be committed against boys and men. However, one must criticise the Guidelines for its lack of gender responsiveness in that it excludes and makes no mention of the vulnerability of sexual minorities, based often on their actual or perceived sexual identity and orientation.<sup>57</sup> Third, they are victim-oriented, although as stated, victimhood is restricted to male and female sexes to the exclusion of any other identities. To this end, the Guidelines identifies a wide range of service needs specifically tailored for victims such as shelters, protections order, toll-free call centres etcetera. Fourth, the Guidelines are based on pre-existing jurisprudence emanating from international courts, tribunals, and other (quasi-)judicial mechanisms, thus reinforcing and complementing the existing international legal framework on sexual violence. Lastly, one can also discern the added value of the Guidelines in the succinct, specific, clear, practical, and implementable measures it tenders to states and their agencies in safeguarding the victims from sexual violence.

Undeniably, through these Guidelines, the mechanism of the SRRWA adds to the combating of VAW and girls by assisting states with innovative and practical measures. Moreover, with its formal adoption by the African Commission, the SRRWA's guidelines now form part of the overall corpus of the rich soft law of the African Commission,<sup>58</sup> and therefore have the actual and potential impact of enriching and advancing the jurisprudence on sexual violence in Africa and beyond.

### 3 3 Resolution 283 on the Situation of Women and Children in Armed Conflict

Since its initiation, the mechanism of the SRRWA has sponsored fifteen resolutions of the African Commission.<sup>59</sup> These resolutions are predominantly administrative with almost no substantive contribution to the protection of the rights of women,<sup>60</sup> more so on issues related to VAW. However, only one of them has direct repercussions for the protection of women's rights, including

<sup>57</sup> The Guidelines for example do not recognise lesbians, gays, bisexuals, transgender persons and intersex persons ("LGBTI") as potential victims of sexual violence but rather restricts the subject of such violence to a binary classification based on men/boys and women/girls.

<sup>58</sup> The Guidelines were adopted by the African Commission at its 60th Ordinary Session held in Niamey, Niger from 8–22 May 2017.

<sup>59</sup> Although in practice the African Commission adopts resolutions that may be applicable directly to the Commission as a whole as in respect of its special mechanisms, often the resolutions with specific thematic concerns are relegated to the different special mechanisms to either implement those resolutions or serve as focal persons for those resolutions. Since the initiation of the mechanism of the SRRWA the African Commission has adopted fifteen resolutions relating to the SRRWA.

<sup>60</sup> These include Resolution 425 On the Renewal of the African Commission on Human and Peoples' Rights' Special Mechanisms' Mandates ACHPR/Res.425(LXV)2019; Resolution 380 On the Renewal of the Mandate of the Special Rapporteur on the Rights of Women in Africa ACHPR/Res.380(LXI)2017; Resolution 327 On The Appointment of the Special Rapporteur on the Rights of Women in Africa ACHPR/Res.327(LVII)2015; Resolution 205 On the Appointment of the Special Rapporteur on the Rights of Women in Africa ACHPR/Res.205 (L) 11; Resolution 154 On the Appointment of the Special Rapporteur on the Rights of Women in Africa ACHPR/Res.154 (XLVI) 09; Resolution 112 On the Renewal of the Mandate and the Appointment of the Special Rapporteur on the Rights of Women in Africa ACHPR/Res.112(XXXII) 07; Resolution 78 On the Renewal of the Term of the Special Rapporteur on the Rights of Women in Africa ACHPR/Res.78(XXXVIII) 05; and Resolution 63 On the Renewal of the Mandate of the Term of the Special Rapporteur on the Rights of Women in Africa ACHPR/Res.63(XXXIV) 03.

on aspects relating to VAW, namely Resolution 283 On the Situation of Women and Children in Armed Conflict (“Resolution 283”).<sup>61</sup> Adopted in 2014 at the 55th Ordinary Session of the African Commission, Resolution 283 marks the African Commission’s first ever resolution on the women, peace and security agenda. While the importance of this resolution lies not only in that it breaks new ground, one should be mindful that the resolution is a joint effort not only between the SRRWA and the Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa *inter se* but also that of African NGOs that support the work of these two special mechanisms.

Although in mainstream scholarship there has been an approval of the fact that conflicts in Africa are a natural consequence of Africa’s colonial past,<sup>62</sup> international legal processes, including processes in the African regional human rights system, often had difficulty coming to terms with the effects of such conflict on women and girls. The situation has however changed, and the international community has seen greater synergy and acceptance of the physical, social and psychological impacts of conflict on women, girls and children generally. For example, the Beijing Platform for Action of 1995, amongst others, recognises that “while entire communities suffer the consequences of armed conflict and terrorism, women and girls are particularly affected because of their status in society and their sex”.<sup>63</sup>

The work of the SRRWA, through the initiation of Resolution 238 has been resounding, having formally raised the concerns of women in peace and security at the formal processes of the African human rights system, such as the African Commission. The adoption of the resolution signals an acceptance by the African Commission of the disproportionate and gendered effects of conflict on women and girls in Africa, which has been marked with several political conflicts over the years. It takes into account the fact that conflict in Africa presents unique challenges for women. As Maina has correctly argued within the African context, women in most African conflicts are used as weapons of war through sexual exploitation, often leaving them with social and psycho-social impediments.<sup>64</sup>

Written with a focus on sexual violence, the resolution takes into account the sexual subjugation of women and children during armed conflict. This focus is apposite and responsive as Dyani-Mhango has rightly suggested in one study that sexual violence is arguably one of the greatest concerns for women and girls in the present day armed conflict in Africa and indeed across

<sup>61</sup> Resolution 283 On the Situation of Women and Children in Armed Conflict ACHPR/Res.283(LV)2014.

<sup>62</sup> See generally C Ake “Why is Africa not developing?” (1985) *West Africa* 1212-1214; O Mkwugo “Africa and political stability” (1977) *Africa* 93-96.

<sup>63</sup> United Nations *Beijing Declaration and Platform for Action, The Fourth World Conference on Women* (1995) para 135 <<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>> (accessed 10-02-2022).

<sup>64</sup> G Maina “An overview of the situation of women in conflict and post-conflict Africa” (2012) 1 *Conference Paper on Constructive Resolution and Disputes* 4-5 <[https://media.africaportal.org/documents/ACCORD\\_Conference\\_-\\_An\\_overview\\_of\\_the\\_situation\\_of\\_women\\_in\\_conflict.pdf](https://media.africaportal.org/documents/ACCORD_Conference_-_An_overview_of_the_situation_of_women_in_conflict.pdf)> (accessed 10-02-2022); A Kirsten “Guns and roses: Gender and armed violence in Africa” (2007) *Background Conference Proceedings* 3 <<http://www.genevadeclaration.org/fileadmin/docs/regional-publications/Gender-and-Armed-Violence-in-Africa.pdf>> (accessed 10-02-2022).

the world.<sup>65</sup> The resolution therefore classifies sexual violence in armed conflict within the context of international law as crimes against humanity.<sup>66</sup> Clearly, by such characterisation, the formulation of the resolution situates VAW perpetuated within the context of armed conflict as a violation of international law.

In addition to the provisions of the Maputo Protocol, Resolution 283 gives specificity to the issue of VAW by aligning violence perpetuated within conflict situations with contemporary international legal frameworks regulating this issue. Given that certain parts of the African continent have been the subject of continued armed conflict, this resolution sought to address the status of women (and girls) in such situations more in line with their right to peace as envisaged in the Maputo Protocol. In addition to upholding the right to peace, the resolution also takes note of the prohibition of VAW and women's rights to dignity, life, integrity, security, and freedom from discrimination.

Another notable feature of this resolution is its deviation from the commonly held presumption that the end of conflict either through peace agreements or cessation of hostilities bears positive outcomes for all parties, including women. While the achievement of peace is critical, the role of women during post-conflict processes remains neglected. To this end, this resolution addresses issues pertaining to women's state in post-conflict situations. The resolution in particular calls on states parties to "ensure that women are involved throughout the post-conflict peace-building and consolidation processes".<sup>67</sup>

Surely, and in light of the substantive content underlying this resolution, one cannot overlook the importance of this resolution in protecting women and girls from violence, especially in armed conflict situations. By sponsoring a resolution of this magnitude and importance for women's rights protection, the SRRWA iterates the interconnected nature of the vulnerability of women and conflict processes. Although the SRRWA can be said as making a modest contribution to the protection of women, especially in conflict situations, one must not shy away from criticising the SRRWA for not exploring and making comprehensive use of resolutions in discharging its mandate. As the study by Biegon has shown, this is clearly an undervaluing of the actual and potential impact of resolutions in shaping state parties domestic norm development and overall long term impact of the protection of fundamental human rights and freedoms.<sup>68</sup> One can therefore not overemphasise the importance of these apparatuses in heightening the impact and role of the SRRWA in protecting women from gender-based violence. This is more so given the fact that resolutions generally do not require much. They are less bureaucratic as far as formulating and adopting them are concerned. Resolutions also

<sup>65</sup> D Dyani-Mhango "Sexual violence, armed conflict and international law in Africa" (2007) 15 *African Journal of International and Comparative Law* 230-253.

<sup>66</sup> See generally, Article 11(3) of the Maputo Protocol, Article 7 of the Statute of the International Criminal Court, and Article 5 of the Statute of the International Criminal Tribunal for the Former Yugoslavia.

<sup>67</sup> See, preamble to Resolution 283 para 16.

<sup>68</sup> J Biegon *The Impact of the Resolutions of the African Commission on Human and Peoples' Rights* LLD dissertation, University of Pretoria (2016) 46.

require less mobilisation since the SRRWA can address them to the African Commission for adoption. Furthermore, they are also less demanding as far as expertise and financial resources are concerned. For a mechanism such as that of the SRRWA with scarce resources, both financially and technically, resolutions can offer more impact than the current state of underutilisation by the mechanism of such soft law instruments.

#### **4 Conclusion**

Since its establishment, the mechanism of the SRRWA has remained consistent in its role and function within the human rights architecture of the African Commission. To this end, the mechanism has raised the concerns of African women through its working modalities, consequently making modest contributions to the human rights promotion and protection mandate of the African Commission as envisaged in Article 45 of the African Charter. VAW, as illustrated in this article, remains an important and frequent thematic consideration in the work of the mechanism.

One of the major contributions of the mechanism of the SRRWA in the area of VAW can be traced to norms development. As illustrated in this article, since the formation of this mechanism, the mandate holders of the mechanism of the SRRWA have actively been involved in developing various conventions and soft laws focusing on VAW. Beginning with the Maputo Protocol the mechanism of the SRRWA has contributed to several soft law instruments pertaining to VAW, setting out the standard requirements that African states must meet in addressing VAW.

This article has shown that the responsivity of the mechanism of the SRRWA in norms development can be attributed to the fact that in the development of these instruments the SRRWA has given specificity and scope to VAW within the human rights architecture of the African Commission. It has integrated VAW as a human rights issue and thus set the much-needed framework on which states can build and tailor their domestic measures in addressing VAW domestically. In addition to developing these norms, the mechanism of the SRRWA has been an influential stakeholder, together with NGOs in popularising and educating states on their norm obligations relating to VAW. The norms development role of the mechanism of the SRRWA illustrates to a considerable extent its appreciable role in the efforts aimed at combating VAW in African states.

Despite this appreciable role, there is room for improvement. Cooperation and complementarity with other mechanisms relating to women's rights should be fostered. The UN special rapporteur on violence against women, its causes and consequences, is a mechanism in question that the SRRWA can closely work with, especially in the context of VAW. Joint action, such as joint country visits between these two mechanisms not only has the potential to reduce the exorbitant costs of country visits but can also yield more results as it involves joint engagements and appeals by two mandate holders. Furthermore, as indicated in this article, the SRRWA also needs to utilise soft law modalities such as the development and moving of motions, letters

of appeals and press statements. Although these modalities are relatively less bureaucratic and faster means of engagement and intervention, the mechanism of the SRRWA has used these approaches far less. For a mechanism such as that of the SRRWA with scarce resources, both financially and technically, soft law approaches, though not binding have the potential of raising not only the profile of the mechanism but may also contribute positively to the work of the mechanism, especially as far as the promotional aspects of the mandate of the SRRWA are concerned.