

# Promotion of Gender Responsiveness of the ACDEG, Laws & Policies on Political Participation of Women in Elections & Electoral Processes through Civic Technology in SADC Region

Research Report



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## Acronyms

AU	African Union
ACDEG	African Charter on Democracy, Elections & Governance
CEDAW	Convention on Elimination of all Forms Discrimination Against Women
CSO	Civil Society Organisations
DEAU	Democracy and Electoral Assistance Unit
EMB	Election Management Bodies
FPTP	First Past The Post
IPU	Inter-Parliamentary Union
NGO	Non- government organisation
REC	Regional Economic Community
PR	Proportional Representation
SADC	Southern African Development Community
WPP	Women in Political Participation
VAWIP	Violence Against Women in Politics

# 1. Introduction And Background

**One of the essential elements of an open, free and democratic society is the extent to which citizens have opportunities to participate and to be represented in governance and decision-making processes. This includes the extent to which both women and men have equal opportunities, rights and responsibilities to participate in electoral and political processes.**

Due to various factors, women's participation and representation in electoral and political processes has historically been less than that of men world-wide. As a result, global efforts have been made to ensure the increased participation of women in electoral and political processes during the last three decades. The foundation of these efforts is premised on the principles of non-discrimination and equal enjoyment of political rights as enshrined in the Universal Declaration of Human Rights<sup>1</sup> and the Convention on the Political Rights of Women<sup>2</sup>. Various international and regional human rights and political instruments came into effect thereafter, with some explicitly providing for women's rights to participate in electoral and decision-making processes<sup>3</sup>, and others implicitly providing for this right through equality and non-discrimination provisions.<sup>4</sup> At the African level, the African Charter on

Democracy, Elections & Governance (ACDEG) has been instrumental as it established a significant framework for States to use in electoral, democracy and governance processes. The ACDEG has been one of the widely used charter on the continent on matters pertaining to elections, democracy and governance since its adoption in 2007. The charter is explicit on the contentious issues on elections ranging from corruption, political pluralism, transparency in electoral processes etc. The charter is clear on how challenges of women's participation in election, democracy and governance can be addressed for instance through approaching the Democracy and Electoral Assistance Unit for advisory services for strengthening electoral institutions and processes.<sup>5</sup> While ACDEG is not a traditional women's rights instrument, it has a wide range of provisions that advance women's political rights.

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<sup>1</sup>UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>.

<sup>2</sup>UN General Assembly, Convention on the Political Rights of Women, 20 December 1952, A/RES/640(VII), available at: <https://www.refworld.org/docid/3ae6b3b08.html>

<sup>3</sup>UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, Article 7, 18 December 1979, A/RES/34/180, available at: <https://www.refworld.org/docid/3b00f2244.html>; African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, Articles 2, 8(f) and 9, 11 July 2003, available at: <https://www.refworld.org/docid/3f4b139d4.html>; Southern African Development Community, SADC Protocol on Gender and Development, Articles 2.1, 5, 12, 13 and 32; African Union, African Charter on Democracy, Elections and Governance, Articles 8 and 29, 30 January 2007, available at: <https://www.refworld.org/docid/493fe2332.html>.

<sup>4</sup>UN High Commissioner for Refugees (UNHCR), ICCPR International Covenant on Civil And Political Rights: Quick Reference Guide - Statelessness and Human Rights Treaties, October 2016, Article 25, available at: <https://www.refworld.org/docid/58c25e3a4.html>; Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), Articles 3 and 13, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: <https://www.refworld.org/docid/3ae6b3630.html>.

<sup>5</sup>Article 18 of the African Charter on Democracy, Elections and Governance

These provisions include mandating States to: 'promote gender equality in public and private institutions; eliminate all forms of discrimination, especially those based on gender; adopt legislative and administrative measures to guarantee the rights of women; protect the right to equality before the law and equal protection by the law.'<sup>6</sup> The charter creates necessary conditions for full and active participation of women in decision-making at all levels; take all possible measures to encourage full and active participation of women in electoral process and ensure gender parity in representation. Furthermore, the charter endeavours to provide free and compulsory basic education to all, especially girls to ensure literacy of citizens above compulsory school age, particularly women. These provisions include mandating States to: 'promote gender equality in public and private institutions; eliminate all forms of discrimination, especially those based on gender; adopt legislative and administrative measures to guarantee the rights of women; protect the right to equality before the law and equal protection by the law.'<sup>7</sup> In reference to youth, the ACDEG specifically calls for States to 'promote the participation of social groups with special needs, including the youth and people with disabilities, in governance processes'.

Regionally, many Southern African Development Community (SADC) Member States are party to several human rights and political instruments, and most of the rights and principles contained in these instruments are reflected in their Constitutions and domestic laws. In addition, the SADC Revised Protocol on Gender and Development requires State Parties to ensure that at least fifty percent of their decision-making positions in both the public and private sphere are held by women. SADC Member States are actively working towards the equal representation of women and men in

politics and decision-making positions in all levels (Cabinet, Parliament, Council, Management of Public Services, Public Services, State owned enterprises and the private sector).<sup>8</sup> To date, several countries, including Angola, Mozambique, Namibia, South Africa, Tanzania and Zimbabwe, have on average more than 30% women's representation in the upper and lower houses of parliament.<sup>9</sup> However, despite the existence of these instruments and the ACDEG, women's participation and representation in electoral processes continues to decline. In a bid to contribute to the above challenges, the SADC Lawyers Association commissioned this research to gain a deeper and comprehensive understanding of the challenges affecting women's political participation and representation in politics and decision-making positions in SADC Member States.

*The research paper will analyse the provisions of the ACDEG and give an explicit clear and measurable status on political participation of women showing the initiatives essential to improve the current status and explicit recommendations on how to achieve the objectives. A deep analysis will be on the extent in which women have access to their political rights. In this paper, the term "political rights" is defined to encompass the right to exert influence or involvement in the political sphere, shaping policies.*

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<sup>6</sup>Article 8 (1) of the African Charter on Democracy, Elections and Governance

<sup>7</sup>Ibid at 43 (2)

<sup>8</sup>SADC Women in Politics and Decision Making, See <https://www.sadc.int/pillars/women-politics-decision-making>

<sup>9</sup>SADC Women in Politics and Decision Making, See <https://www.sadc.int/pillars/women-politics-decision-making>

**More specifically, the study seeks to investigate and analyse gender responsiveness of the ACDEG in the SADC region in light of challenges and barriers witnessed in regard to the participation of women in democracy, governance and electoral processes to enhance promotion of human rights, strengthen the rule of law and improve political, economic and social governance.**

## 1.1 Research Objectives

In examining and analysing gender responsiveness of the ACDEG in the SADC region considering challenges and barriers of women's participation in democracy, governance and electoral processes, the research is guided by the following broad objectives;

- To examine the application of the ACDEG and highlight the impact on the most vulnerable groups of women and provide recommendations to key rule of law institutions.
- To identify innovative solutions on Civic technology to promote gender responsiveness of the ACDEG.
- To highlight gaps in the ACDEG pertaining to the rights of women in elections in the SADC Region, and identify existing gaps between policy and implementation on and create effective practical and administrative solutions
- To highlight and recommend for review and amendment/ repeal legislation policies and practices that limit the political rights of women at national level
- To identify initiatives imperative in ensuring gender responsiveness of the ACDEG.
- To lay foundation for development of a strategy for coordinated and inclusive advancement of implementation of the ACDEG principles on participation of women in politics
- To identify key strategies to educate & improve the knowledge of women on their fundamental political and electoral rights.



## 1.2 Research Methodology

The research adopted a combination of qualitative and document-based research, a literature review, and interviews with key informants in the electoral and democracy space in SADC, women in politics, and leadership, civil society organisations (CSOs,) academia and development partners. Documents such as the ACDEG, CEDAW, Maputo Protocol, Journals, SADC Protocol on Gender and Development, SADC's Framework for Achieving Gender Parity in Political and Decision-Making Positions were reviewed and analysed to get a deeper understanding of normative frameworks for women's participation in elections, governance and decision-making structures. Furthermore, through analysis of the reform processes of the existing laws and policies on elections, the research explored in detail the context and mechanisms that are required to initiate reforms successful and how to apply these in SADC region.

## 2. Research Findings and Discussions

### 2.1 Situational Analysis: Political Participation of Women in Elections & Governance Processes in SADC

Women's participation in politics (WPP) and decision-making across the SADC has improved in recent years, but significant gaps remain. While some countries are leading the way, others are lagging behind. Similarly, at the continental level, Africa has witnessed notable advancements in consolidating democratic governance, largely attributed to the collective endeavours of women's rights groups advocating for a transformation of political systems.<sup>10</sup> Despite these strides, women's marginalization and enduring inequalities present challenges that impede the full realization of democracy.<sup>11</sup> Current data indicates a substantial underrepresentation of African women in formal political structures and processes.<sup>12</sup> The Inter-Parliamentary Union (IPU), a mere 23.6 percent of parliamentarians in Africa are women, with Rwanda, Namibia, and South Africa leading with 61.3 percent, 46.2 percent, and 42.4 percent representation, respectively.<sup>13</sup> Women's participation in executive or ministerial positions is even scarcer, constituting only 19.7 percent of ministerial posts in 2017.<sup>14</sup>

In SADC, as of 2022, the average representation of women in national parliaments was sitting 26.3%. This was, however, an increase from 19.4% in 2003, but still far from the SADC Protocol on Gender and Development's target of 50% by 2030. Latest data from the SADC Gender and Development Monitor 2022, shows that the top performing countries in the SADC region are Namibia 46% female parliamentarians and South Africa with 46.5% female parliamentarians. Regrettably countries like Botswana, Lesotho and Eswatini have recorded the lowest, sitting at 12.9%, 22.3% and 27.5% respectively.<sup>15</sup> The Monitor also notes that there is only one SADC member state with a woman President (United Republic of Tanzania) and two member States have achieved gender equality in Cabinet (Mozambique and South Africa).<sup>16</sup> Within the legislature, the representation and participation of women have generally seen a modest improvement over the past 25 years compared to other arms of government. For example, in 2013, the regional average for women in parliament in SADC (both houses combined) was 24.5%, and this increased to 30.4 percent in 2018, and 30.9 percent by March 2022. There are eight presiding officers, Speakers/Presidents of the National Assembly who are women, as well as good progress in the Judiciary with many women judges in some cases.

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<sup>10</sup>Tripp AM (2001) New political activism in Africa. *Journal of Democracy* 12(3): 141–155.

<sup>11</sup>Mindzie MA, Wachira GM and Lucy D (2014) *Effective Governance in Challenging Environment*. New York: International Peace Institute, online: (accessed: 20 January 2017).

<sup>12</sup>Iwilade A (2011) Women and peace talks in Africa. *Journal of International Women's Studies* 12(1): 22–37.

<sup>13</sup>Inter-Parliamentary Union Report (2007, 2012, 2018) online: (accessed: 25 December 2023).

<sup>14</sup>Ibid

<sup>15</sup>SADC Gender and Development Monitor 2022, SADC, Gaborone

<sup>16</sup>SADC Gender and Development Monitor 2022, SADC, Gaborone, p11

One of the key findings of the SADC Gender and Development Monitor 2022 that was SADC Member States using the Proportional Representation (PR) electoral system in conjunction with women quotas system have a higher representation of women in Parliament, while those using the First Past The Post (FPTP) system have the least. In PR electoral system, often called the list system, citizens vote for a political party rather than a specific candidate, and political parties receive seats proportional to the number of votes won in the voting process. For instance, countries like Angola, Mozambique, Namibia, and South Africa use the PR electoral system, with South Africa leading the SADC gender rankings. In an open PR system, the voters decide where a candidate appears on the list; and in a closed PR system, the political party decides. The closed list is more accommodating of women since it can be prescribed that equal numbers of women and men candidates appear on the list. The list thus adopts what is called a "zebra" approach, alternating the candidates between a woman and a man. Conversely, the FPTP electoral system, which is the most common in SADC and used by Botswana, Comoros, the DRC, Eswatini, Madagascar, Malawi, Mauritius, Seychelles, and Zambia does not promote gender parity in political life. In this system the electorates cast their vote for a candidate who represents a geographically defined constituency and the candidate with the highest number of votes wins. The other main electoral system used in SADC is the Mixed System which combines aspects of the FPTP and PR electoral systems. Countries in the region using this system include Lesotho, Tanzania, and Zimbabwe. However, evidence collected from these members states show that the system produces better results than FPTP in promoting WPP although the results are lower than the PR system with quotas. but higher than the FPTP.

Despite progress, WPP in the SADC region faces significant challenges, including traditional gender roles, cultural barriers, unequal access to resources, and limited support networks. This stark inequality hinders women's capacity to influence national decision-making, including shaping programs and allocating resources.

To problematise and understand such barriers one needs to analyse the myriad cultural norms and values that determine women's roles in SADC societies. In a manner that many women in the region might identify with, Yoon & Bunwaree (2008, p 17) describe the barriers to women's legislative representation in Mauritius. These include '[a] low level of women's activism within political parties, an electoral system unfavourable to women, discriminatory nomination practices, coalition politics, the male-dominant culture, the lack of financial resources for women, and a gender specific education'.<sup>17</sup> Similarly, elsewhere in the world women experience serious hurdles which impede their franchise rights. Recently, in an article entitled 'First woman to run for elections', the Guardian (1 April 2013) reported that '[f]or most women in Pakistan's war-torn and ultra-conservative frontier region, casting a vote in an election is an impossible dream, let alone standing as a candidate.'

A fundamental problem in many societies that undergirds women's participation and representation in elections and therefore in politics is access to power and resources and control thereof. Many justifications for why women cannot ascend to the highest thrones rest on this reality and are particularly relevant as African countries increasingly adopt liberal democracy as a political system of choice.<sup>18</sup>

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<sup>17</sup>Yoon, M Y & S Bunwaree. 2008. 'The Mauritian Election of 2005: An Unprecedented Increase of Women in Parliament'. *Journal of International Women's Studies* 9(3).

<sup>18</sup> Maphunye K. WHY PARTICIPATE IN ELECTIONS IF WE'RE NOT PROPERLY REPRESENTED?' Women's political participation and representation in SADC countries *Journal of African Elections*, Volume 12, p 315

The main challenge is the continual rhetoric of the mostly male political party leaders and representatives. This arises essentially as a result of the leaders' superficial commitment to gender equality within their parties. 'Ideally, all adult citizens, women and men, ought to have the rights to stand for election and to vote for a candidate or political party of their choice.'<sup>19</sup> Yet some party representatives and leaders seem reluctant to accept women as equals, merely paying lip service to gender equality issues while publicly suggesting that they support gender equality. In South Africa, Oakley-Smith argues that 'paying lip service to equity' undermines women's empowerment in the private sector too.<sup>20</sup> This explains the anomaly of many SADC countries having 'ratified conventions and treaties on women's rights', while failing to translate them into 'concrete deliverables for ... government participation and representation'<sup>21</sup> This rhetoric is difficult to detect because even the 'women's wings' of the political parties sometimes try to conceal their leaders' vacillation or ambiguity over gender issues. Some have argued that '[n]o SADC country has achieved gender parity in parliament (the target set by the SADC Protocol for 2015)', and it is possible to attribute this reality to party political and government rhetoric.<sup>22</sup>

Research also shows a troubling trend of violence against women (VAW) during elections. VAW is often instigated by political parties, elite groups, and youth wings. For instance, in Zimbabwe, the entrenched culture of election-related violence has been a deterrent for young women's political participation due to militarization. Despite progressive electoral laws in some countries, young women tend to shy

away from national politics due to the fear of violence, preferring reserved seats in local governments.<sup>23</sup>

*Even in relatively stable democracies, the threat of violence affects women's confidence to contest or cast their votes. Young women, in particular, may face additional challenges, given potential disrespect from both older individuals and male peers.*

AU Member States and their governing bodies hold the responsibility to ensure the safety of young women candidates and voters. Tackling this challenge necessitates collaborative efforts. Organizations like UN Women and UNDP have published guides, such as "Preventing Violence Against Women in Elections," which provide practical measures.<sup>24</sup> These include reviewing electoral frameworks to criminalize gender-based violence, implementing security and electoral reforms, and collaborating with political parties to establish and enforce codes of conduct that explicitly prohibit violence. A comprehensive, multi-stakeholder approach is essential for both preventing and, if necessary, sanctioning violence.<sup>25</sup>

<sup>19</sup>EISA. 2010. 'This seat is taken: Elections and the under-representation of women in seven Southern African countries'. Johannesburg: EISA.

<sup>20</sup>Oakley-Smith, T. 2010. 'Paying lip service to equity'. Pretoria News, 10 August.

<sup>21</sup>Mandiyani, D. 2012. 'The marginalised majority: Zimbabwe's women in rural local government'. Journal of African Elections 11(2), p 89

<sup>22</sup>Kadima, D & S Booyesen (eds). 2009. Compendium of Elections in Southern Africa 1989-2009. Johannesburg: EISA, p 13

<sup>23</sup>Supra Note 69 at 43

<sup>24</sup>Ibid

<sup>25</sup>Ibid

## 2.2 Challenges faced by Young Women in Politics

Despite progress in transitioning from conflict and autocracy to multi-party democratic systems in many African countries, challenges persist, particularly impacting the active participation of women in politics. Prolonged democratic transitions, often marked by conflicts, disproportionately affect women in conflict-affected regions, impeding their involvement in political life. High rates of violence against women, a critical barrier to young women's participation, are prevalent, especially in post-conflict scenarios. The threat of violence limits women's exercise of political rights, hindering their engagement as candidates, voters, activists, and public officials.



The COVID-19 pandemic introduced new threats to election participation, potentially risking the health of women and men. Fear of the virus during the pandemic had a negative impact on voter turnout, particularly among first-time and young women voters. Societal norms, discriminatory stereotypes, and gender-based violence contribute to the denial of political opportunities for young women. Discriminatory cultural beliefs affecting girls' education, combined with challenges in addressing educational gaps, limit young women's growth into confident leaders with active civic and political engagement.<sup>26</sup>

Economic inequality resulting from disparities in education access further acts as a barrier to young women's entry into politics. High youth unemployment, financial constraints, and the expensive nature of political campaigns create disadvantages for young women aspiring to political office.<sup>27</sup> Discriminatory institutional practices within political parties, male-dominated structures, and limited gender-sensitive policies hinder young women's participation.<sup>28</sup> Electoral Management Bodies (EMBs) often lack gender sensitivity, necessitating a shift toward ensuring a level playing field for women throughout the electoral process. Overcoming these challenges requires comprehensive efforts addressing societal, institutional, and economic factors to empower and facilitate the meaningful participation of young women in African politics.<sup>29</sup>

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<sup>26</sup>Ibid

<sup>27</sup>Donnas Ojok and Tony Acol, Connecting the Dots: Youth Political Participation and Electoral Violence In Africa, Journal on Africa Democracy Development

<sup>28</sup><https://www.ohchr.org/sites/default/files/Documents/Issues/Women/ViolenceAgainstWomeninPoliticsReport.pdf>

<sup>29</sup>Ibid

### 3. International and Regional Normative Frameworks for Women's Political Participation and Decision-Making Structures

Various human rights and political instruments provide for women's right to political participation at both the international and regional level. SADC member states are party to several of these instruments, and have obligation to incorporate all international conventions, treaties and agreements into their domestic national legislation. It should however be noted that different SADC countries adopt different approaches to incorporating international or regional instruments into their domestic laws. While some countries adopt a dualist approach, others adopt a monist approach for implementation of international treaties. The Table below provides significant international frameworks providing for women's political participation and in decision making structures.

Instrument	Relevant provision(s)	Main legal obligation(s) for SADC Member States
Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)	Articles 5, 7, 18	<ul style="list-style-type: none"> <li>To eliminate discrimination against women in the political and public life</li> <li>To eliminate prejudices and customary and all other practices which are based on the inferiority or the superiority of either sexes or the stereotyped roles for men and women</li> </ul>
Convention on the Political Rights of Women (CPRW) (1952)	Articles 1, 2, 3	<ul style="list-style-type: none"> <li>Women are entitled to vote in all elections on equal terms with men</li> <li>Women shall be eligible for election and public office</li> </ul>
African Charter on Democracy, Elections and Governance (ACDEG) (2007)	Articles 2, 8, 29, and 30	<ul style="list-style-type: none"> <li>To promote participation and representation of women</li> <li>To promote representative systems of government</li> </ul>
Protocol to the African Charter on the Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)(2003)	Articles 2, 8(f), 9 and 11	To take positive action to promote participative governance and ensure participation of women through affirmative action, enabling legislation and other measures
SADC Protocol on Gender and Development (2008) and (SADC PGD) (2016)	Articles 2.1, 4, 5, 12, 13, and 32	<ul style="list-style-type: none"> <li>Enshrines gender equality and equity in the Constitutions</li> <li>States are to ensure that these rights are not compromised by any provisions, laws or practices</li> <li>Member States to improve the representation of women in government and all decision making in public, private and social spheres to at least 50%</li> </ul>

Instrument	Relevant provision(s)	Main legal obligation(s) for SADC Member States
Convention on the Rights of Persons with Disability (CRPD) (2006)		All PWD must enjoy all human rights and fundamental freedoms
AU Gender Policy and Action Plan (2009)		Provides a basis and standard for the elimination of barriers to gender equality and fostered re-orientation of existing institutions. To implement the policy AU developed the Strategy on Gender Equality and Women's Empowerment (GEWE) 2018-2028 launched during the AU Summit in February 2019.
Universal Declaration of Human Rights (UDHR)		To respect, protect and fulfil human rights.
International Covenant on Civil and Political Rights (ICCPR) (1966)	Article 3 and 25	To ensure men and women's equal participation in public life.
Beijing Declaration and Platform for Action (1995)	Section 190(b)	To take measures that encourage political parties to integrate women in elective and non-elective public positions in the same proportion and at the same levels as men
Sustainable Development Goals (SDGs) (2015-2030)	SDG 5 and 10	<p><i>SDG 5: Achieve gender equality and empower all women and girls</i></p> <ul style="list-style-type: none"> <li>▪ To Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life (SDG 5.5)</li> <li>▪ To adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels (SDG 5.c)</li> </ul> <p><i>SDG 10: Reduce inequality within and among countries</i></p> <ul style="list-style-type: none"> <li>▪ To empower and promote the social, economic, and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion, or economic or other status by 2030 (SDG 10.2)</li> <li>▪ To ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies, and practices and promoting appropriate legislation, policies, and action in this regard (SDG 10.3)</li> </ul>
United Nations Economic and Social Council Resolution (1990/15)		
United Nations General Assembly resolution on women's political participation 2003 (A/ RES/58/142)		
2011 United Nations General Assembly resolution on women's political participation (A/ RES/66/130)		

The above normative frameworks such as the 1979 CEDAW have paved the way for the development of legal structures articulating and advocating for the safeguarding of women's political rights by African states.<sup>30</sup> Some argue that these global treaties inadequately address issues specific to African women, prompting calls for region-specific frameworks within Africa to broaden the scope of women's rights.<sup>31</sup> At the continental and regional levels, various policy decisions aimed at advancing women's participation in decision-making structures have been endorsed. These include the Maputo Protocol, the Solemn Declaration on Gender Equality in Africa (SDGEA), African Union Gender Policy and Action Plan (2009), the Strategy on Gender Equality and Women's Empowerment (GEWE); the Southern African Development Community's Protocol on Gender and Development, and the East African Community's Gender Equality and Development Act. Despite these policy directives setting the stage for AU member states and regional economic communities (RECs), and other stakeholders to champion gender parity in democratic governance processes, implementation remains lacking. Institutional barriers, entrenched discriminatory social norms, and instances of violence and intimidation persist, underscoring the divide between policy aspirations and on-the-ground realities.<sup>32</sup> The above instruments setting human rights frameworks and standards for women's participation in politics are discussed in detail below

### 3.1 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is also another significant international legal Instrument. Often referred to as the international Bill of rights for women. CEDAW addresses issues on political participation of women in elections, democracy and governance. Article 1 of CEDAW defines "discrimination against women" as any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."<sup>33</sup> Article 2(b) of CEDAW places a positive obligation on State Parties to "adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women."<sup>34</sup>

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<sup>30</sup>Mukumu W. Irene (2015) Africa: The Maputo protocol – evaluating women's rights. All Africa Report, June 2015.

<sup>31</sup>Tadesse AM (2015) African women protocol as supplemental to African charter and other human rights instruments: brief analysis. Bahir Dar University Journal of Law 5(1) 1–16.

<sup>32</sup>Bofu-Tawamba N (2015) Awake to the challenge: African women's leadership at Beijingp20. In: Open Democracy. online: (accessed: 9 June 2017)

<sup>33</sup>Article 1 of the Elimination of all forms of Discrimination Against Women (CEDAW)

<sup>34</sup>Ibid; Article 2

Further, CEDAW expects States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and shall ensure to women, on equal terms with men, the right:

- To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- To participate in non-governmental organizations and associations concerned with the public and political life of the country.



In 1997, the CEDAW Committee issued General Recommendation No. 23 to elaborate on Article 7, making a stronger case for “temporary special measures” (for example, gender quotas) to achieve equality of participation. The Recommendation states that the “formal removal of barriers and the introduction of temporary special measures to encourage the equal participation of both men and women in the public life of their societies are essential prerequisites to true equality in political life.” It must be noted that all SADC States have ratified CEDAW and are expected to take practical steps to implement ACDEG and other AU instruments that speak to women's rights, considering the interconnected and interrelated nature of rights across social, political, and economic divides.

### 3.2 The African Charter on Human and Peoples Rights on the Rights of Women In Africa (Maputo Protocol)

The Maputo Protocol is one of the most progressive legal instruments providing a comprehensive set of human rights for African women. This protocol contextualises CEDAW into the African context and is comprehensive in its prescription to Member States to ensure gender equality and parity in governance and politics. Article 9 specifies that “state parties should promote the equal participation of women in the political life of their country and ensure such participation through affirmative action, enabling national legislation and other measures.” Article 9 of the Maputo Protocol mandates African states to take affirmative action to ensure women's active participation in governance and political life. It stipulates that women should participate in all elections without discrimination, have equal representation with men at all electoral levels, and be equal partners in the development and implementation of state policies.<sup>35</sup> The deliberate language in the provision, such as 'at all levels' and 'in all electoral processes,' underscores the comprehensive nature of the measures expected from States.<sup>36</sup> This accentuates that efforts should address gender inequities throughout the entire political and governance system, avoiding isolated or partial approaches. The phrase “increased and effective representation and participation” highlights the significance of the process leading to outcomes, emphasizing that the anticipated results are a result of the broader measures. In essence, the provision aims at a holistic transformation of the political landscape rather than isolated improvements.

<sup>33</sup>Article 1 of the Elimination of all forms of Discrimination Against Women (CEDAW)

<sup>34</sup>Ibid; Article 2

<sup>35</sup>Op cit note 9

<sup>36</sup>Ibid

Article 9 underscores the need for transformative equality in achieving gender equity in political and governance realms. It goes beyond a literal understanding of equality, demanding tangible measures to eliminate historical, structural, and institutional obstacles hindering real equality.<sup>37</sup> Transformative equality focuses not only on the outcomes of measures but also scrutinizes the entire process leading to those results.

The African Women's Rights Protocol stands as the authoritative instrument for women's political participation in Africa. However, the genesis of this right in Africa predates the protocol, with the African Charter, two decades earlier, already enshrining citizens' right and duty to participate in their government freely and without discrimination. This duty emphasizes the integral role of participation in democratic governance.<sup>38</sup> While the political rights in the African Charter were initially slow to be implemented, the 1990s marked a shift as Africa embraced democracy. Leaders recognized popular political participation as not just a codified right but a prerequisite for transforming nations from a socio-economic point of view. The Organisation of African Unity's 1990 Declaration acknowledged popular participation, an enabling political environment, human rights guarantees, and the rule of law as prerequisites for achieving socio-economic transformation.<sup>39</sup> While the 1990 Declaration symbolically recommitted African leaders, in principle, to the African Charter's provisions, there was a lack of immediate substantial actions to ensure the genuine participation of all citizens, especially women, in political and

governance processes. Despite the transition from authoritarian one-party systems to participatory politics in several African states toward the end of the 20th century, the principles outlined in the declaration largely remained symbolic for women. The 'democratic' systems retained old patriarchal models of leadership, maintaining limited access to political power for women<sup>40</sup>.

Despite progress in Africa to aligning national laws with international obligations including the Maputo Protocol, there is a need for further efforts to ensure meaningful and transformative participation by women. While there has been progress in domestication, a notable disparity persists between the normative framework and the practical involvement of women in political activities. It is essential to devise collaborative initiatives among African nations to facilitate authentic intra-Africa learning. The goal is to enable African states to exchange experiences, reinforce achievements, and devise innovative solutions for shared challenges. Such collaboration can empower African states to overcome existing obstacles, hastening the practical realization of Article 9.<sup>41</sup> It must be noted however that even though the Maputo Protocol was conceived as an extension of the African Charter rather than a response to CEDAW, it naturally draws comparisons with CEDAW. Unlike CEDAW, the Protocol articulates a more explicit stance on issues particularly relevant to African women, contextualizes CEDAW within the African setting, and addresses certain challenges resulting from the pursuit of global consensus during the adoption of CEDAW.<sup>42</sup>

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<sup>37</sup>Op cit note 10

<sup>38</sup>Fredman 'Beyond the dichotomy of formal and substantive equality: towards a new definition of equal rights' in I Boerefijn et al (eds) *Temporary special measures: accelerating de facto equality of women under article 4(1) UN Convention on the Elimination of All Forms of Discrimination Against Women* (2003) 111.

<sup>39</sup>T Thabane & M Buthelezi *Bridging the gap between de jure and de facto parliamentary representation of women in Africa*' (2008) 41 *Comparative and International Law Journal of Southern Africa* 175-176

40Ibid

<sup>41</sup>Owiso, R., & Sefah, B. (2017). *Actualising Women's Participation in Politics and Governance in Africa: The Case of Kenya and Ghana*. *African Human Rights Yearbook (AHRY)*, 1, 263-289.

<sup>42</sup>Frans Viljoen, *An Introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, 16 *Wash. & Lee J. Civ. Rights & Social Justice*. 11 (2009). Available at: <https://scholarlycommons.law.wlu.edu/crsj/vol16/iss1/4>

Of importance, the Protocol emphasizes the private sphere as a crucial arena for realizing rights and underscores the importance of positive action.<sup>43</sup> A compelling example is the *Ts'epe v. The Independent Electoral Commission* case, demonstrating how international human rights law effectively supported a legal argument in a national court and clarified ambiguities in domestic law. The case involved a challenge to Lesotho's Election Act, which reserved one-third of council election seats for women. A male voter contended this violated his right to equality, urging the court to declare the relevant provisions unconstitutional.<sup>44</sup> Relying on Lesotho's international obligations, including CEDAW, and the SADC Declaration on Gender and Development, the Lesotho Court of Appeal endorsed a substantive equality approach, affirming the constitutionality of the electoral quota thereby promoting political participation of women in elections and electoral processes.

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<sup>43</sup>*Ibid*

<sup>44</sup>*Ts'epe v. The Independent Electoral Commission and Others*, 2005 AFR. HUM. RTS. L. REP. 136, 136 (Lesotho Ct. App. June 2005), available at [http://www.chr.up.ac.za/centrepublishations/ahlr\\_2005.html](http://www.chr.up.ac.za/centrepublishations/ahlr_2005.html)

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### 3.3 SADC Protocol on Gender and Development

The SADC Protocol on Gender and Development was adopted in 2008. The Protocol intersects with the Maputo Protocol in addressing specific aspects of domestic law, encompassing constitutional rights and legislative adoption. More specifically, six primary objectives of the SADC Gender Protocol are clearly articulated, being the development and implementation of gender responsive legislation, policies and programmes to (i) eliminate discrimination and achieve gender

equality;<sup>45</sup> (ii) harmonise and co-ordinate the implementation of the various obligations imposed by the instruments to which SADC member states have subscribed;<sup>46</sup> (iii) address emerging gender issues and concerns and fill gaps where existing treaties are inadequate or insufficient;<sup>47</sup> (iv) set realistic, measurable targets, time frames and indicators for achieving gender equality and equity;<sup>48</sup> (v) strengthen, monitor and evaluate the progress made by the member states towards reaching the targets and goals set out in the Protocol;<sup>49</sup> and (vi) deepen regional integration, attain sustainable development and strengthen community building.<sup>50</sup>

Together with the SADC Gender Protocol occasionally express these provisions more eloquently. However, differences are apparent, ranging from subtle nuances to more significant distinctions. Notably, the SADC Gender Protocol introduces a dedicated section on affirmative action, while the Maputo Protocol incorporates "affirmative action" and "positive action" for specific rights.<sup>51</sup> In this regard articles 12 and 13 of the revised SADC Protocol on Gender and Development are apt. The provisions mandate state parties to "ensure equal and effective representation of women in decision-making positions in the political, public and private sectors including through the use of special measures as provided for in Article 5", which says: "State Parties shall put in place special measures with particular reference to women in order to eliminate all barriers which prevent them from participating meaningfully in all spheres of life and create a conducive environment for such participation."

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<sup>43</sup>Ibid

<sup>44</sup>*Ts'epe v. The Independent Electoral Commission and Others*, 2005 AFR. HUM. RTS. L. REP. 136, 136 (Lesotho Ct. App. June 2005), available at [http://www.chr.up.ac.za/centrepublishings/ahrlr\\_2005.html](http://www.chr.up.ac.za/centrepublishings/ahrlr_2005.html)

<sup>45</sup>Article 3(a) of SADC Gender Protocol

<sup>46</sup>Article 3(b) of the SADC Gender Protocol

<sup>47</sup>Article 3(c)

<sup>48</sup>Article 3(d)

<sup>49</sup>Article 3(e)

<sup>50</sup>Article 3(f)

<sup>51</sup>Supra note 68

Article 12 also says, "State Parties shall ensure that all legislative and other measures are accompanied by public awareness campaigns which demonstrate the vital link between the equal representation and participation of women and men in decision-making positions, democracy, good governance and citizen participation." Therefore, through the SADC Protocol, member States should be committed to place gender equality and women's empowerment on the top agenda. Article 13 further enjoins State parties to adopt specific legislative measures and other strategies to enable women to have equal opportunities with men to participate in all electoral processes including the administration of elections and voting. Similarly, states must put in place policies, strategies and programmes to ensure the equal participation of women and men in decision-making." The Protocol challenges the patriarchal norms and cultures of decision-making structures. Measures that states can take include, law reform to create legal environment for women's participation, capacity-building and support structures for women in decision-making positions, strengthening structures to enhance gender mainstreaming, and "changing discriminatory attitudes and norms of decision-making structures and procedures." Without undertaking these measures, members would be violating their obligations under the revised SADC Protocol on Gender and Development.

It must be noted further that while the Maputo Protocol highlights gender considerations within law enforcement organs and advocates for equal representation for women on these organs, the SADC Gender Protocol extends these principles to apply in customary and traditional courts. A distinctive aspect of the SADC Gender Protocol is its establishment of specified targets, striving for realistic and measurable goals with set time frames. Notably, it sets targets for decision-making positions,

aiming for at least fifty percent of such positions to be held by women by 2015. This target was not met as already stated above. Concerning reporting obligations, states party to the SADC Gender Protocol must submit biennial progress reports on implementation to the SADC Executive Secretary. Despite a promise of more focused reporting, the politicized nature of the process may impact its effectiveness. Striking a balance between brevity and comprehensiveness in reporting guidelines is crucial, as current guidelines under the African Charter struggle to achieve this balance.<sup>52</sup>



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<sup>52</sup>Malcolm Evans & Rachel Murray, The State Reporting Mechanism of the African Charter, in THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS: THE SYSTEM IN PRACTICE 1986-2006 49, 52-57 (Malcolm Evans & Rachel Murray eds., 2d ed.

## 4. African Charter on Democracy, Elections And Governance And How It Has Been Observed in Women's Political Participation.

The African Charter on Democracy, Elections and Governance was adopted by member states of the African Union (AU) on January 30, 2007, to promote liberal democracy and human rights in Africa. It is the first binding document adopted by members of the African Union. Among its provisions are several aimed at combating unconstitutional regime changes, including the first legal instrument adopted by the AU acknowledging that constitutional coups are a form of unconstitutional regime change.<sup>53</sup> The charter has specific provisions which address gender equality an issue surrounding promotion of political participation of women in elections and electoral processes.

ACDEG's objectives, outlined in Chapter 2, pave the way for a gender-conscious approach to democratic governance by explicitly aiming to promote gender balance and equality in governance and development processes.<sup>54</sup> This commitment extends to both public and private institutions in Chapter 3,<sup>55</sup> challenging the perception that the private sphere is beyond the regulatory scope of states in relation to human rights. The Charter imposes explicit obligations on state parties, emphasizing the crucial role of gender parity in strengthening democratic governance in Africa.<sup>56</sup> It underscores the duty of states to ensure citizens enjoy their fundamental freedoms and human rights, rejecting any hierarchy of rights, especially concerning women's rights.

The ACDEG calls on state parties to eliminate all forms of discrimination, particularly those based on political opinion and gender,<sup>57</sup> and to adopt legislative and administrative measures to guarantee the rights of women and other marginalized groups.<sup>58</sup> Although ACDEG does not explicitly mention repealing or amending discriminatory laws, the provision to adopt measures for rights guarantees and discrimination elimination can be leveraged for pushing reforms. Furthermore, Article 10 reinforces the commitment to equality before the law, a fundamental precondition for a just and democratic society. The Maputo Protocol supports this by calling for the reform of discriminatory laws to promote and protect women's rights.<sup>59</sup>



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<sup>53</sup>Op cit note 2 at Article 2.

<sup>54</sup>Op cit note 15 at Article 2.11

<sup>55</sup>Ibid at Chapter 3

<sup>56</sup>Ibid at Chapter 4

<sup>57</sup>Ibid at Article 8.1

<sup>58</sup>Ibid

<sup>59</sup>Supra Note 5

## ACDEG PROVISIONS ON GENDER & POLITICAL PARTICIPATION OF WOMEN IN ELECTIONS AND GOVERNANCE POSITIONS

Art 3(6)	Promotion of gender equality in public and private institutions
Art 8(1)	State Parties shall eliminate all forms of discrimination, especially those based on political opinion, gender, ethnic, religious and racial grounds as well as any other form of intolerance
Art 8 (2)	State Parties shall adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons and other marginalized and vulnerable social groups.
Art 10 (3)	State Parties shall protect the right to equality before the law and equal protection by the law as a fundamental precondition for a just and democratic society
Art 21 (2)	Electoral Observer Missions shall take due cognizance of principles of gender equality
Art 29 (1)	State Parties shall recognize the crucial role of women in development and strengthening of democracy
Art 29 (2)	State Parties shall create the necessary conditions for full and active participation of women in the decision-making processes and structures at all levels as a fundamental element in the promotion and exercise of a democratic culture
Art 29 (3)	State Parties shall take all possible measures to encourage the full and active participation of women in the electoral process and ensure gender parity in representation at all levels, including legislatures
Art 31 (1)	State Parties shall promote participation of social groups with special needs, including youth and people with disabilities in the governance process
Art 33 (6)	Equitable allocation of the nation's wealth and natural resources

The charter emphasizes gender equality in electoral observer missions,<sup>60</sup> providing impetus to engender the entire process through gender-responsive training, gender-specific questions, requiring gender-disaggregated data, and gender analysis. However, consistent application of these measures is still pending. State parties are urged to recognize the crucial role of women in development and strengthening democracy.<sup>61</sup> While this could be seen as an instrumental approach, questions arise about the nature of recognition and its effectiveness in advancing gender equality. Furthermore, the charter underscores its commitment to women's rights by advocating for an environment conducive to the full and active participation of women in decision-making processes at all levels. The Charter allows flexibility in interpretation, recognizing diverse contexts.

Concerning the electoral process, the ACDEG urges state parties to employ measures to promote women's active participation, emphasizing the need for gender parity in representation at all levels, including legislatures. Importantly, the Charter calls for parity rather than specifying a particular percentage of representation, aligning with the principles of the Maputo Protocol.<sup>62</sup>

Empowering women politically involves navigating a complex interplay of socio-cultural, economic, and political factors. ACDEG emphasizes the universality and interdependence of human rights, incorporating provisions for free and mandatory basic education and literacy, particularly for girls and women. States are encouraged to integrate measures that enhance women's socio-economic status into initiatives aimed at bolstering their political participation. Examples

include establishing day-care facilities in parliament, ensuring equal pay for equal work, and implementing progressive policies that grant women access, control, and ownership of resources.<sup>63</sup>

Both the Maputo Protocol and ACDEG acknowledge the interconnected nature of rights, calling on state parties to enact legislative and administrative measures that guarantee women's rights and provide equal opportunities. The explicit inclusion of literacy and education provisions demonstrates a recognition that overlooking these issues would inadvertently marginalize women from electoral processes. The charter, establishes a solid foundation and framework for member states, complementing existing policies and practices, notably those rooted in normative frameworks like the Maputo Protocol.<sup>64</sup> When states are obligated to ensure women's political rights the ACDEG underscores gender equality as pivotal for robust democratic governance. This commitment is reflected in provisions urging member states to facilitate women's full participation in democracy and governance processes (Articles 3.7, 8.2, and 29), demonstrating a conscious gender-oriented approach to governance. The Charter's focus on women's rights echoes prior instruments like the Maputo Protocol, it goes beyond by reiterating substantive political rights for women within a democratic governance context. This emphasis is noteworthy as the charter is not conventionally a women's rights instrument but reaffirms member states' dedication to women's empowerment.

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<sup>60</sup>Op cit note 20 at 21.2

<sup>61</sup>Ibid at 29.1

<sup>62</sup>Ibid at 29.3

<sup>63</sup>Ibid at Article 43

<sup>64</sup>Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa ( Maputo Protocol )

The charter recognizes the intricate factors influencing women's political empowerment, acknowledging the interdependence of sociocultural, economic, and political elements. Emphasizing the universality of human rights, ACDEG addresses education and literacy,<sup>65</sup> equitable allocation of national resources,<sup>66</sup> and equality before the law. The charter stresses that efforts to enhance women's socio-economic and legal status must accompany endeavours to increase political participation. Specific examples include introducing day-care facilities in parliament, ensuring equal pay for equivalent work, and implementing policies for women's access, control, and ownership of resources. These are some of the essential recommendations that are imperative in addressing systematic and structural barriers to political participation of women, realization of gender equality and parity in elections and governance for women.

## 4.1 Implementation of ACDEG in SADC and Emerging Opportunities

Despite the inclusion of various provisions in ACDEG addressing women's political rights, their practical application faces challenges, rendering these commitments essentially ineffectual. The charter stresses the importance of state parties aligning national laws with the Charter, fostering political will, and increasing awareness about ACDEG.<sup>67</sup> While the AU Commission is encouraged to establish benchmarks for compliance assessment, these benchmarks are yet to be developed.

The responsibility for implementing and monitoring ACDEG lies with Regional Economic

Communities (RECs), tasked with boosting support through extensive stakeholder participation, especially involving civil society organizations. However, the consequences of non-compliance outlined in ACDEG are confined to perpetrators rather than state parties and limited to unconstitutional changes of government, leaving other areas without specific sanctions.<sup>68</sup> AU member states must take concrete actions to implement ACDEG and other AU shared values instruments addressing women's rights comprehensively. These measures should recognize the interconnected nature of rights across social, political, and economic dimensions. Overcoming structural barriers to women's political participation and aligning shared values with national and local norms are crucial for substantial change. Regular reporting on these initiatives is essential for monitoring progress and sharing insights.<sup>69</sup>

Continental and regional institutions, especially the AU and RECs, should play a key role in supporting the effective implementation of ACDEG. This involves offering technical assistance to member states, promoting the Charter among gender machineries, civil society, and women's rights organizations, and incentivizing reporting and compliance to expedite implementation and monitoring.<sup>70</sup> It is evident that the Charter's potential for advocacy purposes remains underutilized. Women's rights advocates, practitioners, organizations, and gender machineries should capitalize on ACDEG's substantial provisions. Successfully implementing ACDEG's clauses on women's political rights requires collaborative efforts among stakeholders at different levels, resource pooling, and advocating for the universal ratification, domestication, and implementation of the Charter to fully realize its potential.<sup>71</sup>

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<sup>65</sup> Op cit note 3

<sup>66</sup> Article 33 (6) of the African Charter on Democracy, Elections and Governance

<sup>67</sup> Op cit Note 28 at Article 44

<sup>68</sup> Supra note 21

<sup>69</sup> Ibid

<sup>70</sup> Ibid

<sup>71</sup> Ibid

*The Actions Pour la Protection Des Droits De L'Homme (APDH) v Cote D'Ivoire* ruling set a precedent, allowing cases based on Charter violations to be taken to court.<sup>72</sup> In this case, a non-governmental entity (APDH) took the state to court by leveraging the state's utilization of Article 34(6), allowing direct access to the courts for individuals and Non-State Acts such as NGOs. Despite the limited adoption of this declaration by only eight member states, it acts as a possible channel for women's rights activists and organizations to pursue legal remedies. It's important to highlight that an AU organ or another member state also has the capacity to initiate legal proceedings in this context.<sup>73</sup> While direct access to courts is limited to the few states that have signed the relevant declaration, it serves as a potential legal recourse for women's rights activists and organizations.

The ACDEG state reporting process offers an avenue to monitor compliance with gender provisions. The Rules of Procedure and Guidelines for State Reporting mandate robust citizen engagement, particularly involving women, youth, and civil society. The initial efforts of the AGA Platform in this direction, including the development of youth and women engagement strategies, illustrate the commitment to inclusive participation.<sup>74</sup>

The Guidelines for State Reporting provide opportunities for women's engagement throughout the reporting process, emphasizing the inclusion of non-state actors. State parties must include information on the involvement of women's groups and minorities in compiling reports, encouraging active participation in the consultation process.

Women's rights organizations have opportunities to engage post-report submission through interaction with the AGA Platform. While limitations exist, such as the requirement for non-state actors to be members of ECOSOCC, avenues for engagement, including dialogues with the state party under review, are available.<sup>75</sup>

Although the engagement of civil society and women's rights organizations depends on the discretion of state parties and AGA Platform members, the existing provisions in the Rules of Procedure and Guidelines provide a foundation for meaningful participation throughout the state reporting and review process.<sup>76</sup> The effectiveness of these provisions will become clearer as more state reports are submitted and reviewed in the future.

The charter, as expounded in this exploration, presents numerous channels for advancing and safeguarding the political rights of women, especially when considered in conjunction with existing instruments for women's rights. The Charter underscores the imperative need for active participation, representation, and leadership of women in African governance and decision-making realms. With its state reporting process, it establishes a robust groundwork for advocating substantive engagement rather than mere symbolic gestures from women and women's rights groups, ensuring accountability for the various provisions addressing women and girls.

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<sup>72</sup>African Court on Human and People's Rights (ACHPR) Judgement (18 November, 2016) Matter of Actions Pour la Protection Des Droits De L'Homme (APDH) V. Republic of Cote D'Ivoire. Application 001/2014.

<sup>73</sup>Ibid

<sup>74</sup>Musa R (2007) Women, Equality and African Human Rights System. online: (accessed: 23 June, 2018).

<sup>75</sup>Ibid Note 30 at 156

<sup>76</sup>Ibid

Member states of the African Union must take concrete steps to put into action the ACDEG and other AU shared values instruments that focus on advancing women's empowerment.<sup>77</sup> These measures should be comprehensive, recognizing the interconnected nature of rights across social, political, and economic realms. Effecting substantial change necessitates state actors addressing the structural barriers to women's political participation and aligning these shared values with norms and practices at both national and local levels. Regular reporting on these actions is vital for effective monitoring and sharing valuable insights. Continental and regional institutions, particularly the African Union and Regional Economic Communities (RECs), should play a pivotal role in ensuring the successful implementation of ACDEG. This involves providing technical support to member states, promoting the Charter among member states, gender machineries, civil society, and women's rights organizations, and incentivizing reporting and compliance to expedite implementation and monitoring.<sup>78</sup>

While it is premature to measure the impact of ACDEG on advancing women's political rights, given the early stage of state reporting and the limited time since its enforcement, further research in this less-explored area will be vital for shaping policy and practice. AU member states must take tangible steps to implement ACDEG and other AU shared values instruments that champion women's empowerment. These actions should be comprehensive, recognizing the interconnected nature of rights across social, political, and economic dimensions. Addressing structural barriers to women's political participation and aligning shared values with national and local norms and practices are imperative. Regular reporting on these steps will facilitate monitoring and the exchange of comparable lessons. Moreover, continental and regional institutions, such as the AU and RECs, should play a central role in ensuring ACDEG's

effective implementation by providing technical support to member states, promoting the Charter, and incentivizing reporting and compliance to expedite implementation and monitoring.



It is evident that the advocacy potential of the Charter has not been fully harnessed. Women's rights activists, practitioners, organizations, and gender machineries should leverage the substantial provisions of ACDEG outlined in this paper. Achieving effective implementation of ACDEG's provisions on women's political rights necessitates collaborative efforts among relevant stakeholders at multiple levels, pooling necessary resources, and fostering universal ratification, domestication, and implementation of the Charter. Only through such concerted efforts can the full potential and promise of ACDEG be realized.

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<sup>77</sup>Ibid Note 37

<sup>78</sup>Ibid

## 4.2 Socio-political context in the implementation of the ACDEG

The effective enforcement of the ACDEG relies on specific socio-political conditions. From a realist perspective, the interests of influential states, notably the major contributors to the AU budget—South Africa, Nigeria, Algeria, Egypt, and Libya—play a pivotal role.<sup>79</sup> Among them, only South Africa, Nigeria, and Algeria have ratified the ACDEG, and none allows direct access by individuals and NGOs to the ACHPR. The backing of these states is crucial for binding weaker states to the system and sharing the costs of enforcement.<sup>80</sup>



Moreover, the success of implementation is tied to the quality of governmental regimes, with rule-of-law systems being more inclined to honour international agreements compared to authoritarian regimes. Given the ACDEG's focus on democracy, human rights, and the rule of law, a genuine commitment from states is imperative.<sup>81</sup> Conflict dynamics also influence implementation, with more stable and post-conflict states being better positioned, despite potential capacity challenges.

It is evident that there is a clear significant variation in ACDEG implementation, emphasizing the need for a convergence of favourable contextual factors. No single factor guarantees full operationalization, highlighting the intricate nature of these dynamics.<sup>82</sup> This complexity suggests a promising area for further empirical study, exploring economic, cultural, and other elements that shape the actual implementation of the ACDEG.



<sup>79</sup>While the focus here lies at the continental level, similar trends have been discussed in a more general “international” sense. See, for example, J Goldstein, M Kahler, RO Keohane and AM Slaughter “Introduction: Legalization and world politics” (2000) 54/3 *International Organization* 385; D Kennedy *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (2016, Princeton University Press); and K Alter *The New Terrain of International Law: Courts, Politics, Rights* (2014, Princeton University Press). The framework of legalization, technocratization and judicialization is inspired by the concept of “regional constitutionalism”, developed by Cebulak and Wiebusch, which draws on a similar structure to explore and interrogate possible tensions and channels of interaction between regional organizations and constitutional law; see P Cebulak and M Wiebusch “Comparative regional constitutionalism: Towards a research agenda” (paper presented at the International Society of Public Law (ICON·S) Conference on Borders, Otherness and Public Law, Berlin, 17–19 June 2016).

<sup>80</sup>Ibid

<sup>81</sup>For an analysis of the influence of regime types (liberal vs illiberal democracies) on the implementation of ACDEG, see U Engel “The 2007 African Charter on Democracy, Elections and Governance: Trying to make sense of late ratification and non-implementation of compliance mechanisms” (2019) *Africa Spectrum* (forthcoming).

<sup>82</sup>Ibid

### 4.3 Legal Context in implementation of the ACDEG

Numerous legal elements, spanning normative, institutional, and procedural dimensions, will play a pivotal role in shaping the implementation of the ACDEG. Normative aspects encompass the binding nature of rules and the specific subjects they address.<sup>83</sup> Achieving full continental implementation of the ACDEG hinges on widespread ratification by all AU member states, with progress made as 17 out of 23 signatory states move towards this goal. Anticipated variations in implementation across diverse policy issues highlight the multifaceted nature of the ACDEG's impact.<sup>84</sup>

Institutional factors, notably capacity challenges in financial, technical, and human aspects within member states and AU institutions, present hurdles to crucial aspects of ACDEG implementation, such as ratification processes and fulfilling treaty obligations.<sup>85</sup> Although state reporting may face challenges, the ACDEG empowers the AU Commission to provide essential technical support, potentially mitigating national capacity constraints.

Procedural considerations, including access rules, hold significant weight in the implementation process. Access rules not only influence the credibility of observation missions but also impact enforcement mechanisms, with the effectiveness of the ACHPR constrained by limited jurisdiction acceptance and restricted direct access for individuals and NGOs.

In essence, the convergence of normative, institutional, and procedural factors collectively defines the trajectory of ACDEG implementation, necessitating collaborative efforts to overcome challenges and establish a comprehensive continental accountability framework.<sup>86</sup>



<sup>83</sup>Article 12 of the Vienna Convention

<sup>84</sup>Policy brief on the 10th anniversary of the African Charter on Democracy, Elections and Governance" (2017) at 8, available at: <<https://www.uantwerpen.be/images/uantwerpen/container2673/files/PolicyBrief-AfricanCharter.pdf>>

<sup>85</sup>Ibid

<sup>86</sup>M Evans and R Murray "The state reporting mechanism of the African Charter" in M Evans and R Murray (eds) *The African Charter on Human and Peoples' Rights: The System in Practice 1986–2006* (2008, Cambridge University Press) 49.

## 4.4 Statistical Data Collection on Political Participation of Women

Advancements in African democracies are evident through the increased inclusion of historically marginalized sectors. Notably, the engagement of women in public spheres has witnessed a significant upswing, driven by initiatives such as campaigns advocating for electoral quotas.<sup>87</sup> Many African nations have experienced a purposeful drive to elevate women's representation in decision-making bodies, resulting in substantial achievements. Rwanda stands out with the highest global proportion of women in Parliament, constituting two-thirds of its members.<sup>88</sup>

Seychelles, Senegal, and South Africa also demonstrate notable figures, with at least 40 percent women serving as Deputies. This reflects a successful strategy employed by women's movements to champion for quotas. Furthermore, sub-Saharan Africa stands alone as the sole sub-region to have doubled the percentage of elected women in national parliaments within a decade.<sup>89</sup> Educational progress further underscores these advancements, with a significant reduction in the number of girls out of school, indicating a positive shift towards gender parity in primary school enrolments across numerous African countries.

The ACDEG gender barometer is a very significant civic technology tool that is essential in assessing the extent to which the ACDEG promotes and protect the rights of women in political participation in elections, democracy and governance. This measurement tool goes beyond existing accountability instruments, focusing exclusively on ACDEG and its gender-related clauses. It encompasses the 36 countries that are official parties to the Charter. All metrics

are derived directly from ACDEG's provisions, corresponding to specific articles within the Charter. In essence, the barometer consolidates data from diverse tools and datasets to offer a comprehensive evaluation.



The assessment relied on the 2022 Inter-Parliamentary Union index for women in parliament. To account for the IPU index's separation of lower and upper houses, figures were manually combined for Algeria, Cameroon, Cote D'Ivoire, Ethiopia, Kenya, Liberia, Lesotho, Madagascar, Namibia, Nigeria, Rwanda, South Africa, and South Sudan. No data was available for Sahrawi Democratic Arab Republic, and Sudan's parliament is currently suspended.<sup>90</sup> Concerning heads of state or deputy heads, Zambia's former Vice President, Inonge Wina, served from January 2015 to August 2021, succeeded by HE Mutale Namulango. Gambia's Vice President Isatou Touray has held the position since March 2019. Ethiopia stands out as the only state with a current female head of state, HE Sahle-Work Zewde.<sup>91</sup>

<sup>87</sup> Supra note 7 at 34

<sup>88</sup> Ibid

<sup>89</sup> Ibid

<sup>90</sup> <https://www.ipu.org/resources/publications/infographics/2023-03/women-in-politics-2023>

<sup>91</sup> Ibid

For literacy rates of women above compulsory school age, UNESCO's data set on adult female literacy rates, primarily from 2018, was utilized. Some countries had more recent data, such as Cote D'Ivoire, South Africa, and Togo (2019), while others, like Ethiopia, Liberia, Mauritania, Mozambique, had data from 2017.<sup>92</sup> Earlier data included Chad (2016), Gambia, and Malawi (2015), while Angola, Djibouti, Guinea Bissau, and Lesotho lacked available data. Compulsory free education for girls was substituted with completion rates of primary school by girls, extracted from UNESCO's data set on completion rates by sex, mostly from 2020. Exceptions included Rwanda (2015) and Benin (2018), with no data available for Seychelles.<sup>93</sup>

Regarding special measures, IDEA's Gender Quota Database provided data, except for Chad, Comoros, Gambia, Ghana, Guinea-Bissau, Madagascar, Nigeria, Seychelles, and Zambia. In Zimbabwe for instance, the parliament consists of two chambers, employing both voluntary and legislated quotas for gender representation. In the National Assembly, 31% of the 270 seats are held by women. Constitutional Article 124-b stipulates that, for the first four Parliaments following the effective date, an additional sixty women members will be introduced.<sup>94</sup> These members, six from each province in Zimbabwe, will be elected through a party-list proportional representation system based on votes cast for political party candidates in the general election for constituency members in the respective provinces.

This change will expand the total number of members in Zimbabwe's parliament from 210 to

270.<sup>95</sup> In comparison with Mozambique it is explicit that there is more political participation of women in governance positions in this country. This is substantiated by the fact that Mozambique operates with a Unicameral parliament, the Assembleia da Republica, where 42% of the 250 seats are held by women, facilitated by voluntary party quotas in place since 1994. The FRELIMO party, currently holding 191 seats, enforces a policy mandating 40% of candidates for the national assembly and local government to be women.<sup>96</sup> This quota system also emphasizes a balanced gender distribution on candidate lists. The National Council, comprising 120 members elected by Congress, adheres to the principle of provincial and gender representation during the election process, as outlined in Article 28 (2) of the Party Statutes.<sup>97</sup>

For the ratification of global and continental instruments, all countries except Sudan ratified CEDAW. Algeria, Ethiopia, Lesotho, Mauritania, and Niger ratified with reservations. Except for CAR, Chad, Madagascar, Niger, Sahrawi Arab Democratic Republic, South Sudan, and Sudan, all countries are state parties to the Maputo Protocol.

Data on women in ministerial positions was derived from IPU and UN Women's Women in Politics 2021 mapping (as of January 1, 2021). Data on women in local government and access/ownership of land originated from UN DESA's data sets, mainly from 2018.<sup>98</sup> Exceptions included Cameroon (2020), Algeria, Ghana, Lesotho, Malawi, Rwanda, and Zambia (2019), and Malawi (2020). Chad, Lesotho, and Rwanda's data was from 2014.

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<sup>92</sup>[https://www.unesco.org/gem-report/en/literacy-adult-learning?TSPD\\_101\\_R0=080713870fab2000944a212e404aa98bad76075ce8a11c6d476f7d3cf60e0fd95d785cf8876fe03508a28d06f91430008d31c9abb30468ca8c4112a9eabe49b1c475ddd88809b1ec7d21d8ef83c810734237107d97c051dd68373422c708c5bd#:~:text=Between%202000%20and%202020%2C%20the,many%20countries%2C%20especially%20among%20women.](https://www.unesco.org/gem-report/en/literacy-adult-learning?TSPD_101_R0=080713870fab2000944a212e404aa98bad76075ce8a11c6d476f7d3cf60e0fd95d785cf8876fe03508a28d06f91430008d31c9abb30468ca8c4112a9eabe49b1c475ddd88809b1ec7d21d8ef83c810734237107d97c051dd68373422c708c5bd#:~:text=Between%202000%20and%202020%2C%20the,many%20countries%2C%20especially%20among%20women.)

<sup>93</sup> Ibid

<sup>94</sup> <https://www.idea.int/data-tools/data/gender-quotas-database/country?country=250>

<sup>95</sup> Ibid

<sup>96</sup> Ibid

<sup>97</sup> Ibid

<sup>98</sup> Op cit note 42

The Inter-Parliamentary Union (IPU) compiles extensive global legislative data, revealing that a mere 22 countries worldwide have women leading as heads of state or government. In a symbolic role, Ethiopia's Hon. Sahle-Work Zewde serves as the first female President. As of January 2020, the average percentage of women ministers across Africa stands at 21.45%.<sup>99</sup> Amid the COVID-19 pandemic, Africa saw 13 female Health Ministers, including nine qualified medical doctors. Notable disparities exist in women's representation, with Ethiopia achieving a 50/50 gender-balanced cabinet in 2018. Following suit, Rwanda and other nations now boast 53.6% women ministers.<sup>100</sup> Various African countries, such as Burundi, Kenya, Rwanda, and South Sudan, mandate quotas for executive positions.

The average percentage of women in African parliaments is 22.5%, indicating significant diversity. Rwanda leads globally with the highest percentage of women MPs. Notably, only a few African legislatures have over 5% of MPs under 30 years old. Attention is shifting to women's roles in local government, with 27 African countries implementing quotas, 12 having legislated political party quotas, and 15 reserving seats.<sup>101</sup> This aligns with SDG Target 5.5, emphasizing women's engagement in local government. Overall, these endeavours showcase a multifaceted approach to bolster gender inclusivity in African political arenas.<sup>102</sup>

## 4.5 Data Gaps on Political Participation of Women

While some institutions have curated

repositories for data on WPP, it is important to note that there is a gap in disaggregated data on WPP. This poses a significant challenge across most AU Member States, hindering effective monitoring of ACDEG, SDGs and regional gender equality commitments. The current data collection efforts, primarily by the IPU, provide valuable insights, but there's a crucial need for more detailed information, especially concerning age and sex disaggregation.<sup>103</sup> At the nation level and SADC level, efforts should focus on systematically collecting and publishing data on candidates and winners, ensuring disaggregation by sex and age following elections. Electoral observation missions, whether coordinated by the AU, RECs, UN, or other partners, are encouraged to collaborate with national Electoral Management Bodies (EMBs) to collect and publish disaggregated electoral data, including specific breakdowns for sex and age. Additionally, involving young women in these mission teams can enhance insights and contribute to more inclusive analysis and reports.<sup>104</sup>

Political governance and electoral assistance programs should integrate support for the collection and publication of disaggregated statistics on Young Women's Political Participation (YWPP). Regional initiatives, such as the African Gender Scorecard, should enhance their data by including age disaggregation, enabling more targeted analysis of the unique challenges faced by young women.<sup>105</sup> These recommendations aim to address data gaps and promote a more comprehensive understanding of women's political engagement, particularly among the youth.

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<sup>99</sup>2016 Gender Scorecard (Addis Ababa, Ethiopia, 2017) [https://au.int/sites/default/files/documents/36204-doc-agenda2063\\_popular\\_version\\_en.pdf](https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf)

<sup>100</sup>Ibid

<sup>101</sup>Ibid

<sup>102</sup>Ibid

<sup>103</sup><https://africa.unwomen.org/sites/default/files/Field%20Office%20Africa/Attachments/Publications/2021/09/2020%20-%20YWPP%20Working%20Paper%20A4%20Final%20TY.pdf>

<sup>104</sup>Ibid

<sup>105</sup>Supra note 67 at 18

# 5. ACDEG and continental Institutions promoting WPP

## 5.1 SADC Institutions promoting WPP

The SADC has established key bodies and platforms to advance gender equality and women's rights in the SADC region. The SADC Gender Unit is one of the key mechanism and focus points to elaborate a policy and institutional framework for gender mainstreaming at national and regional levels within the SADC Region; provide advisory and technical services to SADC institutions, Sector Coordinating Units (SCUs), as well as to member states. The focal point for the SADC Gender Unit is tasked with co-ordinating and catalysing activities of gender mainstreaming and gender and development programmes of SADC institutions, NGOs, Civil Society Organisations and the Private Sector; and promote a culture of Gender Equality in the SADC Region.<sup>106</sup> The Gender Unit works in collaboration with the Advisory Committee consisting of one representative from Government and one member from the Non-Governmental Organisations in each member state whose task is to advise the Standing Committee of Ministers and other Sectoral Committees of Ministers on gender issues.

## 5.2 African Union Institutions for promoting WPP

The AU has established key bodies and platforms to advance gender equality and women's rights, particularly focusing on young women's political participation. The AU Commission's Women, Gender, and Development Directorate (WGDD) serves as a focal point for advocacy within the AU and Member States, emphasizing the need for increased participation of young women in leadership roles.<sup>107</sup> The Human Resources, Science & Technology Department (HRST) coordinates AU programs on human resource development, education, science, and technology, providing opportunities for young women's priorities in advocacy.

The AU appointed its first Special Envoy on Youth, Aya Chebbi, in 2018, aiming to represent and advocate for African youth voices within AU decision-making bodies. The AU Office of the Special Envoy on Women, Peace, and Security amplifies women's voices in peace and security matters, addressing the unique vulnerabilities of young women in conflict and post-conflict situations.<sup>108</sup>

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<sup>106</sup> <https://www.sadc.int/directorates-and-units/gender-unit>

<sup>107</sup> Op Cit note 89

<sup>108</sup> Ibid

### 5.3 Promoting WPP and in electoral processes through Civic Technology

Across SADC the landscape of democracy is undergoing a digital transformation. Civic technology, an umbrella term encompassing digital tools and platforms designed to promote citizen engagement and government accountability, is playing a crucial role in amplifying the voices and participation of women in elections and democratic processes. Civic technology can serve as a bridge, connecting women to critical information, fostering collaboration, and empowering them to overcome traditional barriers to political participation. The historical underrepresentation of women in SADC's political arenas is a complex issue rooted in societal biases, limited access to resources, and inadequate information about electoral procedures. These barriers disproportionately affect women in rural areas, those with lower levels of education, and those facing cultural or linguistic constraints. However, civic technology has emerging as a potent force for change. Several countries have adopted a variety technological solution in a bid to make elections more efficient, more cost-effective and to strengthen stakeholder trust at each stage of the electoral cycle. The solutions range from the use of geographic information systems to conduct boundary delimitation and the establish polling stations; the use of sophisticated databases to maintain the voter registry; the use of mobile technology for the transmission of election results; and the use of electronic voting machines for citizens to cast their ballots.

According to IDEA, biometric technology now plays a large role in a number of electoral processes around the world during voter registration as well as during the identification of prospective voters at the polling station on election day.

The introduction of information and communications technologies (ICT) into the electoral process is generating both interest and concern among voters. One of the concerns is how civic technology could advance women's participation in electoral processes without exposing them to further victimisation online. The advantages of election-related technologies have been widely documented. For instance, one study on the use of election-related technologies in South Africa found that '... participants favoured EVT over the current paper-based system because of ...convenience of access, time saving, cost (transportation) and the effort it would take to vote.'<sup>111</sup>

One vital role of civic technology lies in bridging the information gap. Platforms like "SheVotesNamibia" and "ElectionsZW" have provide online voter education guides, candidate profiles, and voting procedures in local languages, empowering women to make informed decisions and navigate the intricacies of the electoral process. This accessibility is particularly crucial for marginalized communities, enabling them to claim their democratic right to participate. However, Dubow et al argue that '[t]he degree to which digital technologies can strengthen citizen participation in democratic processes depends on the ability of digital technologies to mobilise higher levels of engagement and action from citizens across a broader spectrum of society.'<sup>112</sup>

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<sup>111</sup>Achieng, M. & Ruhode, E., 2013, 'The adoption and challenges of electronic voting technologies within the South African context', *International Journal of Managing Information Technology (IJMIT)* 5(4),

<sup>112</sup>T Dubow et al 'Civic engagement: How can digital technologies underpin citizen-powered democracy?'



The Fund for African Women, launched in 2010 is a key mechanism for implementing programs dedicated to the African Women's Decade. It welcomes applications from youth and women's groups, aligning with the AU's gender equality objectives. The AU's commitment to operationalize the Youth Development Fund under the AU Youth Agenda 2063 (APAYE) emphasizes catalysing positive action in youth development and transformative change, with a focus on engagement with stakeholders.<sup>109</sup>

Encouraging collaboration among AU institutions responsible for youth and women's rights, there's a call for a joint action plan to promote young women's rights, emphasizing political participation. The guidelines for the Youth Development Fund should explicitly integrate gender equality, making supporting young women's political participation a priority with sex-disaggregated indicators for effective monitoring.<sup>110</sup>

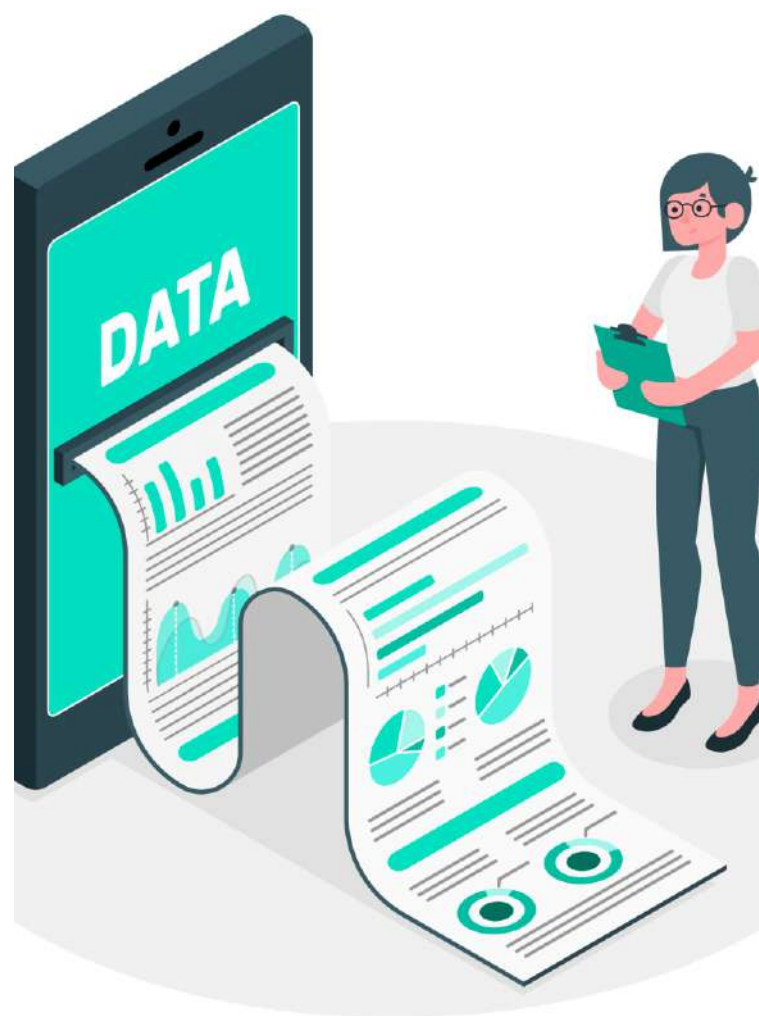
<sup>109</sup><https://www.sadc.int/directorates-and-units/gender-unit>

<sup>110</sup>Op Cit note 89

Civic technology also fosters collaboration and networking among women, creating vibrant online communities that transcend geographical boundaries. Platforms like "Women4Politics-Botswana" and "Young Female Politicians Network-South Africa" facilitate knowledge sharing, campaign strategies, and mentorship opportunities. These virtual spaces empower women to learn from each other, build solidarity, and amplify their collective voices, challenging the traditional male-dominated political landscape. Another typical example of a case study where digital technologies have been used to promote civic voter education was in the United States. In 2016 a voter outreach and education campaign called 'My Hope. My Voice. My Vote' placed full reliance of social media.<sup>113</sup> In order to inspire and encourage citizens to vote, the social media campaign used videos and messaging. The videos depicted voters discussing their voting experiences, illustrating 'how participating in the democratic process can hold very different, but positive feelings for each person'.<sup>114</sup> Citizens who participated in the social media campaign shared their personal perspectives on voting, and related their participation in the electoral processes with family connection and community history up to the present landscape. In addition, this campaign provided 'important dates, deadlines, and other useful statewide-voting information in a positive, approachable, consumer friendly way to ensure that women and young voters or candidates are not intimidated. Therefore, there is wealth of evidence illustrating that civic technology offers tools to combat misinformation and gender-based violence, two persistent threats to women's political participation. Platforms like "PolitLeaks Kenya" and "SheDecides Zimbabwe" have also allowed women to report instances of online harassment and hate speech

targeted towards female candidates, creating a safer and more inclusive environment for political engagement. In the 2019 South African elections, the "Get2PollSA" platform registered over 200,000 new voters, many of them young women, while "Uchaguzi" in Tanzania observed and reported irregularities in the 2020 elections, ultimately influencing electoral reforms.

Similarly, fact-checking initiatives and online reporting tools help counter misinformation and fake news, ensuring that women can participate in elections based on accurate and reliable information.



<sup>113</sup> G Pillsbury 'Voter engagement toolkit for community foundations' (2018) 19

<sup>114</sup> Ibid

Civic technology also promotes transparency and accountability within the electoral process. Open-source tools like "Results-Watch Tanzania" enable citizen-led data analysis and verification of election results, fostering trust and preventing potential fraud. This increased transparency empowers women to hold authorities accountable and advocate for fair and inclusive elections. However, the road to digital empowerment is not without its challenges. While the use of information and communication technologies (ICTs) presents women politicians with an opportunity to hold virtual meetings, briefings and campaign events to reach their constituencies, it can also be a barrier to women participating effectively in decision-making.<sup>115</sup> Digital literacy and internet access remain obstacles for some women in SADC, particularly in rural areas. The huge digital gender divide is in itself a huge obstacle for women to leverage on technology. According to World Wide Web Foundation, men remain 21% more likely to be online than women, rising to 52% in the world's least developed countries.<sup>116</sup> Access to the internet is essential to human development, and the UN 2030 Agenda 'recognised the spread of ICTs and global interconnectedness as having great potential to accelerate human progress, reduce inequalities and develop knowledge-based societies'.<sup>117</sup> In order to develop an active and informed citizenry and to foster meaningful political participation in the democratic process before, during and after elections, civic voter education could be conducted on a continuous basis through online platforms.<sup>118</sup> Accessibility and the usage of digital devices play an important role in promoting active participation in the democratic process.

While civic technology provides an opportunity to promote WPP and representation in leadership positions, the role of civic technologies as safe spaces for expression, support, and access to critical information, is being undermined by increasing levels of online violence and cyberbullying, and is a deterrent to women participating in online spaces. According to the Inter Parliamentary Union (IPU) social media is the main channel for psychological violence against women politicians. Gender-based online violence and targeted misinformation campaigns highlight the need for ongoing security measures and awareness campaigns. Evidence of the persistent digital divide in Africa treads on historical social inequalities, and it widens the gap between the poor and the rich.<sup>120</sup>



<sup>115</sup> Women's Political Participation, Africa Barometer 2021 p 25

<sup>116</sup> Worldwide Web foundation, Women's Rights Online - Closing the digital gender gap for a more equal world, October 2020, pp. 2, <https://webfoundation.org/research/womens-rights-online-2020/>

<sup>117</sup> A Gillwald & O Mothobi 'After access 2018: A demand-side view of mobile internet from 10 African countries' April 2018

<sup>118</sup> ACE Electoral Knowledge Network 'CVE' (2020),

<sup>119</sup> Inter-Parliamentary Union, IPU Study reveals widespread sexism, harassment and violence against women MP's, 2016 < <sup>116</sup> <https://www.ipu.org/news/press-releases/2016-10/ipu-study-reveals-widespreadsexism-harassment-and-violence-against-women-mps>>

<sup>120</sup> A Gillwald & O Mothobi ' A demand-side view of mobile internet from 10 African countries' April 2018

While women and the poor form part of the target groups of CVE, digital divide is primarily factored by poverty, with those at the bottom of the pyramid (women and the poor) being the most marginalised.<sup>121</sup> Simiyu noted that only 28,2 % of the African population has access to the internet, meaning that Africa has the lowermost mobile and internet penetration, quality, and affordability in the world.<sup>122</sup> At face value, Simiyu's analysis on digital solutions for African elections during the COVID-19 pandemic identifies the need for an information communication technology infrastructure, equal access to electricity, and digital literacy.<sup>123</sup> As a result, digital divide could have a detrimental effect on the feasibility of finding digital solutions for empowering voters in remote rural areas, especially women where access to technological infrastructure and equipment is distantly slim.

Despite these challenges, the potential of civic technology to revolutionize women's political participation in SADC is undeniable. By connecting women to information, fostering collaboration, and providing tools for accountability and safety, digital platforms are creating a more inclusive and equitable electoral landscape. SADC governments, civil society organizations, and technological developers must work together to bridge the digital divide, ensuring that women are not left behind in this digital wave of democratic transformation. Only then can we truly realize the promise of a SADC where women's voices are amplified, their

participation valued, and their contributions actively shape the future of the region. Thus, civic technology is not just a tool; it is a bridge, paving the way for a more equitable and representative democracy in SADC.

*By equipping women with the digital tools and platforms they need, we can empower them to overcome traditional barriers, claim their voices, and actively participate in shaping the future of their communities and nations. As we embrace the transformative power of civic technology, let us remember that a truly inclusive democracy can only be achieved when women stand shoulder-to-shoulder with men, their voices echoing strong and clear.*

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<sup>121</sup>Ibid

<sup>122</sup>MA Simiyu 'Digital solutions for African elections in the time of COVID-19' 22 April 2021, <https://africlaw.com/2020/04/22/digital-solutions-for-africanelections-in-the-time-of-covid-19/#more-1706>

<sup>123</sup>Ibid

## 6. Legal and Policy Gaps in Electoral laws within SADC

Electoral laws and systems play a huge role in promoting or inhibiting WPP and in electoral processes. Countries that have legislated PR and affirmative action for women's political participation, often referred to as Temporary Special Measures (TSM), have better chances of increasing WPP and promoting women representation than FPTP system. Without the right laws in policies and laws, women continue to be underrepresented in key decision-making structures. In the SADC, there are three main types of electoral systems that are applied and supported by National Constitutions or election specific legislation. These are; firstly; the Proportional Representation (PR) or "list system". Within this systems citizen vote for parties that are allocated seats in parliament according to the percentage of vote they receive. Individual candidates get in according to where they sit on the list. In an "open" list system, voters determine where candidates appear on the list. In a "closed" list system, the party determines where candidates appear on the list. This is usually based on democratic

nomination processes within the party. The second time is the Constituency or "First Past the Post" (FPTP) system, in which citizens vote not just for the party, but also for the candidate who represents the party in a geographically defined constituency. The weakness in this system is that a party can get significant percentage of the votes, but still have no representative in parliament, because in this system "the winner takes all". The third is a mixed system which combines both PR and FPTP. Where this happens, there is typically a higher proportion of women in the PR seats than in the FPTP. Quotas are more usually used in conjunction with the PR than with the FPTP system. While many countries in SADC use different systems, it is crucial to provide an exposition of SADC members' electoral laws and provide gaps that should be addressed to improve participation of women in electoral processes. The table below shows some legal and policy gaps requiring amendments across SADC countries to promote WPP.

Table 2: Legal and Policy Gaps in respect of WPP in electoral processes

COUNTRY	KEY LEGAL AND POLICY GAPS IN RE WOMEN PARTICIPATION IN ELECTORAL PROCESSES
ANGOLA	<p>Article 20 of the Electoral Act of 2004 directs that the law on political parties should encourage the promotion of equal opportunities and equity between men and women, as well as a gender representation of not less than 30 percent in the governing and directive bodies at all levels. However, no penalties for non-compliance and political parties get away with non-compliance</p>
BOTSWANA	<p>The Electoral Act Chapter 02:09 of 2012, the Local Government Act 2012 and the Referendum Act CAP 02:10 guide the electoral processes in Botswana. These laws do provide for special measures to facilitate women's representation. Botswana adopted the National Policy on Gender and Development in 2015 as a strategic guiding tool on gender interventions, and a National Gender Commission has been established to support the process towards an inclusive legislature. According to the national progress report, FPTP system which Botswana uses, it is adequate in ensuring that women fully participate in the electoral process. Only three women were elected under FPTP in the 2019 elections.</p>
	<p>The Comoros Constitution of 2018, Articles 32 and 33 provide citizens of Comoros with the right to participate in political life directly or through representatives freely elected; the right to access public functions and elective mandates "in conditions of equality and freedom", within the law; and Article 34 "recognizes and guarantees the youth and women the right to access political instances of local and national representation". Suffrage is universal, equal and secret, under Article 3. However, the country does not have quota system or temporary measures to promote women's participation in electoral processes</p>
DEMOCRATIC REPUBLIC OF CONGO	<p>DRC's National Constitution of the DRC (2006) mandates the state to ensure the equality of gender representation at all levels. In particular article 14 specifies that the State guarantees women equal participation in decision-making bodies. However, its Electoral Law (Law 06/006 of March 2006,13) has not been aligned to article 14 of the Constitution. There is therefore no consequence for non-adherence. According to its National progress report the measure to promote equality in gender representation is not effective because it is a statement of intent that is not applied to date. There are also no quotas or special measures to ensure representation by women.</p>

COUNTRY	KEY LEGAL AND POLICY GAPS IN RE WOMEN PARTICIPATION IN ELECTORAL PROCESSES
KINGDOM OF ESWATINI	<p>Articles 94 and 95 of the Constitution specifies that women “and other marginalized groups have a right to equitable representation in Parliament and other public structures.” There are also special measures and affirmative action in the National Constitution to ensure women's representation in parliament. Article 86 specifies that if after any general election it appears that women will not constitute at least 30 percent of the total membership of Parliament, the House shall form itself into an electoral college at its first sitting and elect 4 women from the four regions to the House of Assembly. The Women in the House of Assembly Act of 2018 to give effect to this. However, the constitutional quotas have not achieved their goal in the Lower Chamber, the House of Assembly, which has 59 members directly elected in constituencies using a FPTP electoral system</p>
KINGDOM OF LESOTHO	<p>Lesotho has a Mixed Member electoral system of FPTP and Proportional Representation. The legal framework is provided in the National Constitution (1993 and amendments) and the Electoral Act. One of the major issues in Lesotho has been the mixed proportional electoral system that's led to unstable coalitions and acrimony within political parties. The arrangement has resulted in infighting and floor-crossing rather than a representation of voters.</p>
MADAGASCAR	<p>Madagascar uses the FPTP electoral system as provided in the National Constitution of 2010. The electoral legislation contains no quotas or special measures to ensure representation by women or youth, and this could be addressed to improve WPP. However, Madagascar is in the process of adopting a Law on Gender Equality, and drafting a National Gender Policy to support gender parity.</p>
MALAWI	<p>The Constitution of Malawi provides for equality of all people and gender parity in the representation of women and men in the National Assembly. However, its elections are guided by the Parliamentary and Presidential Elections Act Chapter 2:01 which has no specific obligations for women's representation in politics and decision making. The Gender Equality Act is enforceable in the public sector and not in the National Assembly, and there are no special measures for women. Therefore, the commitments on promoting the participation of women in decision-making structures have limited enforcement mechanisms to address systemic or structural gender discrimination</p>
MAURITIUS	<p>Mauritius uses the FPTP electoral system for the National Assembly elections and a combination of FPTP with quotas for local elections. The National Assembly has 70 seats of which 62 are contested through the FPTP electoral system and 8 are filled by the Electoral Supervisory Commission using a complex formula to ensure representation of all ethnic communities, as specified in the Constitution (1968). There is however no electoral quotas or special measures to ensure representation by women.</p>

COUNTRY	KEY LEGAL AND POLICY GAPS IN RE WOMEN PARTICIPATION IN ELECTORAL PROCESSES
MOZAMBIQUE	<p>The Constitution in articles 35 and 36 enshrines the principle of equality that establishes equal rights of men and women. It Gender Policy also guides gender equality in the socioeconomic and political spheres, and the National Plan for the Advancement of Women is being implemented. Mozambique uses a PR system of party lists by province for election to the Assembly and there is no system of legislated quotas, but the three leading political parties with seats in the Assembly have adopted voluntary party quotas for women in leadership, and through the use of this system of voluntary political party quotas, there has been a significant increase in the participation of women in politics and in the Assembly. Mozambican case demonstrates the effectiveness of using a PR system combined with political party quotas system. The political party quota system could be strengthened if it is legislated.</p>
NAMIBIA	<p>The Constitution provides in article 10 for non-discrimination and equal treatment with regard to candidates and voters, and article 23 prescribes affirmative action. The Electoral Act 5 of 2014, which is under review, does not make specific provision for women's representation and should be amended. However, the Local Authorities Act specifies a 30 percent quota which is enforced by the electoral commission. Namibia also uses a PR system combined with voluntary party quotas for elections at national and local levels.</p>
SEYCHELLES	<p>Gender equality and political participation principles are enshrined in the Constitution of Seychelles through the Preamble and Chapter 3 on human rights and freedoms including political participation. However, the Constitution is gender neutral. There are also no constitutional or legislated quotas for women's representation, and political parties do not have voluntary quotas. Seychelles uses a Mixed Member System of primarily FPTP single-member constituency elections combined with additional PR seats based on the total national votes by party. PR system is gender neutral and not specifically to increase representation by women</p>
SOUTH AFRICA	<p>Political rights and equality are provided in the Constitution and its Bill of Rights, Section 9, and the PR electoral system is prescribed in the Constitution. The equality provision of the Bill of Rights makes a specific provision for affirmative action. The provisions are further expounded in the Electoral Act 73 of 1998, specifically Articles 26 and 27. However, implementation is inadequate because there are no penalty measures for non-compliance. The ruling party adopted voluntary quota while other parties have not. This could be strengthened by legislating the party quota system.</p>

COUNTRY	KEY LEGAL AND POLICY GAPS IN RE WOMEN PARTICIPATION IN ELECTORAL PROCESSES
TANZANIA	<p>The Constitution of the Tanzania provides for equal opportunities and rights in decision-making processes (Articles 21, 22) and non-discrimination (Article 13). It also prescribes that women must make up not less than 30 percent of Members of unicameral Parliament. The National Elections Act of 1985 says that all the seats in the National Assembly are contested, and Elections Regulations 2010 provide the modalities for single-constituency FPTP electoral system with an additional 30 percent seats for women members elected using a party list PR system. The Local Authorities Act prescribes the same mixed electoral system at local level. Tanzania therefore uses a Mixed electoral system in which the FPTP single constituency elections are freely contested by women and men, but 30 percent additional seats specifically for women are chosen by PR using party lists. This arrangement guarantees at least 30 percent seats for women in the national assembly, in addition to women who are directly elected in constituencies.</p>
ZAMBIA	<p>The Constitution of Zambia (1996) enshrines the principles of gender equality and representation in article 8 and in the Preamble. Amendment Act No. 2 of 2016 also provides that every citizen “man or woman” has equal rights of participation and building a sustainable political order freely. Article 45 enshrines gender equity in the National Assembly and Councils and places a constitutional duty to the Electoral Commission of Zambia to adopt measures that promote gender equity “and ultimately meet gender equality”. Article 68 mandates the President of the Republic to nominate up to eight members of the National Assembly, and Article 69 specifies gender as one of the considerations in doing so. Article 259 provides for all appointments to consider gender parity, and that nominations to public ofce must ensure 50 percent representation by men and women. However, these measures have not been effective” and provisions of the Constitution have not been fully adhered to. The FPTP has not helped women's representation, and the absence of a quota system in the Constitution worsens it, as does inadequate implementation or enforcement of constitutional requirements such as Article 45(1)(d) which provides principles for ensuring gender equity in the electoral system and process, and the lack of subsidiary legislation. In addition, the Electoral Act No 35 of 2016 and the Electoral Process Act of 2016 have no affirmative action or quotas for women. Thus Zambia's use the FPTP electoral system without affirmative action measures to promote women's representation has not effectively promoted WPP.</p>

COUNTRY	KEY LEGAL AND POLICY GAPS IN RE WOMEN PARTICIPATION IN ELECTORAL PROCESSES
ZIMBABWE	<p>The Constitution of Zimbabwe Amendment (No. 20) Act 2013 provides for equality, non-discrimination, and equal opportunities in political, economic and social activities, and sets a specific framework for this, including gender, age, disability and status. Section 80 provides that every woman has the right to “equal treatment including the right to equal opportunities in political, economic, cultural and social spheres”. Section 120 and 124 provide for a reserved quota of 60 seats for women in the National Assembly elected through proportional representation, and for election to the Senate through proportional representation. The use of this measure doubled women's representation in the National Assembly to more than 30 percent in the next two general elections, and in the Senate to 48 percent (2013) and 44.2 percent (2018) through the use of a “zebra” list in which women and men candidates are listed alternately, and lists are headed by a woman candidate. The 2013 Constitution makes provision for 210 members of the National Assembly to be elected in single-member constituencies using FPTP plus 60 additional seats reserved for women elected using the PR system, with six from each of the ten provinces based on the total votes cast in each province for each political party in the constituency elections, applicable for the life of two Parliaments. The constitutional amendment extended the PR quota for women for five years, the life of the next parliament. The amendment also included 10 seats for Youth elected under the PR system. However, one of the major gaps is that the Political Parties Finance Act makes no specific gender obligations.</p>

# 7. Conclusion and recommendations

## 7.1 Recommendations to States

- Domestication of international human rights and political instruments that include the CEDAW, Maputo Protocol, ACDEG, SADC Protocol on Gender and Development by alignment of electoral laws with these instruments to create environments for women to freely participate in electoral processes.
- Alignment of the electoral laws with constitutional provisions on gender, equality and for women's political participation
- Governments should reform laws and adopt mandatory Temporary Special Measures (TSM) with compliance and enforcement mechanisms. These are 'policies adopted and implemented to increase women's access to political participation and decision-making to overcome structural barriers that women face in male-dominated electoral politics Globally, the use of quotas has proved to be the most effective of the TSMs; however, to be effective, they require specific targets, rules and compliance and enforcement mechanisms.
- SADC Governments should effectively regulate political parties to ensure compliance with inclusivity, participation and gender responsiveness. Political parties can be legally obliged to ensure equal gender representation and participation as candidates in elections, and ensure that electoral management bodies are empowered to sanction political parties for failure to meet gender parity in party lists.
- Addressing and tackling violence against women in politics and elections through

developing deterrent sanctions. Violence against women in political spheres, particularly during electoral processes, serves as a significant obstacle to their active involvement in politics. Recent studies highlight a troubling trend where the increased representation of women in politics coincides with a surge in violence against them, encompassing harassment, media aggression, intimidation, sexual and physical violence, and, at its extreme, assassinations of women politicians exercising their political rights.<sup>124</sup> This phenomenon, known as violence against women in politics (VAWP), poses a formidable challenge to realizing women's political rights.

- Reforming political party finance legislation to ensure ease for women to public finance given that access affects women's ability to compete against opponents that have access to campaign finance and resources. Campaign finance legislation must promote women's meaningful participation in elections and politics, and it should be used to incentivise political parties to adhere to gender equality provisions, or to sanction non-compliance. This can be achieved through the limiting campaign budgets through legislation; establishing TSM in campaign finance legislation as an incentive for political parties that increase women's representation in their candidate lists and sanctioning political parties that have low levels of women's representation.
- Reforming the law to mandate SADC states to provide funding to independent female political politicians;

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<sup>124</sup> Linda K Kabwato, 'Young Women in Political Participation in Malawi :Final Technical Report' ( Malawi: Governance and Development Development Institute, 2013) <https://idl-bnc-idrc.dspacedirect.org/server/api/core/bitstreams/efa18686-4aae-4008-aded-c318bdccfdbf/content>

## 7.2 Recommendations to Civil Society Organisations, RECs, and Electoral Management Bodies

- Partnerships with national and regional electoral and human rights institutes. CSOs can forge collaborations between young women and supportive entities, including Electoral Management Bodies (EMBs) and civic education institutions, to identify opportunities and implement initiatives fostering young women's involvement in electoral processes. Provide technical and financial support to youth and women's NGOs through relevant AU bodies, national institutions, and development partners, empowering them to actively engage in electoral processes using an electoral cycle approach.<sup>125</sup> It is also essential to encouraging EMBs and civic education institutions to create gender and age-sensitive content for civic and voter education, partnering with national statistics offices to systematically collect sex and age disaggregated data.<sup>126</sup> This data-driven approach aims to enhance program targeting, particularly benefiting young women. The AGA-Secretariat, in collaboration with partners, should document successful approaches in utilizing an electoral cycle framework to boost political participation.<sup>127</sup> This repository of good practices can serve as a valuable resource for young women and the broader youth population. post-election assessments should comprehensively address young women's concerns and challenges. Electoral observation missions (EOMs) must focus on creating an environment conducive to young women's effective participation. Special attention to their safety is crucial, given the unfortunate prevalence of violence against women during elections in Africa.<sup>128</sup> State authorities have a duty to ensure the protection of young women engaged in political activities.
- Member states of the African Union must take concrete steps to put into action the ACDEG and other AU shared values instruments that focus on advancing women's empowerment.<sup>129</sup> These measures should be comprehensive, recognizing the interconnected nature of rights across social, political, and economic realms. Effecting substantial change necessitates state actors addressing the structural barriers to women's political participation and aligning these shared values with norms and practices at both national and local levels. Regular reporting on these actions is vital for effective monitoring and sharing valuable insights. Continental and regional institutions, particularly the African Union and Regional Economic Communities (RECs), should play a pivotal role in ensuring the successful implementation of ACDEG. This involves providing technical support to member states, promoting the Charter among member states, gender machineries, civil society, and women's rights organizations, and incentivizing reporting and compliance to expedite implementation and monitoring.<sup>130</sup>

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<sup>125</sup>Op cit Note 72 at 28-29

<sup>126</sup>Ibid

<sup>127</sup>Supra Note 69 at 42

<sup>128</sup>Ibid

<sup>129</sup>Supra Note 37

<sup>130</sup>Ibid

- Capacity-building initiatives, to build capacity of women and young women. This is vital and can be supported by development partners to leverage their roles for positive change.<sup>131</sup> Additionally, the establishment and reinforcement of parliamentary women's and youth caucuses provide valuable platforms for cross-party collaboration, issue discussions, and policy influence. Encouraging the creation of these caucuses, especially where they are lacking, can enhance visibility, solidarity, and support for MPs, particularly young women, addressing issues vital to their constituencies. Collaboration between the AU, RECs, Member State legislatures, and development partners is pivotal in designing and executing targeted programs to support young women MPs continent-wide thereby promoting the ACDEG by enhancing political participation of women .
  
- Pro Active Engagement with women in political parties - Actively engaging in political parties remains imperative for young women seeking roles as candidates and elected representatives in the realm of politics. These parties wield considerable influence in nominating candidates, shaping policy agendas, and determining parliamentary priorities. <sup>132</sup>However, the pervasive lack of gender sensitivity within African political parties poses a formidable obstacle to the active involvement of young women. Instances in Malawi, Kenya, and Tanzania underscore transparency concerns in party nomination procedures and the marginalization of women beyond superficial roles. <sup>133</sup>Despite these obstacles, navigating the electoral cycle necessitates proactive engagement with political parties. Specialized guides, like "Empowering Women Through Political Parties," provide valuable strategies for effective participation. This involvement goes beyond merely joining party women's wings, extending to active participation in youth wings. These wings, while predominantly male-dominated, offer a platform for gender-sensitive engagement, providing opportunities for young women to emerge as future leaders within parties. Meaningful contributions to manifesto development contribute to fostering a more inclusive political landscape.

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<sup>131</sup>Supra note 79 at 14

<sup>132</sup>Supra note 79

<sup>133</sup>Ibid

- Fostering Change in Societal Norms. Promoting active involvement of young women in political processes requires tackling deeply entrenched societal norms. The intersectionality of age and gender often subjects young women to discriminatory practices, hindering their representation in political arenas. A comprehensive study spanning eight African nations in 2017 underscored how prevailing perceptions impede women and youth from assuming leadership roles, emphasizing the necessity of reshaping these ingrained views.<sup>134</sup> For genuine empowerment, a paradigm shift in social norms is imperative, acknowledging and valuing the unique perspectives of young women. This transformative endeavour demands collaborative initiatives across various stakeholders and sectors. While initiatives highlighted contribute to challenging existing norms, it is crucial to prioritize concerted efforts specifically targeting broad-based social norm change.<sup>135</sup> The AU's Strategy on Gender Equality and Women's Rights (2018-28) underscores the pivotal role of altering social norms.<sup>136</sup> Within Pillar 4: Leadership, Voice, and Visibility, Outcome 4.2 explicitly aims at securing equal voice and agency for women and girls. Recognizing that entrenched gender norms can effectively silence women, the AU commits to fostering change through continuous information flow via mainstream, social, and traditional media. This approach aims to create a 'gender-web' and movements that reshape attitudes, mindsets, and social norms.<sup>137</sup> Emphasizing the interconnectedness of voice, choice, and control, this commitment underscores the significance of prioritizing dedicated efforts to create an environment where young women can participate freely, confidently, and equitably in political processes.
- Strengthening, Continental, Regional and National Women Civil Society Organizations. Beyond their direct involvement in political and governance institutions, young women can actively participate in civic life through engagement with women- and youth-led organizations operating at regional and national levels. The Civil Society and Diaspora Directorate (CIDO) of the AU Commission assumes a pivotal role in facilitating the inclusion of young women and their organizations in continental policy platforms. This involvement extends to other AU departments and Regional Economic Communities (RECs), providing diverse avenues for young women to shape regional policy processes. Africa's vibrant civil society movements, addressing a spectrum of civic concerns, serve as conduits for the participation of young women. While challenges persist within existing structures, addressing intergenerational and gender disparities is crucial. The emergence of CSOs specifically dedicated to or led by young women reflects a dynamic landscape. Actively involving young women in CSOs not only incorporates their issues into advocacy efforts but also ensures the enduring vitality of the women's rights movement.<sup>138</sup> Participation in CSOs empowers young women economically, fosters skill development, and cultivates subject matter expertise. Regional bodies, including the AU and RECs, are encouraged to mandate the inclusion of young women in CSO delegations participating in regional initiatives.<sup>139</sup> Collaborative initiatives with established civil society entities can facilitate dialogues across generations and enhance the specific capacities of young women within CSOs, fostering their leadership within the broader framework of African civil society.

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<sup>134</sup>Youth Participation in Elections in Africa: An Eighty Country Study at 84

<sup>135</sup>Ibid

<sup>136</sup>AU Strategy for Gender Equality & Women's Empowerment (2018-28)

<sup>137</sup>Ibid

<sup>138</sup>Ibid

<sup>139</sup>Supra Note 86 at 49



DEMOCRACY  
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