



The Maputo Protocol of the African Union

An instrument for the rights of women in Africa

Contents

1. What is the Maputo Protocol? What is its significance?	3
2. How can the Protocol be applied in development cooperation (DC)?	4
3. Examples of Protocol issues in DC	5
3.1 Female Genital Mutilation (FGM)	5
3.2 Strengthening women's rights	6
3.3 The right to health; reproductive rights	6
3.4 Protection from exploitation	7
3.5 Legal access for women	8
3.6 Reform of customary law in favour of women and girls	9
4. Conclusion	10
Text of the Maputo Protocol and status of ratification	10
Abbreviations	11

Publisher:

**Deutsche Gesellschaft für
Technische Zusammenarbeit (GTZ) GmbH**
Dag-Hammarskjöld-Weg 1-5
65760 Eschborn, Germany
T +49 (0) 61 96 79-0
F +49 (0) 61 96 79-1115
I www.gtz.de

Supraregional Project:

Promotion of Initiatives to end Female Genital
Mutilation

In cooperation with the sector project:
Implementing Human Rights in Development
Cooperation, Division 42, Governance and Democracy

Responsible:

Ms Kerstin Lisy
T +49 (0) 6196 79-1578
F +49 (0) 6196 79-7177
E kerstin.lisy@gtz.de
I www.gtz.de/fgm

Photographs:

Supraregional Project
Promotion of Initiatives to end
Female Genital Mutilation

Text:

Ms Kerstin Lisy
with Emanuela Finke and Anja-Rosa Hoensbroech

English translation: Katherine Clark for GTZ
Language Services

Contact at the German Federal Ministry for Economic
Cooperation and Development (BMZ):
Division 321,
T +49 (0) 228 535-3633

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1. What is the Maputo Protocol?

What is its significance?

On July 11, 2003, on the occasion of their second summit in Maputo, Mozambique, the 53 member countries of the African Union appended to the African Charter on Human and Peoples' Rights, which had been passed in 1986, the Protocol on the Rights of Women in Africa, or Maputo Protocol as it is also known.

The 30-page Protocol is a regional instrument for the protection of women's human rights and terms itself the first legal instrument to protect African women from all forms of abuse. Specific legal claims for the protection of women and girls in Africa are formulated in 31 articles, taking into consideration socio-cultural factors. The Protocol stipulates, for example, a ban on female genital mutilation, women's right to sexual self-determination, the strengthening of women's rights within marriage, and equal rights for women and men to land and property.

43 countries¹ have signed the Maputo Protocol. In October 2005, the 15 states needed for it to become effective had ratified it. On November 25, 2005, it officially came into force².

The Protocol is the result of the efforts of numerous NGOs³ to protect the rights of women through an explicit and specific additional protocol to the African Charter on Human and Peoples' Rights. Certain provisions of the 1986 Charter were criticised for being so vague that, particularly in regard to women's rights, there was scarcely any basis for deriving from it concrete changes in the law or for political measures, even though women and girls are subject to wholesale discrimination. Following numerous national and regional rounds of consultations between state and civil society actors, under the auspices of the African Commission on Human and Peoples' Rights a consensus was reached on a document that would serve as the foundation for the Maputo Protocol.

Key points of the Maputo Protocol

- Guarantees for and recognition of the civil, political, economic and cultural rights of women (Articles 8, 9, 12, 13, 17)
- Assurance of all basic, internationally recognised human rights for women (Articles 2, 3, 4)
- Protection from traditional practices that are harmful to health, such as female genital mutilation (Article 5)
- The right to peace and special protection for women during armed conflicts (Articles 10, 11)
- The right to health and reproductive rights, the right to food (Articles 14, 15, 18)
- Equal treatment of women and men under the law, with equal legal protection and equal access to justice (Articles 2, 8)
- Protection of women from exploitation and degradation (Articles 2, 3, 4)
- Consideration of women in the enactment of legislation pertaining to marriage, particularly regarding polygamy, forced marriage, early marriage and the rights of widows (Articles 6, 7, 20, 21)

¹ Signatories are: Algeria, Equatorial Guinea, Ethiopia, Benin, Burkina Faso, Burundi, Cameroon, Democratic Republic of the Congo, Djibouti, Côte d'Ivoire, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Cape Verde, Kenya, Comoros, Congo, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Tanzania, Togo, Chad, Uganda, Zambia, Zimbabwe, Swaziland (as of November 2006).

² To date, 20 countries have ratified the Protocol: Benin, Burkina Faso, Djibouti, Gambia, Cape Verde, Comoros, Lesotho, Libya, Malawi, Mali, Mauritania, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Seychelles, South Africa, Zambia, Togo (as of November 2006).

³ Particularly worthy of mention is the African women's network Women in Law and Development in Africa / Femmes Droits et Développement en Afrique (WiLDAF/FEDDAF).

2. How can the Maputo Protocol be applied in development cooperation (DC)?



An instrument of international law, the Maputo Protocol is an important frame of reference for cooperation with African governments. It supplies points of intervention for the realisation of the human rights of women in Africa.

- Ratification of the Protocol can be urged during the process of political dialogue (government negotiations and consultations). Partner governments can then state their intention to support equal rights for women and men, which is a Millennium Development Goal.
- The rights and obligations connected with the Protocol can also be raised during the political dialogue, and support can be offered for translating them into national policy.
- Implementation of the provisions in the Protocol, from formal legislation right down to the implementation level, can be supported in concrete programmes and projects in cooperation with national ministries and civil organisations. One possible approach could be the harmonisation of traditional norms and customary law with the national laws and the provisions of the Maputo Protocol.

3. Examples of Protocol issues in DC

On behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ), GTZ carries out a number of projects whose objectives and measures are geared to various articles of the Maputo Protocol. These projects have gained a new, more solid foundation since the Protocol took effect.

3.1 Female Genital Mutilation (FGM)

Article 5 on the elimination of harmful practices standardises the ban on “harmful practices”⁴ throughout the signatory states and formulates measures for ending these practices. More specifically, these are: (a) public awareness-raising through information campaigns, formal and informal education and outreach, (b) the prohibition of every form of female genital mutilation, including the medicalised procedure, by means of sanctions and laws (c) support for victims of FGM in the form of health care, legal counsel, psychological care and support, and education and training, and (d) protection of women who are potential victims of harmful traditional practices or other forms of violence, abuse or intolerance.

Since 1999 the supranational project “Promotion of Initiatives to End Female Genital Mutilation” has supported the efforts of non-governmental and governmental organisations in various African countries – as well as bilateral Development Cooperation projects in the health, education, youth and good governance sectors – to stop FGM. It is currently working in Ethiopia, Benin, Burkina Faso, Guinea, Kenya, Mali, Mauritania and Senegal. The project provides specialised professional and methodological advisory services, tests and disseminates innovative approaches, strengthens local capacities, networks various actors, and promotes knowledge management both at home and abroad.

The measures named in the Protocol offer a contextual framework for designing strategies to stop FGM in cooperation with partner countries. The project assists partner efforts, for instance, to organise dialogue forums, reform traditional legal norms, put FGM on the classroom agenda, create alternative passage rituals, and work with uncircumcised girls.



The project also advises BMZ on taking FGM into consideration during government negotiations and consultations. It briefs the German development ministry on the FGM situation in the partner countries and makes suggestions about how to handle the issue as part of the political dialogue. The German Federal Government can point to the obligations to which Protocol signatory states have committed themselves and offer concrete support for meeting them.

⁴ “Harmful practices” as defined in the Protocol are “all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity”.

3.2 Strengthening women's rights

Various provisions of the Maputo Protocol concern equal rights for women. Article 2 prohibits any form of discrimination against women. Article 3 recognises women's right to human dignity through the observance and protection of their legal and human rights, and it guarantees them protection from exploitation, degradation and every form of violence, including sexual violence. Article 4 concerns women's right to life, integrity and safety of person. Articles 6, 7 and 8 take up the legal position of women, particularly within marriage, and equal access to the law. Article 9 guarantees women's right to political participation.

In numerous African countries, the sector project "Strengthening Women's Rights" works with its partners in cooperation to ensure that women can assert their human rights and that they actively participate in structuring the reforms needed in their countries. In all of its activities, the project adheres closely to the provisions of the Maputo Protocol listed above. It focuses on the following clusters of themes: (1) legal reform and application of the law in everyday life, (2) gender-specific violence, (3) women's political participation and leadership, and (4) women's rights in societies where Islam is prevalent.

In several African partner countries of German DC, the diversity of experience from cooperation? projects contributed significantly to the launch of specific, bilateral gender projects (e.g., in Egypt, Ethiopia, Malawi and Zambia) and also to increased consideration of the issue of women's rights as a cross-cutting theme in ongoing projects and programmes.



3.3 The right to health, reproductive rights

The sector project "Promotion of Reproductive Health" helps to implement the articles in the Maputo Protocol that guarantee women's freedom from sexual violence (Articles 3 and 4) and harmful practices (Article 5) and their right to health as described in Article 14. The latter includes particularly the right to adequate, affordable and accessible information about (reproductive) health. The project supports and provides advisory services to bilateral German DC projects, partner organisations and BMZ on making reproductive health information and services accessible to young people, particularly young women. In addition, the project cooperates with Technical Cooperation (TC) projects and programmes in the field of sexual and reproductive health, e.g., on sex education and HIV prevention in schools and emergency contraception in Cameroon, Burkina Faso and Tanzania⁵. All of these subjects are very closely



bound up with the disparate roles of women and men and the risks to which both are subject in regard to sexuality and family planning.

In addition to the reproductive and other rights mentioned above, the Maputo Protocol names the right to education in Article 12, guarantees protection from forced marriage and from marriage of minors under 18 years of age in Article 6, and ensures the rights of widows in Articles 20 and 21. Articles 3 and 4 also take up protection from domestic violence. The German TC bilateral programme “**Sexual Health, HIV/AIDS, Human Rights, Child Trafficking and Child Labour**” in Burkina Faso supports governmental and non-governmental institutions in implementing these rights. Among the strategies employed by the programme are training, advisory services, the dissemination of texts for legislation, and the financing of projects that promote women’s rights and eliminate sexual violence and gender-based

discrimination. Concerns here are economic and social rights, such as the right to education and training, reproductive rights, issues touching on marriage law, the rights of widows, domestic violence and FGM.

3.4 Protection from exploitation

Trafficking in children and women for purposes of sexual or labour exploitation contravenes Articles 3 and 4 of the Maputo Protocol and is a serious form of violence against women. Article 11 stresses the protection that international human rights legislation, in the form of the Geneva Convention and its additional protocols, guarantees women in particular by setting norms for their protection from every form of violence, rape and other forms of sexual exploitation.

The GTZ Sector Project against Trafficking in Women conducted a study on human trafficking in Ethiopia, Kenya, Uganda, Tanzania and Nigeria that uncovers information gaps and offers concrete recommendations for action. These include everything from NGO training to research and the dissemination of information to rehabilitation measures. Strengthening civil society actors plays a prominent role in this respect.

In Sudan⁶, local civil society organisations are assisted with the implementation of approaches based on human rights. The sector project cooperates with the international human rights organisation Anti-Slavery International, which strengthens Sudanese NGOs in their capacity to detect and support victims of human trafficking and to document instances of the practice.

⁶ Sudan has neither signed nor ratified the Maputo Protocol (as of November 2006).



In addition to legal measures and police work to establish law and security in Sudan, it is important to initiate activities with civil actors so that the development and protection of human rights on the local level is advanced and the issue is kept on the agenda throughout the peace process. In Sudan, new fronts in the war and new conflicts as they arise increase the readiness and/or necessity for flight and migration. Under such circumstances, Sudanese women and children are particularly vulnerable to traffickers.

3.5 Legal access for women

Together with the Zambian judiciary, the Zambian Commission for Law and Development, and NGOs from rural areas, the bilateral project "Improvement of the Legal Status of Women and Girls in Zambia" supports legislative reforms that increase the equality of women and men before the law. The project also conducts related awareness-raising and training measures for judicial personnel. These activities contribute directly to the implementation of the obligations specified in Article 8 of the Maputo Protocol, which ensures women equal access to and protection by the law. Women's rights, consciousness-raising and behavioural change in regard to discrimination and the position of women in family and society are at the core of project activities, which serve to realise the obligations of the Zambian Government under Articles 2 and 3 of the Maputo Protocol. One aim of the social empowerment approach is to improve women's access to local courts in order to strengthen their self-confidence, initiative and sense of responsibility. Women are trained as paralegals; they organise awareness-raising workshops and offer legal counsel in their communities⁷.



3.6 Reform of traditional law in favour of women and girls

In Ethiopia, in a number of communities in the Oromia region, the NGO HUNDEE is achieving impressive attitude and behavioural changes in regard to women's rights through workshops, forums and community meetings for women and men. HUNDEE works closely with other NGOs and government institutions. Through cooperation with the former bilateral project GALPO (Gender and Law Programme Oromia), the supraregional project "Promotion of Initiatives to End Female Genital Mutilation", and the sector project "Strengthening Women's Rights", HUNDEE has been able to extend its community education programme to a number of villages in the Oromia region.

Hundreds of women and men take part in the workshops, including village elders, who are versed in traditional law. In the discussion forums, women raise the issues that are essential components of the Maputo Protocol: equality of women and men, which is the central point of Article 2; property rights, which are protected under Article 21 as inheritance rights; the institution of marriage, in which the equal rights of women are specifically guaranteed in Articles 6 and 7; and harmful traditional practices, which are forbidden under Article 5⁸.

With the participation of the elders, a new outlook and consensus can be formed on various legal issues, in which information about constitutional rights is made available and prejudices are demystified. In the debates that follow, women and men discuss the topics at hand in an atmosphere of respect and agree how in future the rights of women and girls can be better guaranteed. In public ceremonies attended by traditional persons of authority, the regulations of the revised traditional law are formally adopted. These regulations then place explicit sanctions on any discrimination against women and girls in certain key areas, for instance in relation to FGM or forced or early marriage. Representatives of the police and the local administration are also present at these ceremonies, and they welcome and support the closing of the gap between traditional law and state law.

⁸ Ethiopia has signed the Maputo Protocol, but (not yet) ratified it (as of November 2006).

4. Conclusion

With the Maputo Protocol, the African Union has created an instrument that censures the precarious situation of the rights of women in Africa and commits the ratifying countries to take concrete action for equality of women and men before the law. Thus for the first time an African legal document now exists that puts to rest the reproach that in Africa, gender equality is considered a “matter for the North” and that as a concern of development cooperation it constitutes “interference in African culture and tradition”. As the practical examples indicate, German DC has been working actively on several issues within the Maputo Protocol before it even came into being. Now that the Protocol has come into effect, it provides DC with new opportunities for building on the obligations that African partner governments have taken upon themselves and for supporting them in realising the human rights of women. In this way, DC can make a valuable contribution to ensuring that these rights not only exist on paper, but actually become a part of the daily lives of women and men.

Text of the Maputo Protocol and status of ratification

www.africa-union.org



Abbreviations

AIDS	Acquired Immunodeficiency Syndrome
AU	African Union
BMZ	Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung/ German Federal Ministry for Economic Cooperation and Development
DC	Development Cooperation
FGM	Female Genital Mutilation
GALPO	Gender and Law Programme Oromia
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH – German Technical Cooperation
HIV	Human Immunodeficiency Virus
NGO	Non-Governmental Organisation
TC	Technical Cooperation

Deutsche Gesellschaft
für Technische Zusammenarbeit (GTZ) GmbH

Dag-Hammarskjöld-Weg 1-5
65760 Eschborn/Germany
T +49 (0) 6196 79-0
F +49 (0) 6196 79-1115
E info@gtz.de
I www.gtz.de

