

# **AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**



**General Comment No. 2 on Article 14.1 (a), (b), (c) and (f)  
and Article 14. 2 (a) and (c)  
of the Protocol to the African Charter on Human and  
Peoples' Rights on the Rights of Women in Africa**



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(f) and Article 14. 2 (a) and (c)  
of the Protocol to the African Charter on Human and  
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on the Rights of Women in Africa**

## Preface

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) is the main legal instrument for the protection of the rights of women and girls in Africa. Article 14 of the Maputo Protocol guarantees women's right to health, including sexual and reproductive health.

Women's rights to sexual and reproductive health include: the right to control their fertility, the right to decide the number of children and the spacing of children, the right to choose any method of contraception, and the right to have family planning education.

Under Article 14 (2) (c) of the Maputo Protocol, States Parties are called upon to take all appropriate measures to "protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus".

It should be noted that the Maputo Protocol is the very first treaty to recognize abortion, under certain conditions, as women's human right which they should enjoy without restriction or fear of being prosecuted.

The African Commission on Human and Peoples' Rights (the African Commission) welcomes the ratification of this important instrument by the majority of AU Member States. However, the African Commission notes that many countries are yet to undertake the necessary legislative reforms towards domesticating the relevant provisions, including in the area of women's sexual and reproductive rights. As such, in many States Parties, there is still limited access by women and girls to family planning, criminalization of abortion, and difficulties faced by women in accessing safe and available abortion services, including in cases where abortion is legalized. There are several reasons why this situation which is harmful to women's physical and mental health still persists, despite the very high daily rate of maternal mortality in Africa.

It is with the objective of reversing this trend that the African Commission adopted **General Comment No. 2 on Article 14 (1) (a), (b), (c) and (f) and Article 14 (2) (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa** at its 55<sup>th</sup> Ordinary Session held from 28 April - 12 May 2014 in Luanda, Angola. This General Comment provides interpretive guidance on the overall and specific obligations of States Parties towards promoting the effective domestication and implementation of Article 14 of the Maputo Protocol.

This General Comment is also to be used when drafting and presenting State periodic reports, to report on the legislative and other measures taken to promote and protect the sexual and reproductive health of women and girls.

The African Commission wishes to express its gratitude to Ipas Africa Alliance for its valuable contribution on all issues relating to sexual and reproductive rights and its technical support towards the preparation of the General Comment.

**Commissioner Soyata Maiga**  
**Special Rapporteur on the Rights of Women in Africa**

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# **General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa**

## **Introduction**

1. The Treaty Monitoring Bodies around human rights-related conventions generally use General Comments as a tool for the interpretation and development of the provisions of relevant international legal instruments so as to guide the States in implementing their obligations. The jurisdiction of the African Commission on Human and Peoples’ rights (the Commission) results from Article 45.1.b) of the African Charter on Human and Peoples’ rights (African Charter), which entitles it to "*formulate and develop rules and principles that address legal problems regarding the enjoyment of human and peoples’ rights.*" As a legal instrument complementary to the African Charter, the Protocol to the African Charter on Human and Peoples’ rights on the Rights of Women in Africa (the Protocol) also falls under the Commission's interpretative jurisdiction.
2. It is important to note in addition that Articles 60 and 61 of the Charter establish the importance of regional and international human rights instruments as benchmarks for the application and interpretation of the Charter; it is the same for the Protocol.
3. Aware of its commitment to promote gender equality and the need to eliminate all forms of discrimination against women, the African Union adopted the Protocol in 2003. For purposes of this instrument, which entered into force in 2005, “women” is understood as persons of female sex including girls, including women and girls living with a disability.
4. The Commission welcomes the commitment of African States to redouble their efforts to ensure the principle of equality in health, as well as to promote and protect women’s sexual and reproductive rights as enshrined in the Solemn Declaration on Gender Equality in Africa (2004), the Pretoria Declaration on Economic, Social and Cultural rights in Africa (2004), the Continental Guiding Framework for the Advancement of Sexual and Reproductive Rights in Africa (2006), the Maputo Plan of Action for the implementation of the Continental Guiding Framework for the Advancement of Sexual and Reproductive Rights in Africa (2006) and the Campaign for the Accelerated Reduction of Maternal Mortality in Africa (CARMMA).
5. The Commission notes with satisfaction the progress reports 2012 and 2013 of the African Union on maternal, new-born and child health, the Agreed Declaration from the African regional consultations on Post-2015 Development agenda, from the 2013 report on Africa’s progress towards achieving the Millennium Development Goals, as well as the technical guidelines published by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to guide the States called upon to adopt a

19. Only a very low percentage of abortions practiced in Africa are safely conducted. As a result of this state of facts, unsafe abortions remain a factor in preventable maternal mortality. Furthermore, they are for women who undergo them a persistent disability factor which is often not listed as such. It has been demonstrated that in a context where national laws allow therapeutic abortion when it proves necessary, and where health services are available, accessible, acceptable and of good quality, the prevalence as well as the complications arising from unsafe abortions are generally lower than in countries where the legal conditions for abortion are restricted.
20. The Protocol puts on State parties the obligation to protect women's reproductive rights, particularly by authorizing safe abortion in the cases listed in Article 14. 2 c.). In addition, the Maputo Plan of Action urges Governments to adopt legal policies and frameworks so as to reduce cases of unsafe abortion, as well as to develop and implement national action plans in order to mitigate the prevalence of unintended pregnancies and unsafe abortions. WHO reiterates that, if States do not remove the legal and administrative barriers that impede women's access to safe abortion services, they could not meet their international obligations to respect, protect, promote and implement the right to non-discrimination.
21. Thus, administrative discriminatory laws, policies, procedures, practices must be removed so that women can effectively claim their reproductive freedom and the rights thereof, and enjoy the same.
22. State parties must imperatively take all necessary measures to remove socio-cultural structures and norms that promote and perpetuate gender-based inequality. It is the same for the cross-cutting forms of discrimination contained in laws, policies, plans, administrative procedures and the provision of resources, information and services concerning contraception/family planning and safe abortion, in the limited cases listed.

## **Normative content**

*Article 14.1.a), b) and c): the right to exercise control over one's fertility, decide one's maternity, the number of children and the spacing of births, and choice of contraceptive methods.*

23. The rights to exercise control over one's fertility, to decide one's maternity, the number of children and the spacing of births, and to choose a contraception method are inextricably linked, interdependent and indivisible.
24. The right to dignity enshrines the freedom to make personal decisions without interference from the State or non-State actors. The woman's right to make personal decisions involves taking into account or not the beliefs, traditions, values and cultural or religious practices, and the right to question or to ignore them.



25. The right to health care without discrimination requires State parties to remove impediments to the health services reserved for women, including ideology or belief-based barriers. Administrative laws, policies and procedures of health systems and structures cannot restrict access to family planning/contraception on the basis of religious beliefs.
26. The right to freedom from being subjected to discrimination prohibits any deprivation concerning access to family planning/contraception services by health care providers for reasons of conscientious objection. While it is true that they may invoke conscientious objection to the direct provision of the required services, State parties must ensure that the necessary infrastructure is set up to enable women to be knowledgeable and referred to other health care providers on time. In addition, State parties must ensure that only the health personnel directly involved in the provision of contraception/family planning services enjoys the right to conscientious objection and that it is not so for the institutions. However, the right to conscientious objection cannot be invoked in the case of a woman whose health is in a serious risk, and whose condition requires emergency care or treatment.
27. Administrative laws, policies, procedures and practices, as well as socio-cultural attitudes and standards that impede access to contraception/family planning violate the woman's right to life, non-discrimination and health, in that they deprive her of her decision-making power and force her to undergo early pregnancy, unsafe or unwanted pregnancy, with as consequence, the temptation to seek unsafe at the risk of her health and her life.

*Article 14.1.f): the right to family planning education*

28. State parties are required to provide complete and accurate information which is necessary for the respect, protection, promotion and enjoyment of health, including the choice of contraceptive methods. The measures required of State parties include:
  - (a) training or upgrading healthcare providers and competent educators regarding complete information to provide to clients, including the causes of the failure of the practiced contraception method and the options that are available, if the said failure results in an unwanted pregnancy;
  - b) ensuring that available, accessible, acceptable and reliable information on contraceptive methods is provided, in printed form or by other means, such as the Internet, radio and television, mobile phone applications, and other telephone assistance service;
  - (c) enabling the structures of health facilities, institutions and teaching programs, as well as civil society organizations which are duly competent, to provide the relevant population with necessary information and education on family planning/contraception;

d) ensuring that information on family planning/contraception is provided to communities in accessible languages and in a form that is accessible to all women and girls, including those with disabilities.

*Article 14.2 a): the right to adequate, affordable health services at reasonable distances, including information, education and communication programs for women, especially those living in rural areas*

29. It is crucial to ensure the availability, financial and geographical accessibility as well as the quality of women's sexual and reproductive health-care services, without any discrimination relating to age, health condition, disability, marital status or place of residence. State parties have the obligation to provide services that are comprehensive, integrated and rights-based. They must develop laws that are accompanied by administrative appeal and complaint mechanisms which allow women to fully exercise their rights so that they can clearly understand the procedures and reasons that led them to being denied family planning/contraception services and how to challenge such a decision, with a view to exercise the remedies provided within the timelines.

30. This obligation imposes on them, inter alia, to develop a national public health plan with comprehensive sexual and reproductive health services, protocols, guidelines and standards that are consistent with current evidence-based standards established by WHO and the committees responsible for ensuring compliance, by States, with the relevant United Nations conventions such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on Children's Rights and the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW).

*Article 14.2 c): the right to safe abortion in cases of sexual assault, rape, incest and when the pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.*

### ***Rights covered***

31. The enjoyment of rights is non-discriminatory and grants gender equality when women are well informed of products, procedures and health services that are specific to them and when they actually have access to the latter, including in the area of family planning/contraception and safe abortion.

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

33. Article 15.1.b) of the ICESCR states that every individual must benefit from scientific progress and its applications. Women see themselves denied the right to benefit from the fruits of this progress as soon as they are denied the means to interrupt an unwanted pregnancy safely, using effective modern services.
34. For women who have the right to therapeutic abortion services, being subjected by health care providers, police and/or judicial authorities to an interrogation on the reasons why they want to interrupt a pregnancy that meets the criteria listed in Article 14. 2.c) or being charged or detained for suspicion of illegal abortion when they seek post-abortion care constitutes a violation of their rights to privacy and confidentiality.
35. WHO recommends to the Member States to end the practice of extortion of confessions from women seeking emergency medical care as a result of an illegal abortion and to remove the obligation imposed by law to physicians and other health care providers to denounce cases of women who have undergone abortions. States are required to ensure, immediately and unconditionally, the treatment required for anyone seeking emergency medical care. UN human rights bodies have also condemned such practices which constitute a human rights violation.
36. Article 5 of the African Charter prohibits cruel, inhuman and degrading treatments, a prohibition reiterated in Article 4 of the Protocol. State parties must ensure that women are not treated in an inhumane, cruel or degrading manner when they seek to benefit from reproductive health services such as contraception/family planning services or safe abortion care, where provided for by national law and the Protocol.

### ***The grounds for abortion stated in the Protocol***

37. The Protocol provides for women's right to terminate pregnancies contracted following sexual assault, rape and incest. Forcing a woman to keep a pregnancy resulting from these cases constitutes additional trauma which affects her physical and mental health, as evidenced by the UN bodies responsible for ensuring compliance with the treaties, which advocate for women's access to therapeutic abortion in cases of pregnancy resulting from sexual assault.
38. Apart from the potential physical injuries in the short and long term, the unavailability or refusal of access to safe abortion services is often the cause of mental suffering, which can be exacerbated by the disability or precarious socioeconomic status of the woman. When assessing the risks to a pregnant woman's health, health must be interpreted according to the WHO definition, namely: "*state of complete physical, mental and social well-being and not merely the absence of disease or infirmity*". The reasons put forward by the woman seeking an abortion must be taken into account, and States are required to ensure that the legal frameworks in place facilitate access to medical abortion when the pregnancy poses a threat to the health of the pregnant mother. This implies

notably that the evidence of prior psychiatric examination is not necessary to establish the risk to mental health.

39. The Protocol guarantees the right to terminate a pregnancy when the woman's life is threatened. Yet women's lives are in danger when they have no access to legal security procedures, which obliges them to resort to unsafe, illegal abortions. Maternal mortality from abortions performed in unhealthy conditions is a high risk, particularly for adolescent girls who seek to terminate pregnancies through unqualified or unspecialized service providers, or through abortions that are induced using dangerous procedures, products and objects.
40. Safe abortions may be required by women whose pregnancies pose risks to the life of the mother or the foetus. That is the case, for example, where it is demonstrated that the foetus which is developing suffers from deformities that are incompatible with survival, so being forced to carry the pregnancy to term would constitute cruel and inhuman treatment. This can also occur in women who need special medical treatment for heart disease, cancer or other diseases which may endanger the survival of the foetus.

### **General obligations of the State: respect, protect, promote and fulfill rights**

41. Article 14.1. a), b), c) and f) and Article 14 2. a) and (c)) impose four general obligations on State parties, like several provisions on human rights: respect, protect, promote and fulfill rights thereof.
42. The obligation to respect rights requires State parties to refrain from hindering, directly or indirectly, women's rights and to ensure that women are duly informed on family planning/contraception and safe abortion services, which should be available, accessible, acceptable and of good quality.
43. The obligation to protect requires State parties to take the necessary measures to prevent third parties from interfering with the enjoyment of women's sexual and reproductive rights. Particular attention must be given to prevention, as regards the interference of third parties concerning the rights of vulnerable groups such as adolescent girls, women living with disabilities, women living with HIV and women in situations of conflict. The obligation entails the formulation of standards and guidelines containing the precision that the consent and involvement of third parties, including but limited to, parents, guardians, spouses and partners, is not required when adult women and adolescent girls want to access family planning/contraception and safe abortion services in the cases provided for in the Protocol.
44. The obligation to promote obliges State parties to create the legal, economic and social conditions that enable women to exercise their sexual and reproductive rights with regard to family planning/contraception and safe abortion, as well as to enjoy them. An essential step towards eliminating stigmatization and discrimination related to reproductive health includes, but is not limited to, supporting women's

empowerment, sensitizing and educating communities, religious leaders, traditional chiefs and political leaders on women's sexual and reproductive rights as well as training health-care workers.

45. The obligation to fulfil rights requires that State Parties adopt relevant laws, policies and programs that ensure the fulfilment *de jure* and *de facto* of women's sexual and reproductive rights, including the allocation of sufficient and available resources for the full realization of those rights.

## **Specific obligations of the State**

### *Enabling legal and political framework*

46. State parties should provide a legal and social environment that is conducive to the exercise by women of their sexual and reproductive rights. This involves revisiting, if necessary, restrictive laws, policies and administrative procedures relating to family planning/ contraception and safe abortion in the cases provided for in the Protocol, as well as integrating the provisions of the said legal instrument into domestic law.
47. State parties should ensure that the necessary legislative measures, administrative policies and procedures are taken to ensure that no woman is forced because of her HIV status, disability, ethnicity or any other situation, to use specific contraceptive methods or undergo sterilization or abortion. The use of family planning/contraception and safe abortion services by women should be done with their own informed and voluntary consent.
48. State parties should ensure that laws, policies and administrative procedures aimed at ensuring women's access to family planning/contraception and safe abortion services in the cases provided for in the Protocol are respected and implemented. State parties should particularly ensure that health services and health care providers do not deny women access to contraception/family planning and safe abortion information and services because of, for example, requirements of third parties or for reasons of conscientious objection.
49. State Parties must ensure that law practitioners, judges and magistrates and judicial police officers get adequate training and are sensitized on respecting and implementing the individual rights and the State's obligations guaranteed by the Protocol, so that women are not arrested, charged and prosecuted because they have sought safe abortion services or post-abortion care to which they are entitled.
50. Measures facilitating access to family planning /contraception and safe abortion services, when provided for by law, should be realized by State parties including through: the establishment of accountability mechanisms; development of implementation standards and guidelines; a monitoring and evaluation framework, and availing accessible, timely and efficient redress mechanisms for women whose sexual and reproductive rights have been violated.

### *Access to information and education on family planning/contraceptive and safe abortion*

51. The Commission would like to stress the importance of information and education on family planning/contraception and safe abortion for women, especially adolescent girls and young people. State parties must ensure provision of comprehensive information and education on human sexuality, reproduction and sexual and reproductive rights. The content must be based on clinical findings, rights-based, without judgment and take into account the level of maturity of adolescent girls and the youth, in accordance with the Maputo Plan of Action and Articles 2 and 5 of the Protocol.
52. In addition, State parties must ensure that educational institutions at primary, secondary and tertiary levels include sexual and reproductive rights issues in their school programs and to take the necessary measures so those programs also reach women in private schools, including faith-based schools, as well as those out of school.

### *Access to family planning/contraception and safe abortion services*

53. It is crucial to ensure availability, accessibility, acceptability and good quality reproductive health care, including family planning / contraception and safe abortion for women. State parties should ensure services that are comprehensive, integrated, rights-based, sensitive to the reality of women in all contexts, and adapted to women living with disabilities and the youth, free from any coercion, discrimination and violence.
54. They should integrate and/or link family planning/contraception and safe abortion services funded by public resources to other services relating to reproductive health, primary health care, HIV and other sexually transmitted infections.

### *Procedures, technologies and services for sexual and reproductive health*

55. State parties should ensure availability, accessibility and acceptability of procedures, technologies and comprehensive and good quality services, using technologies based on clinical findings. Access to services must be guaranteed to all women, especially rural women, by ensuring the availability of supplies through procurement systems that function properly.
56. Family planning / contraception services should include women's access to a variety of contraceptive methods, including short-term methods (hormonal contraceptives, male and female condoms, emergency contraception), long-term (implants, injections, IUDs, vaginal rings) and permanent ones (voluntary sterilization). The

new technologies based on available evidence, when available, including, but not limited to, spermicidal microbicides, should also be included. Such services should be provided through both family planning/contraception programs and under post-abortion care.

57. Safe abortion services should include the methods recommended by WHO, updated and based on clinical findings, including procedures such as evacuation, dilation and intrauterine manual or electric suction, as well as the use of other efficient methods or medicines that might become available in the future. The equipment and medicines recommended by WHO should be included in the lists of national essential products and medicines. Techniques such as dilation and curettage should be replaced with safer methods.
58. State parties should avoid all unnecessary or irrelevant restrictions on the profile of the service providers authorized to practice safe abortion and the requirements of multiple signatures or approval of committees, in the cases provided for in the Protocol. In many African countries, there are not enough trained physicians available. Mid-level providers such as midwives and other health workers should be trained to provide safe abortion care. The training of health workers should include non-discrimination, confidentiality, respect for the autonomy and free and informed consent of women and girls.
59. State parties should ensure that HIV testing is not used as a condition for accessing family planning/contraception and safe abortion services. When women reveal their HIV status, positive tests must not serve as pretexts to the use of coercive practices or the suspension of service provision.

#### *Obstacles to the right to family planning / contraception and safe abortion*

60. State parties should take all appropriate measures, through policies, sensitization and civic education programs, to remove all obstacles to the enjoyment by women of their rights to sexual and reproductive health. Specific efforts should especially be made to address gender disparities, patriarchal attitudes, harmful traditional practices, prejudices of health care providers, discriminatory laws and policies, in accordance with Articles 2 and 5 of the Protocol. In this regard, State parties should work in cooperation with health care providers, traditional and religious leaders, civil society organizations, non-governmental organizations, including women's organizations, international organizations and technical and financial partners.
61. State parties should take all appropriate measures to remove the obstacles such as those arising from marital status, age, disability as well as economic and geographic barriers faced by women who want access to family planning / contraception and safe abortion services, especially young women, teenage girls, women living with disabilities and women in situations of conflict, displaced or refugee women, as well as rural women.

### *Allocation of financial resources*

62. Pursuant to Article 26.2 of the Protocol, paragraph 26 of the Abuja Declaration and paragraph 7 of the Maputo Plan of Action, State parties should allocate adequate financial resources for the strengthening of public health services so that they can provide comprehensive care in family planning / contraception and safe abortion. This includes making specific budget allocations under the health budget at national and local levels, as well as tracking expenditures on these budget lines. Information on health expenditures should be available to facilitate monitoring, control and accountability.

### *Compliance with the submission of periodic reports by State parties*

63. State parties have an obligation, in accordance with Article 26. 1 of the Protocol, to submit, in a timely manner, their periodic reports on the legislative and other measures they have taken towards the full realization of the rights recognized in the said instrument. The reports must take into account this General Comment and comply with the guidelines adopted by the African Commission for that purpose.





