

Constitutional Rights of Women in Ghana: An Expansion of the Legal Framework

Ethel Fiattor

<https://orcid.org/0000-0001-5029-0286>

University of Pretoria

chabbyethel@gmail.com

Abstract

The research paper elucidates the expansion of the legal framework of women's rights in Ghana to address all forms of discrimination against them. The article considers a three-fold reform process, including a constitutional reform to influence the enactment of an extensive parliamentary Act either domesticating the Maputo Protocol or incorporating its principles. The article acknowledges the existence of some legislation on specific forms of discrimination against women and advocates that these may support the proposed comprehensive Parliamentary Act. The third reform process considers strategic litigation as a means of implementation and compliance.

Keywords: Discrimination; strategic litigation; legal framework; women's rights; politics and governance; parliamentary Act; constitutional reform; affirmative action

UNISA 
University of South Africa

Southern African Public Law

#16136 | 28 pages

<https://doi.org/10.25159/2522-6800/16136>

ISSN 2522-6800 (Online), 2219-6412 (Print)

© The Author(s) 2024



Published by Unisa Press. This is an Open Access article distributed under the terms of the Creative Commons Attribution-ShareAlike 4.0 International License (<https://creativecommons.org/licenses/by-sa/4.0/>)

Introduction

Ghana is not immune to women's rights violations.¹ Despite the Constitution's commitment to safeguard fundamental human rights locally,² reforming the legal framework on gender-based violence to expand its scope is long overdue. An attempt to salvage the situation is represented in some legislations addressing specific forms of discrimination against women.³ There is a need to re-examine the legal regime to accommodate a wide range of gender-responsive policies. In relation to property rights and economic rights of women, the Constitution of Ghana merits an expansion to accommodate modern gender proactive measures and influence the enactment of an all-inclusive Act. In the 1960s, Ghana established the National Council of Women to recognise and promote women's contributions by appreciating their involvement in the struggle for independence and vocationally empowering them.⁴ The government implemented an affirmative action policy to increase female political participation, aiming for forty per cent representation in state councils and committees.⁵ The policy is before parliament, with minimal progress on its promulgation.⁶

Suffice it to say that the country has made significant attempts to advance women's rights in employment and spousal acquisition. Special care for nurturing mothers and paid leave to support traditionally classified caregivers for developing maximum potential in the socio-economic spheres are classical examples. The significant gap in

-
- 1 Amnesty International, *The State of the World's Human Rights* (2023) 179 <<https://www.amnesty.org/en/location/africa/report-africa/>> accessed 23 April 2024; The Commission on Human Rights and Administrative Justice (CHRAJ), *Baseline Study Report on Access to Justice and Gender Based Violence Against Elderly Women Alleged As Witches in Ghana A Research Project by the Commission on Human Rights and Administrative Justice* (2022) <<https://chrhj.gov.gh/wp-content/uploads/2022/05/Baseline-Study-Report-Access-to-Justice-Project.pdf>> accessed 23 April 2024.
 - 2 The Constitution of Ghana 1992, art 12(2).
 - 3 Matrimonial Causes Act of Ghana 367 1971; Domestic Violence Act of Ghana 732 2007; Criminal Offences Act of Ghana 29 1960.
 - 4 John Burgess and Desmond Ayentimi, 'Women in Ghana: Progress, But Important Challenges Remain' *The Conversation* (6 March 2020) <<https://theconversation.com/women-in-ghana-progress-but-important-challenges-remain-130065>> accessed 2 February 2024.
 - 5 Dzodzi Tsikata, *Affirmative Action and the Prospects for Gender Equality in Ghanaian Politics* (Abantu, Women in Broadcasting and the Friedrich-Ebert-Stiftung 2009) 25 <<https://library.fes.de/pdf-files/bueros/ghana/10484.pdf>> accessed 2 February 2024.
 - 6 Abantu for Development, 'Affirmative Action, the Guaranteed Way to Increasing Women's Representation in Decision Making Spaces in Ghana' *Ghana Today* (18 January 2022) <<https://ghanatoday.gov.gh/opinion/affirmative-action-the-guaranteed-way-to-increasing-womens-representation-in-decision-making-spaces-in-ghana/>> accessed 4 February 2024.

other areas, including education,⁷ maternal and fertility healthcare,⁸ climate change⁹, information technology¹⁰ and economics¹¹ amongst others, are defining. The Constitution guarantees women equal rights to training and promotion without any obstacles with the understanding that the similitude of equal opportunities to both genders provides the foundation to afford economic leverage for women¹² and these are replicated under section 57 of the Labour Act.¹³

The Constitution mandates the establishment of legislation regulating property rights, ensuring equal access to jointly acquired property and equitable distribution upon dissolution. It further maintains that the presence or otherwise of a will is no grounds for women to be denied reasonable provisions from the deceased estate of a spouse.¹⁴ While addressing property rights and labour rights is essential, gender-based discrimination is widespread. Addressing gender-inclusive issues like climate change and information technology can reduce poverty among women and girls, improve agricultural production and minimise poverty in Ghana.¹⁵ Implementing women's rights initiatives in a digital socio-economic setting guarantees empowerment through information on modernised healthcare, education, social interaction and communication.¹⁶

-
- 7 Clara Lindhard Neltoft, 'Girls' Education in Ghana: Fighting Barriers Beyond Gender Parity' (GEP Transformation Education 2021) <<https://www.globalpartnership.org/blog/girls-education-ghana-fighting-barriers-beyond-gender-parity>> accessed 3 February 2023.
 - 8 Kwamena Sakyi Dickson, Edward Kwabena Ameyaw and Kenneth Setorwu Addem, 'Are Ghanaian Women Meeting the WHO Recommended Maternal Healthcare (MCH) Utilisation? Evidence from a National Survey' (2021) *BMC Pregnancy Childbirth* 161 <<https://doi.org/10.1186/s12884-021-03643-6>> accessed 4 February 2023.
 - 9 Enoch Bessah and others, 'Gender-based Variations in the Perception of Climate Change Impact, Vulnerability, and Adaptation Strategies in the Pra River Basin of Ghana' (2021) *IJCICSM* 436.
 - 10 United Nations Special Rapporteur on the Right to Peaceful Assembly and of Association - Clément Voulé, 'Digital Space and the Protection of Freedoms of Association and Peaceful Assembly in Africa' Consultative Meeting With UU Special Rapporteur Clément Voulé Intercontinental Hotel, Nairobi, Kenya (21–22 February 2019) <<https://www.icnl.org/wp-content/uploads/Final-Communique-UN-Consultation-Africa.pdf>><https://www.icnl.org/wp-content/uploads/Final-Communique-UN-Consultation-Africa.pdf>> accessed 2 February 2024.
 - 11 Katharine Christopherson and others, 'Tackling Legal Impediments to Women's Economic Empowerment' (2022) International Monetary Fund paper.
 - 12 The Constitution of Ghana (n 2), art 27(3).
 - 13 Labour Act of Ghana 651 2003.
 - 14 The Constitution of Ghana (n 2), art 22.
 - 15 Georgetown Institute for Women, Peace and Security, 'Women and Climate Change Impact and Agency in Human Rights, Security, and Economic Development' (2015) 17 <<https://giwps.georgetown.edu/wp-content/uploads/2017/09/Women-and-Climate-Change.pdf>> accessed 26 April 2024.
 - 16 Carolyn Hannan, 'The Role of ICT Policy in Empowering and Protecting the Rights of the Girl Child' Parallel event at the Fifty-first Session of the Commission on the Status of Women (5 March 2007) <<https://www.un.org/womenwatch/daw/csw/csw51/statements/CH/UNITAR%20ICT%20event.pdf>> accessed 26 April 2024.

The article advocates that discrimination against women in the political and socio-economic settings calls for an extensive proactive legal framework by a constitutional amendment to inspire domesticating the Maputo Protocol in accordance with the dualist implementation of treaties.¹⁷ Domesticating the Maputo Protocol, either by legislating the Treaty provisions verbatim as domestic law or by establishing a comprehensive Act on all forms of discrimination against women with the principles of the Protocol incorporated therein, provides an extensive legal framework for women's rights issues.¹⁸ A comprehensive Act incorporating internationally recognised gender progressive principles necessitates decisive means of enforcement. The article suggests the judicial process of strategic litigation to enforce compliance and curb the non-implementation of rules and decisions on safeguarding women's rights.

Discrimination against Women in Ghana

Article 22 of Ghana's Constitution mandates the enactment of legislation to regulate the property rights of spouses, including married women.¹⁹ However, the absence of legislation on the property rights of spouses has led to significant challenges in implementing women's property rights in Ghana, despite the article's general scope. Article 27,²⁰ labelled under the topic of women's rights, interestingly only concentrates on the economic rights of women in Ghana and informs the promulgation of the employment rights of women in the Labour Act.²¹ This was a response to the rise of women's participation in the labour force from 54.5 per cent to seventy per cent between 1960 and 2010.²² The increase necessitated the safeguarding of employment rights relating to night work, overtime by pregnant women,²³ protection of assignment of pregnant women,²⁴ and maternity, annual and sick leaves.²⁵ The current legal regime of Ghana only addresses gender-responsive issues that transcend labour and spousal property rights. Scouting for laws on women's rights leads to the consultation of various parliamentary Acts and scattered laws.²⁶ An extensive legal framework should consider other areas such as politics and governance, education, climate change, information technology and the economic sector to achieve gender parity.

17 *Republic v High Court* (Commercial Division) Accra; ex parte Attorney-General (NML Capital Ltd & Republic of Argentina, Interested Parties) (2013–2014) 2 SCGLR 990.

18 Anselmus Kodzo and Paaku Kludze, 'Constitutional Rights and Their Relationship with International Human Rights in Ghana' (2008) 41(3) ILR 682.

19 The Constitution of Ghana (n 2) art 22.

20 *ibid* art 27.

21 Labour Act of Ghana 651 2003.

22 Janine Bosak and others, 'Women and Men of the Past, Present, and Future: Evidence of Dynamic Gender Stereotypes in Ghana' (2017) JCCP 117.

23 Labour Act of Ghana 651 2003 s 55.

24 Labour Act of Ghana 651 2003 s 56.

25 Labour Act of Ghana 651 2003 s 57.

26 Matrimonial Causes Act of Ghana 367 1971; Domestic Violence Act of Ghana 732 2007; Criminal Offences Act of Ghana 29 1960.

Ghanaian Women in Politics and Governance

Discrimination in political participation is a challenge, with a lower percentage than the United Nations (UN) per cent benchmark for policy-making positions.²⁷ The current female legislative representation is 14.5 per cent and below five per cent in the District Assembly System.²⁸ The government's ministerial, ambassadorial and board appointments are situationally the same, albeit international protocols aim for thirty to forty per cent representation. The low representation of women in key decision-making spaces in Ghana hinders their effective contributions to the country's political progress. The affirmative action bill has yielded limited results. Despite its aim to advance female representation in politics and governance, women occupy 14.5 per cent of parliamentary seats, six decades after independence.²⁹ The government's inaction to promote women's participation in politics and governance hinders inclusivity.

Signing numerous treaties and protocols mandated to promote gender equality³⁰ should translate to implementing pro-active gender laws.³¹ This should include striving to eliminate gender discrimination in politics and public life, ensuring equal voting rights for women in elections and public referenda as well as promoting full political and governance participation.³² Requisite measures to endorse the eligibility of women for all publicly elected positions and elections such as insisting on a commendable quota of women participation in the three arms of government is compulsory.³³ Women should be empowered to actively participate in government policy formulation, public office and public functions, with a flexible working environment, including remote work, enabling a balance between political careers and domestic responsibilities.³⁴ The positioning of women in politics advances female-related cutting-edge policies and

27 United Nations, 'United Nations Women and Elections Guide to Promoting and the Participation of Women in Elections. The Underrepresentation of Women in National Parliaments Inter-Parliamentary Union' <www.ipu.org> accessed 4 February 2024.

28 Abantu for Development, 'Affirmative Action, the Guaranteed Way to Increasing Women's Representation in Decision Making Spaces in Ghana' *Ghana Today* (18 January 2022) accessed 4 February 2024.

29 Doris Dokua Sasu, 'Share of Seats Held by Women in National Parliament in Ghana from 2011 to 2021' (15 Dec 2023) <<https://www.statista.com/statistics/1244930/share-of-female-seats-in-parliament-in-ghana/>> accessed 4 February 2024.

30 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

31 CEDAW (n 30) art 3.

32 CEDAW (n 30) art 7 (a).

33 CEDAW (n 30) art 7 (b).

34 CEDAW (n 30) art 7 (c).

proffers effective governmental solutions³⁵ in public decision-making to ensure accountability and transparency.³⁶

The monetisation of political appointments in Ghana is an informal institutional barrier hampering female political representation.³⁷ The hindrance involves citizens exchanging voting rights for financial resources.³⁸ Political party appointments are largely centred on one's ability to lavish money buying the votes of party delegates.³⁹ Female members of parliament face high expenses for campaigning, ranging from making branded T-shirts, fuelling campaign vehicles, and catering for volunteers and party workers.⁴⁰ The increase in campaign expenditure over the years and the lack of resources to meet demand have contributed to the under-representation of women in governance structures and decision-making positions.⁴¹

Educational Standards for Eliminating Discrimination

The significance of educating girls is globally accepted,⁴² and is linked to improved child health, lower rates of infant mortality and lower rates of fertility.⁴³ It is also connected with ensuring equal rights with men.⁴⁴ Ghana's Gender Parity Index (GPI) shows a 1.01 per cent increase in education disparity between boys and girls, indicating a need for equal rights for girls.⁴⁵ The female enrolment in tertiary education after completing senior high school (SHS) is 17.7 per cent, while the male enrolment rate is

35 United Nations Women, 'Political Participation of Women in Asia and the Pacific' <<https://asiapacific.unwomen.org/en/focus-areas/governance/political-participation-of-women#:~:text=Women's%20political%20participation%20is%20a,ensuring%20better%20accountability%20to%20women>> accessed 6 February 2024.

36 *ibid.*

37 Diana Højlund Madsen, 'Affirmative Action in Ghana? Patriarchal Arguments and Institutional Inertia' 219 in Diana Højlund Madsen (ed), *Gendered Institutions and Women's Political Representation in Africa* (The Nordic Africa Institute 2020) 272.

38 George M Bob-Milliar, 'Political Party Activism in Ghana: Factors Influencing the Decision of the Politically Active to Join a Political Party' (2012) *Democratization* 683. <<http://dx.doi.org/10.1080/13510347.2011.605998>> accessed 6 February 2024.

39 Westminster Foundation for Democracy, 'The Costs of Politics in Ghana 12–16' <https://www.wfd.org/sites/default/files/2022-02/Cost_Of_Politics_Ghana.pdf> accessed 13 April 2024.

40 *ibid.*

41 Diana Højlund Madsen, 'Gender, Power and Institutional Change – The Role of Formal and Informal Institutions in Promoting Women's Political Representation in Ghana' (2019) *JAAS* 77–79.

42 Akosua Keseboa Darkwah, 'Education: Pathway to Empowerment for Ghanaian Women?' (2010) *IDS Bulletin* 29.

43 Elizabeth King and Anne Hill, 'Women's Education in Developing Countries: Barriers, Benefits and Policies' (1995) *JDA* 286.

44 CEDAW (n 30) art 10.

45 'Ghana - Ratio of Girls to Boys in Primary and Secondary Education School Enrolment, Primary and Secondary (gross), Gender Parity Index' (GPI, 28 December 2020) <<https://www.indexmundi.com/facts/ghana/ratio-of-girls-to-boys-in-primary-and-secondary-education>> accessed 6 February 2024.

19.6 per cent despite a higher completion rate in favour of girls.⁴⁶ The World Bank and UNESCO Institute of Statistics provide that the primary school completion rate in 2018 was ninety-three per cent for boys and ninety-five per cent for girls. In 2019, the secondary completion rate was seventy-eight per cent for boys and seventy-one for girls in 2019. Regardless of these rates, the gross enrolment in tertiary education was twenty per cent for men in 2020 versus eighteen per cent for women.⁴⁷ Ghana has achieved commendable strides in gender equality since 1971, with an increase in enrolment rates for girls; however, the country still needs to improve to ensure continued growth.⁴⁸

Despite improvements in reducing gender disparity, females face discouraging educational challenges, including early marriage, pregnancy, poverty and sexual harassment.⁴⁹ From 2017 to the present, fourteen per cent of Ghanaian girls aged fifteen to nineteen have at least one child, according to adolescent pregnancy statistics.⁵⁰ The figure excludes the number of aborted fetuses. About fifty-two per cent have experienced gender-based violence and sexual harassment at school, causing them to avoid attending school and potentially reducing their attendance. A significant number of school-aged girls have reported experiencing sexual violence during their educational journey.⁵¹ In July 2018, a senior high school reported sexual violence accusations against eight teachers; only four were indicted for their crimes.⁵²

Women and girls are often denied education due to natural occurrences in their bodies such as menstrual cycle blood flow; sanitary pads are also considered a luxury.⁵³ Young females who live in rural areas often miss school due to financial constraints or because they want to avoid public humiliation and shame due to the lack of necessities such as sanitary pads.⁵⁴ Women in Ghana's Education Service (GES) hold limited leadership roles, primarily as teachers in nursery and primary schools, with few becoming school

46 UNESCO Institute for Statistics (Ghana, December 2021) <<https://uis.unesco.org/en/country/gh?theme=education-and-literacy>> accessed 6 February 2024.

47 International Institute for Capacity Building in Africa Ghana: Education Country Brief (January 2024) <<https://www.iicba.unesco.org/en/node/100#:~:text=According%20to%20the%20World%20Bank,79%25%20for%20girls%20in%202019>> accessed 13 April 2024.

48 Heather Barrigan, 'Top 10 Facts About Girls' Education In Ghana' (The Borgen project, 16 December 2018) <<https://borgenproject.org/top-10-facts-about-girls-education-in-ghana/>> accessed 6 February 2024.

49 *ibid.*

50 *ibid.*

51 Sally A Nuamah, 'On the International Day of the Girl, It's a Good Time to Ask: Are Girls Safe in Schools?' (*The Washington Post*, October 11 2018) <<https://www.washingtonpost.com/news/monkey-cage/wp/2018/10/11/on-the-international-day-of-the-girl-its-a-good-time-to-ask-are-girls-safe-in-schools/>> accessed 6 February 2024.

52 *ibid.*

53 Issac Kaledzi, 'Opinion: Make Sanitary Pads Zero Tax in Ghana' (*Africa Feeds*, 7 November 2018) <<https://africafeeds.com/2018/11/07/opinion-make-sanitary-pads-zero-tax-in-ghana/>> 6 February 2024.

54 *ibid.*

heads.⁵⁵ Men dominate headship positions in junior high schools and senior high schools, with female managers and administrators occupying insignificant roles especially at the tertiary levels, particularly in colleges of education and polytechnics.⁵⁶ Women hold positions with limited authority and fewer administrative positions than men in the academic sector.⁵⁷ Despite progress in female higher education, gender imbalance persists in leadership positions in the education service.⁵⁸

Effects of Climate Change on Women's Rights

Climate change and socio-economic conditions pose significant threats to agriculture, food security, biodiversity, water resources, human health, settlement patterns, energy, transport and industry.⁵⁹ Women's participation in scientific disciplines, and environmental and climate change structures is limited, hindering their ability to articulate their concerns and influence mitigation and adaptation measures.⁶⁰ Policies that favour men and discriminatory cultural practices create inequality in access to and control over resources making women vulnerable. Unequal land rights in Ghana, particularly in agriculture,⁶¹ hinder economic, social and political status, as the patriarchal system allows only men to control land, preventing women from free access to land.⁶² Climate change has reduced the availability of essential biomass resources for energy and livelihoods, affecting opportunities to obtain these resources.⁶³ Climate change threatens material welfare, security, social relations and freedom of choice.⁶⁴ It increases floods and droughts, affecting women and girls in rural areas.⁶⁵ Climate

55 Luky Segkulu and Gyimah Emmanuel, 'Women in Educational Leadership within the Tamale Metropolis Journal of Education and Practice' (2016) JEP 64 <www.iiste.org> accessed 11 February 2023.

56 *ibid.*

57 *ibid.*

58 *ibid.*

59 United Nations Women Watch, 'The UN Internet Gateway on Gender Equality and Empowerment of Women Fact Sheet Women, Gender Equality and Climate Change' <https://www.un.org/womenwatch/feature/climate_change/downloads/Women_and_Climate_Change_Factsheet.pdf> accessed 12 February 2024.

60 Rose Mensah-Kutin, 'Case Study: Gender, Human Security and Climate Change in Ghana' (Abantu for Development in Ghana 2008) <<https://wedo.org/wp-content/uploads/ghana-case-study.pdf>> accessed 12 February 2024.

61 Tracy Higgins and Jeanmarie Fenrich, 'Legal Pluralism, Gender, and Access to Land in Ghana' (2012) FELR 7.

62 *ibid* (n 61) 7.

63 Yianna Lambrou and Grazia Piana, 'Energy and Gender Issues in Rural Sustainable Development (Food and Agriculture Organization of the United Nations 2006) <<https://www.fao.org/3/ai021e/ai021e00.htm>> accessed 7 February 2024.

64 Anantha Kumar Duraiappah and Shahid Naeem, 'Ecosystems and Human Well-being: Biodiversity Synthesis. Millennium Ecosystem Assessment' (World Resources Institute 2005) <<https://www.millenniumassessment.org/documents/document.354.aspx.pdf>> accessed 7 February 2024.

65 *ibid.*

change also increases morbidity and mortality due to heatwaves, floods and diseases, worsening women's caregiving and human rights issues.⁶⁶

Prejudice of Women in Information Technology

Policies on Information and Communication Technology (ICT) have not addressed gender-based access disparity, with fewer women participating due to patriarchal societal structures and sociocultural orientations.⁶⁷ Twenty-nine per cent of women in Ghana have access to the internet, highlighting the gender disparity in the ICT sector and digital jobs, which extends beyond the gig economy.⁶⁸ Cost remains a significant barrier to mobile phone ownership and internet usage among women in low- or middle-income countries, compared to men. To tackle gender inequities, it is crucial to measure the gendered gaps in ICT access and use that to favour the female.⁶⁹ International bodies like the International Telecommunication Union urge Ghana to address the growing gender gap in information technology, promote equal education and digital technology empowerment, and create safe digital environments for all.⁷⁰

Women in the Economics Sector

Poverty is prevalent in Ghana, with women being the most affected.⁷¹ Despite the Constitution's support for female economic participation, few laws mandate their inclusion in key decision-making positions,⁷² focusing on equal economic opportunity.⁷³ The Constitutional mandate for economic participation in Ghana has not been implemented effectively, with legislative trends focusing on inclusion in governance and regulatory bodies yet, yielding minimal results.⁷⁴ The male-dominated parliament of Ghana has hindered the attainment of women's rights⁷⁵ by condoning

66 Kyung wha-Kang, 'Climate Change, Migration and Human Rights' (Keynote address at Conference on Climate Change and Migration: Addressing Vulnerabilities and Harnessing Opportunities Geneva, 13 September 2011) <<https://www.ohchr.org/en/statements/2012/01/united-nations-deputy-high-commissioner-human-rights-ms-kyung-wha-kang-human>> accessed 17 February 2024.

67 Janet Kwami, 'Gendered Digital Inequities in African Contexts: Measuring and Bridging the Gaps' (2021) 16 *Ada AJGNMT* 4 <<https://scholarsbank.uoregon.edu/xmlui/handle/1794/26828>> accessed 14 February 2024.

68 Sam Rex Sagoe Babo and Augustina Odame, 'Where have all the Women Gone? The Gender Gap in Ghana's Gig Economy' <https://www.hiig.de/wp-content/uploads/2023/05/HIIG_DP_2023_2_BABO_ODAME.pdf> accessed 21 April 2024.

69 *ibid.*

70 Plan International, 'Four Steps to Advance Digital Equality for Girls' (Plan International 2018) <<https://plan-international.org/case-studies/4-steps-to-advance-digital-equality-for-girls/>> accessed 14 February 2024.

71 Ahmed Tufeyru, 'The Nexus of Female Capital and North-South Labour Migration in Ghana a Potential Remedy from Microfinance' (2014) *JDS* 95.

72 Christine Dowuona-Hammond and others, 'Women's Survival in Ghana: What Has Law Got to Do with It?' (2020) *Sage Open* 7.

73 The Constitution of Ghana (n 2) art 36 (6).

74 Dowuona-Hammond (n 72) 7.

75 The Constitution of Ghana (n 2) art 106 (7); Plan (n 70) 7.

gender hierarchies,⁷⁶ which is detrimental to safeguarding women's rights. The UN ensures equal rights for men and women in economic, social, cultural, civil and political aspects, as mandated by the Convention on the Elimination of Discrimination in the Workplace (CEDAW), which includes eliminating discrimination against women in family benefits, financial credit and recreational activities.⁷⁷ Ghana needs a comprehensive parliamentary Act to protect women's economic rights, especially those in rural areas, in line with the CEDAW, and ensure their full economic participation.⁷⁸ Self-help groups and co-operatives are crucial for women to access economic opportunities equally through employment or self-employment.⁷⁹

The Maputo Protocol

The African Union's commitment to ensure the implementation of policies to eradicate gender-based violence led to the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in July 2003 in Maputo Mozambique⁸⁰ and a solemn declaration.⁸¹ The AU's gender policy aims to monitor the implementation of the Protocol through member states' submission of periodic reports, in line with the African Charter, with the African Court of Human and Peoples' Rights being responsible for matters of interpretation arising from the application or implementation of the Protocol.⁸² As of January 2023, Ghana has ten outstanding state reports and has yet to report on the Maputo Protocol since its ratification.⁸³ Ghana's delayed state reports to the Banjul Commission and its failure to report on the Maputo Protocol despite ratification necessitates stringent grounds for implementation and the need to domesticate the Protocol for enforcement.

Researchers have expressed dissatisfaction with Ghana's lackadaisical approach to domesticating international instruments, citing its dualist nature in international law as a matter of pronouncement rather than practice.⁸⁴ The same can be said about the

76 Douwona-Hammond (n 72) 7.

77 CEDAW (n 30) art 13.

78 CEDAW (n 30) art 14 (1).

79 CEDAW (n 30) art 14(2)(e).

80 African Union Gender Policy (REV 2 /Feb 10, 2009) 1
<https://www.usip.org/sites/default/files/Gender/African_Union_Gender_Policy_2009.pdf>
accessed 23 April 2024

81 The Solemn Declaration on Gender Equality in Africa (SDGEA) was adopted by AU Heads of State and Government at their July 2004 Summit

82 African Union (n 80) 1

83 Matilda Lasseko-Phooko, 'Ghana Commits to Submitting Outstanding State Reports to the African Commission on Human and Peoples' Rights' (15 March 2023) <<https://www.chr.up.ac.za/latest-news/3256-ghana-commits-to-submitting-outstanding-state-reports-to-the-african-commission-on-human-and-peoples-rights>> accessed 23 April 2024.

84 Godwin Dzah, 'Transcending Dualism: Deconstructing Colonial Vestiges in Ghana's Treaty Law and Practice' in Michel Addaney, Michel Gyan Nyarko and Elsabe Boshoff (eds) *Governance, Human Rights and Political Transformation in Africa* (Macmillan 2020) 125

Maputo Protocol,⁸⁵ which Ghana has ratified but has not domesticated by a parliamentary enactment, a position different from states with self-executing treaty policies outrightly imposing international obligations and creating rights enforceable in the domestic courts' post-ratification.⁸⁶ Article 75 allows the president to execute treaties, agreements or conventions in Ghana's name, but these are ratified by parliament through a majority vote.⁸⁷ Although internationally binding post-ratification, specific treaties are only enforced domestically through parliamentary enactment.⁸⁸

The Directive Principles of State Policy further provides that a state is extensively guided by international human rights instruments in recognising, applying and enforcing human rights principles⁸⁹ to prohibit discrimination and prejudice.⁹⁰ This has been progressively demonstrated in the decisions of domestic courts to mean that the principles of a treaty may be enforceable if Ghana is a signatory although these have not been incorporated into domestic laws.⁹¹ Thus, the Supreme Court has stated, in the case of *Ghana Lotto Operators Association and Others v National Lottery Authority*, that the non-exclusion clause in article 33(5) of the Constitution allows international human rights instruments to be used where they are not explicitly guaranteed.⁹²

While the court's interpretation of the Directive Principles of State Policy to include international policies, especially on human rights, is commendable, domesticating the Maputo Protocol is prudent as an enacted law leaves no room for the application of the state's discretionary power in an abysmal manner.⁹³ An enactment outlines state obligations for enforcing and implementing women's rights, allowing for a transparent and robust accountability framework to hold the state responsible for championing women's rights.⁹⁴ A determination to unreluctantly enforce the rights of women must transcend an envisaged discretionary implication that articles 33(5), 37(3) and 40 in

<<https://doi.org/10.1007/978-3-030-27049-0>>; Namaran Coulibaly, 'The Impact of The Maputo Protocol In Ghana' in Susan Mutambasere, Ashwanee Budoo-Scholtz and Davina Murden (eds) *The Impact of the Maputo Protocol in Selected African States* (2023) 138.

85 The Constitution of Ghana (n2 art 75).

86 *ibid*, 679.

87 *ibid* art 75.

88 *Magaret Banful and Henry Nana Boakye v Attorney-General* [2017] (Writ no. J1/7/2016) unreported. (Judgement: 22 June 2017).

89 The Constitution of Ghana (n 2) art 37(3) read in tandem with 75.

90 The Constitution of Ghana (n 2) art 35(5).

91 *New Patriotic Party v Attorney-General* [1997–98] 1 GLR 378; Micheal Gyan Nyarko, 'The Impact of the African Charter and Maputo Protocol in Ghana' in Victor Ayei (ed), *The Impact of the African Charter and the Maputo Protocol in Selected African states* (PULP 2016) 99.

92 *Ghana Lotto Operators Association & Others v National Lottery Authority* [2007–2008] SCGLR 1088 1096.

93 The Constitution of Ghana (n 2) art 35(5).

94 OECD, 'Advancing Gender Balance in the Workforce: A Collective Responsibility: Gender Balance Network, Forum on Tax Administration' (OECD 2017)

<www.oecd.org/tax/forum-on-tax-administration/publications-and-products/advancing-gender-balance-in-theworkforce-a-collective-responsibility.htm> accessed 16 April 2024.

tandem with article 75 may enforce the Maputo Protocol to uphold the Directive Principles of the State to prohibit discrimination and prejudice against women.⁹⁵ Treaties on human rights should not be at the mercy of an imaginative interpretation of the Directive Principles of State Policy⁹⁶ as the Supreme Court is not unanimous on the justiciability or otherwise of these policies.⁹⁷ To ensure a binding effect of women's rights, Ghana needs to domesticate human rights treaties. A consolidated legal document, such as the Maputo Protocol, will further uphold the rights to deter discrimination against women in politics, governance, education, climate change, digital space and economics, amongst others. Adopting the Maputo Protocol can expedite the development of a bill on women's rights, save time and cost, and eliminate the need for inventing wheels.

The Maputo Protocol aims to promote equal women's political participation in governance, addressing gender imbalance in Ghanaian politics.⁹⁸ However, the country's high gender ratio in key policy-making decisions⁹⁹ still falls short of the UN-recommended minimum of thirty per cent.¹⁰⁰ The underrepresentation of women in governance affects the implementation of women's rights policies. Gender-sensitive laws are more likely to be passed in countries with a higher proportion of women in parliament. The presence of female lawmakers encourages male members to acknowledge that women's issues are the purview of legislative institutions. Male legislators should not be responsible for enacting laws or making decisions affecting women without women's input, as they may not understand the delicate nature of these matters.¹⁰¹ Parliament has not passed an affirmative action bill advocating for increased women's participation and this violates the provisions of the Maputo Protocol.¹⁰²

The Maputo Protocol upholds education as a fundamental human right, promoting female education, eliminating discrimination, ensuring equal opportunities, protecting girls against sexual harassment and preventing girls from dropping out of school early.¹⁰³ The Maputo Protocol emphasises women's right to a healthy and sustainable environment, urging greater participation in environmental planning, renewable energy

95 The Constitution of Ghana (n 2) art 35(5).

96 Dzah (n 84) 126.

97 See dissenting opinion in *Ezuame Mannan v The Attorney-General and Speaker of Parliament* (2022) JELR 109828 (SC) on justiciability.

98 Protocol to the African Charter on Human and Peoples' Rights on The Rights of Women in Africa Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo, 11 July 2003 art 9.

99 *ibid* Art 12.

100 Maame Adwoa A. Gyekye-Jandoh, 'Gender in Ghanaian Politics: A Brief Analysis' (Australian Institute of International Affairs, 24 November 2021) <<https://www.internationalaffairs.org.au/australianoutlook/gender-ghanaian-politics-brief-analysis/>> accessed 14 February 2024.

101 Claire Devlin and Robert Elgie, 'The Effect of Increased Women's Representation in Parliament: The Case of Rwanda' (2008) *Parliamentary Affairs* 248.

102 Protocol (n 98) Art 9(2)(a).

103 *ibid* Art 12.

and indigenous knowledge systems.¹⁰⁴ It also calls for state-led research and investment in renewable energy and appropriate technologies, as well as proper waste management and disposal standards.¹⁰⁵

Domesticating the Protocol will provide for a legal regime to enforce gender parity in education, particularly in science and technology.¹⁰⁶ Improving education in science and technology addresses issues like censorship by educating women on their digital rights within the remits of domestic and international law and surveillance by establishing frameworks to monitor educational institutions to advance and promote female education at all levels.¹⁰⁷ Improving female education in science and technology further eradicates privacy breaches and promotes online safety by disseminating information on cybersecurity issues.¹⁰⁸ Information on safeguarding digital spaces and avoiding illicit online activities creates a safer space for women to engage in gender rights discourse online with more participation, express creativity, maintain connections and overcome geographical barriers.

The Protocol upholds gender neutrality in the economic sector by promoting equal opportunities in work, career advancement and economic opportunities.¹⁰⁹ However, the 2023 statistics show gender disparity in Ghanaian labour, with females at 65.3 per cent and males at 72.4 per cent.¹¹⁰ This does not align with the Protocol's mandate for equal work opportunities, highlighting the need for stricter enforcement measures.¹¹¹ Employment disparities stem from women's biological makeup, with employers favouring men because they perceive women as weak, and they want to avoid having to give childcare leave to women. Incorporating the Protocol to ensure that women's rights are upheld is crucial for safer employment measures for women.¹¹² The Protocol will further maintain transparency in women's recruitment, promotion and dismissal, combating workplace sexual harassment and guarantee freedom of choice.¹¹³ It complements women's economic activities, particularly in the informal sector, through protection and social insurance systems.¹¹⁴ The Protocol calls for a minimum work age and the prohibition of child labour and child exploitation. It emphasises women's

104 *ibid* Art 18.

105 *ibid* (n 98) art 18(2)(a).

106 *ibid* (n 98) art 12(2)(b).

107 Association of Progressive Communications, 'Digital Rights are Women's rights' (5 October 2021) <<https://www.apc.org/en/pubs/digital-rights-are-womens-rights>> accessed 18 February 2024.

108 *ibid*.

109 Protocol (n 98) Art 13(1)(a).

110 The World Bank, 'Ghana: Gender Data Portal' <<https://genderdata.worldbank.org/countries/ghana/>> accessed 16 April 2024.

111 Protocol (n 98) Art 13(1)(b).

112 Steven Tobin, 'What Causes Gender Gaps in the Labour Market?' (International Labour Organisation' 1 August 2017) <https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_566891/lang-en/index.htm> accessed 18 February 2024.

113 Protocol (n 98) Art 13(1)(d).

114 *ibid* Art 13.

domestic work, paid maternity leave, equal taxation laws¹¹⁵ and the responsibility of parents and the state for children's upbringing and development.¹¹⁶

The Constitution's mandate for women to provide traditional care for children is ambiguous and has led to gender exploitation, to the detriment of women.¹¹⁷ The definition of 'traditional caregivers' is unclear, as traditional practices vary across societies, even within Ghana. The Constitution must provide a precise definition to ensure proper discourse on the constitutional position and attribute the care of a child to both parents. It further confirms equal responsibility for children's upbringing and development, compelling both parents to bear primary financial responsibilities. This aligns with societal trends and ensures women's equal participation in the economy.¹¹⁸ The Protocol guarantees an appropriate legal ground to improve child upbringing, child support, financial responsibility and economic growth.¹¹⁹

South Africa has made significant progress in promoting gender equality and women's rights through a robust legal framework and progressive policies. It has also incorporated the Protocol. The establishment of the Ministry for Women, the Office on the Status of Women and Gender Focal Points is proof of commitment. Women's representation in parliament has increased from twenty-eight per cent in 1994 to forty-four per cent, ranking South Africa second in the Southern African Development Community (SADC).¹²⁰ The country's democratic dispensation has seen significant progress in women's representation since its democratic elections in 1994. Women have held various leadership positions previously dominated by men, such as police commissioner, public protector and deputy president.¹²¹ Women have also served as deputy speakers in the National Assembly and held positions in various sectors. For the first time in the history of South Africa, fifty per cent of ministers in the cabinet were women, while men held fifty per cent of the portfolios. In the same cabinet, forty-six per cent of deputy ministers were women.¹²² The South African experience emphasises the importance of strong legal frameworks and proactive policy measures in advancing women's rights worthy of emulation.

Domesticating the Protocol demonstrates a political will and commitment at the highest levels of government, robust legal frameworks that align with international human

115 *ibid* Art 13.

116 *ibid* Art 13.

117 The Constitution of Ghana (n 2) art 27.

118 Carmen Reinhart, 'Related: Statement on International Women's Day' (Washington, 1 March 2022) <<https://www.worldbank.org/en/news/press-release/2022/03/01/nearly-2-4-billion-women-globally-don-t-have-same-economic-rights-as-men>> accessed 19 February 2024.

119 Sabelo Gumedze, 'Bringing Communications before the African Commission on Human and Peoples' Rights' (2003) AHRLJ 145.

120 Olubukola Adesina, 'Article 9 of The Maputo Protocol and The Advancement of Political Rights for Women in Nigeria' (2024) AJPSSI 152.

121 *ibid* 152–153.

122 *ibid* 152–153.

rights standards, gender-responsive policies, institutional mechanisms, awareness-raising campaigns and proactive measures to address cultural barriers and discriminatory practices against women.¹²³

Implementing the Rights of Women in Ghana—Strategic Litigation

Strategic litigation aims to achieve legal and social change through test cases by judicial systems.¹²⁴ The process will facilitate safeguarding women's rights across societal structures, particularly in countries with high cases of abuse. Both local and international laws have endeavoured to achieve domestic change.¹²⁵ While these measures are commendable, strategic litigation will further ameliorate the implementation and compliance with such related policies by enabling public recognition, enforcement,¹²⁶ restructuring access to justice and contributing to societal transformation through judicial influence on women's rights-related issues.¹²⁷ The judicial process seeks to enforce legislation, interpret it, review policies, raise awareness and combat stigma. Strategic litigation success is akin to advocacy initiatives and collaboration among stakeholders like lawyers and NGOs.¹²⁸

The African Commission on Human and Peoples' Rights (the Commission) has influenced the decisions of member states on the rights of women through strategic litigation. In the case of *Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt*,¹²⁹ the Commission received communication about the state's violation of Article 9(2) of the African Charter on Human and Peoples' Rights on the violation of women's rights, for failure to implement the rights of women assaulted and sexually violated in a protest against the government.¹³⁰ The complainants allege a violation of Article 18(3) of the African Charter and a violation of Article 1 of the Maputo Protocol, arguing that violence against women can constitute discrimination. The Commission emphasised the importance of non-discrimination principles in the African Charter which protects women from discrimination.¹³¹ It questioned whether women and male protesters received similar treatment and if it was fair and just.¹³² The Commission found that verbal assaults, such as 'slut' and 'whore,' were not typically

123 *ibid* 155.

124 Gesine Fuchs, 'Using Strategic Litigation for Women's Rights: Political Restrictions in Poland and Achievements of the Women's Movement' (2021) EJWS 22.

125 Fuchs (n 124) 22.

126 *ibid*.

127 United Nations Human Rights, 'Strategic Litigation for Sexual and Gender-based Violence: Lessons Learned' <<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/OHCHR-StrategicLitigationforSV-workshopreport-web.pdf>> accessed 16 February 2024.

128 *ibid*.

129 *Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt* [2011] (Communication No. 323/2006) ACHPR 85; (16 December 2011).

130 *ibid* para 25.

131 *ibid* para 119.

132 *ibid* para 129.

used against men, but rather against women who refused to adhere to traditional norms.¹³³ Female protesters' sensitive parts were touched, which amounted to physical assault and unfair targeting based on gender.¹³⁴

The Commission deemed the treatment of women during the demonstration as illegitimate on grounds of unjustifiable reasonable cause and a form of systematic sexual violence targeted at the women. The perpetrators, aware of the consequences, sought to silence the women through violence.¹³⁵ The Commission reiterated that states are obliged to protect women's rights,¹³⁶ affirming that if a state fails to protect victims from violations and does not show evidence of legitimate differential treatment,¹³⁷ it falls short of its obligations under Article 18(3) of the African Charter.¹³⁸ Invariably, the Commission affirmed that freedom of expression is a gender-sensitive human right, stating that both men and women have the right to protest against government decisions, and states must protect female citizens, raising public awareness and understanding of litigation context.¹³⁹ The Maputo Protocol has significantly influenced the Commission's relationship with member states, championing women's rights initiatives and challenging state laws violating international treaties.¹⁴⁰ The Protocol has established an international legal framework for the Commission's Committee on the Rights and Welfare of Children to combat child marriages.¹⁴¹

The Economic Community of West African States (ECOWAS) courts have recognised the Maputo Protocol, used through strategic litigation to uphold member states' obligations to protect women's rights. Dorothy Chioma Njemanze and three others filed a case against Nigeria for assault, threats and unlawful detention, accusing the country of violating international human rights instruments, particularly the Maputo Protocol.¹⁴² This marked the first time that the ECOWAS court applied the Maputo Protocol and ruled that Nigeria violated the petitioners.¹⁴³ In 2019, the ECOWAS Court ruled that Sierra Leone's ban on pregnant schoolgirls from attending school was discriminatory

133 *ibid* para 143.

134 *ibid* para 144.

135 *ibid* para 152.

136 *ibid* para 154.

137 *ibid* para 155.

138 *ibid* para 156.

139 Helen Duffy, *Strategic Human Rights Litigation – Understanding and Maximizing Impact* (Hart Publishing 2018) 38.

140 *APDF & IHRDA v Republic of Mali* (046/2016) 2018 (15) AfCHPR 15 (11 May 2018).

141 Robert Doya Nanima, 'The ACHPR and ACERWC on Ending Child Marriage: Revisiting the Prohibition as a Legislative Measure' (2019) ESR Review 11.

142 *Dorothy Njemanze and Three Others v The Federal Republic of Nigeria* 2017, Court of Justice of the ECOWAS, ECW/CCJ/JUD/08/17; *Mary Sunday v Federal Republic of Nigeria* 2018 ECW/CCJ/APP/26/15.

143 Anthonia Lola Dickson, 'The Impact of The Maputo Protocol in Nigeria' in Susan Mutambasere, Ashwanee Budoo-Scholtz and Davina Murden (eds), *The Impact of the Maputo Protocol in Selected African States* (University of Pretoria Press 2023) 138.

and violated female rights to education.¹⁴⁴ The Maputo Protocol has equipped ECOWAS to use its court to enforce international human rights treaties on women's rights, emphasising the need for domesticating its principles in its member states. Evidence of this is realised in the ruling of Sierra Leone's case setting a precedent for West African countries, leading to the lifting of the ban in March 2020.¹⁴⁵

Strategic litigation processes have demonstrated their influence in shaping both domestic and international jurisprudence on women's rights,¹⁴⁶ addressing stigma and transforming societal perceptions.¹⁴⁷ It is a useful mechanism to restore victims' sense of justice,¹⁴⁸ empower them,¹⁴⁹ and facilitate reparation measures, including financial, material and symbolic reparations.¹⁵⁰ Effective strategic litigation will also ensure non-reoccurrence in cases of women's rights.¹⁵¹ Ghana stands to benefit from this process to prevent discrimination against women and guarantee a higher level of implementation after the Maputo Protocol has been domesticated by mirroring such strategic litigation processes at the regional and sub-regional levels.

The Protocol will successfully influence domestic courts to prevent harmful practices against women. The strategic litigation case of *Rebeca Gyumi v Attorney General*¹⁵² exemplifies this opinion. The High Court in Tanzania in this case ruled that sections 13 and 17 of the Law of Marriage Act,¹⁵³ which allowed girls under eighteen to marry, with their parents' consent, were unconstitutional and did not qualify for inclusion in the Act, corresponding to a petition. The court relied on the Maputo Protocol on grounds of its principles on gender equality in marriage¹⁵⁴ and argued that the right to equality is negated when there is differential treatment. The court emphasised the need for Tanzania to take appropriate legislative measures to ensure the rights guaranteed under article 21(2) of the Constitution.¹⁵⁵ The positive impact of this decision has influenced practitioners to use the favourable ruling of the case in their efforts to advocate against child marriage.¹⁵⁶ Research has also pointed to the fact that judges are increasingly relying on the Maputo Protocol in cases related to matrimonial property division,

144 *Society (WAVES) v The Republic of Sierra Leone* 2019 ECW/CCJ/APP/22/18.

145 *ibid.*

146 *Hadijatou Mani v Niger koroua v the Republic of Niger* 2008 ECW/CCJ/JUD/06/08 para 73–83.

147 *ibid.*

148 *ibid* 51.

149 Duffy (n 139) 51.

150 Alicia Leduc, 'Strategic Alliances as an Impact Litigation Model: Lessons from the Sepur Zarco Human Rights Case in Guatemala' (2018) WJILDR 212.

151 Redress, 'Holistic Strategic Litigation against Torture' (2021) 25 <<https://redress.org/wp-content/uploads/2021/06/20210709-Practice-Note-2-for-digital-A5.pdf>> assessed 3 February 2024.

152 *Rebeca Gyumi v Attorney General* 2016 (6) Misc Civil Cause 5.

153 The Law of Marriage Act, Tanzania 1971 (29) RE 2002].

154 *Gyumi* (n 152) para 20.

155 *Rebeca Gyumi v Attorney General Misc Civil Cause* 2016 (5) para 20.

156 Isabela Warioba, 'The Impact of The Maputo Protocol in Tanzania' in Susan Mutambasere, Ashwanee Budoo-Scholtz and Davina Murden (eds) *The Impact of the Maputo Protocol in Selected African States* (PULP 2023) 282.

demonstrating satisfactory awareness among the judiciary and its impact on women's rights, particularly in cases involving equality in the division of matrimonial property.¹⁵⁷

The Maputo Protocol is seldom referenced in Ghana. The case of the *Commission on Human Rights and Administrative Justice (CHRAJ) and Two Others v Ghana National Fire Service and Attorney General (GHFS)*¹⁵⁸ involving two women fired by the GNFS due to pregnancy, referred to the Protocol. The case filed by CHRAJ cited the Maputo Protocol and influenced the court's decision that Regulation 33(6) of the GNFS Conditions of Service is discriminatory.¹⁵⁹ This case marked a milestone in promoting women's rights in Ghana and called for a review of internal policies, particularly regarding reproductive health rights.¹⁶⁰ Domesticating the Maputo Protocol will provide judicial practitioners with a legal framework for propagating women's rights in Ghana. It also allows the court to set judicial precedence on issues of women's rights backed by legislation as demonstrated by the South African Constitutional Court when it ruled that section 23 of the Black Administration Act was discriminatory, allowing a deceased sister to inherit her brother's estate. This ensured equality and non-discrimination under the South African Constitution.¹⁶¹

A Three-fold Reformative Framework—Recommendation

Domesticating the Maputo Protocol is a gender-responsive measure that will be beneficial subject to adequate reformative measures, including constitutional, legislative and judicial measures.

Constitutional Reform

The 'one-size-fits-all' constitutional provision on protecting the rights of citizens is not detailed to capture the discriminatory societal trends towards women.¹⁶² While article 12 establishes the foundation of protecting the rights of all citizens and article 35(5) admonishes the state to actively promote integration and prohibit gender discrimination, explicitly stating those laws on the rights of women is necessary to change the narrative and status quo of social and cultural trends that advance gender bias. Aside from the general rules,¹⁶³ enshrined constitutional provisions, specifically on the unique rights of women to guarantee gender equality, are expedient.¹⁶⁴ An amendment should mandate

157 Warioba (n 156) 283.

158 *The Commissioner of CHRAJ and Two Others v Ghana National Fire Service and Anor* 2017 HR/0063/2017.

159 *ibid.*

160 Dzah (n 84) 144.

161 *Bhe and Others v The Magistrate, Khayelitsha and Others* 2005 (3) 49/03; *Shibi v Sithole and Others* 2004 (3) 69/03; *South African Human Rights Commission and Another v President of the Republic of South Africa and Another Case* 2005 (3) CCT 50/03.

162 The Constitution of Ghana (n 2) art 27 and 36 (6).

163 *ibid* art 12.

164 The Constitution of Uganda 1995 art 33.

the government to provide necessary facilities and opportunities appropriate to improve women's welfare, enabling them to reach their full potential and achieve advancement.¹⁶⁵ Ghana benefits from emulating this position by constitutionally mandating the state to protect women and their rights, taking into account their unique status and natural biological functions.¹⁶⁶ The provisions of the 1992 Constitution on women's rights should not be limited to only property-related and labour-related issues but be extended to other women's rights issues affecting the unique status and natural biological functions of women.

Ghana may draw lessons on gender reformative measures from the Ugandan Constitution. The 1992 Constitution needs to be reformed to ensure equal opportunities in political, economic and social activities.¹⁶⁷ An entrenched provision dedicated to confirming affirmative action, placing an obligation on the state to take gender proactive measures beneficial to actualising the government's mandate to citizens.¹⁶⁸ The state obligation should incorporate a directive to parliament to create relevant laws, including laws for the establishment of an equal opportunities commission, to give full effect to affirmative action.¹⁶⁹ The proposed law should consider domesticating the Maputo Protocol. A progressive constitution is essential for ensuring women's rights and gender equality for development and nation-building.

Legislative Means of Implementation

A parliamentary enactment ensuring women's rights and spelling out serious sanctions and punitive measures for violating them is beneficial to gender mainstreaming. Constitutional reforms should mandate parliament to enact a comprehensive law on women's rights. Parliament should domesticate the Maputo Protocol by an Act to provide a single document tailored to suit the unique rights of women, based on the CEDAW principles. Parliament's delay in passing the 2003 Affirmative Action Bill and the 2009 Property Rights of Spouses Bill is suspicious and alludes to a disinterest in establishing laws to combat all forms of discrimination against women. The display of non-commitment amounts to contravening the Constitution¹⁷⁰ and prudent accountability requires Supreme Court enforcement through interpretation and judicial declaration.¹⁷¹

Parliament's reluctance to pass the affirmative action bill can be addressed by seeking redress from the Supreme Court to exercise its original jurisdiction through a petition by civil society organisations, pressure groups or an interested party on grounds of

165 *ibid* art 33 (2).

166 *ibid* art 33 (3).

167 *ibid* art 33 (5).

168 *ibid* art 32.

169 *ibid* art 33 (2).

170 The Constitution of Ghana (n 2) art 35 (5).

171 *ibid* art 1(2) and 2(1).

articles 1(2),¹⁷² 2(1, 2 and 3)¹⁷³ and article 130¹⁷⁴ of the 1992 Constitution to give an interpretation of parliament's original jurisdiction to make laws as per article 106. The exercise of the Supreme Court's original jurisdiction is in line with the principles of 'separation of powers and the equally salutary principle of checks and balances, to ensure that all organs of the state, as far as is possible, operate harmoniously within the constitutional framework...' is important.¹⁷⁵ A petitioner may seek a declaration on parliament's reluctance to perform its duties on passing the affirmative action and the 2009 property rights of spouses bills¹⁷⁶ and seek enforcement of the constitutional mandate on parliament's lawmaking exclusive jurisdictions,¹⁷⁷ in line with enforcing the Directive Principles of State Policy on protecting the rights of women.¹⁷⁸ The Constitution of Ghana ensures that all government agencies, including parliament, are subject to it. Any petition of inconsistency or *ultra vires* actions renders parliament's actions subject to the Supreme Court's jurisdiction.¹⁷⁹

Judicial and Strategic Means of Implementation

The judiciary must enforce gender equality laws through the decisions of petitions brought before the court.¹⁸⁰ Collaborations among private individuals, pressure groups, female activist groups, media and civil society organisations are essential to constantly petition the court for accountability and transparency in women's rights violations. The court's decisions on these strategic cases enforce and advance best gender practices. A constitutional amendment and parliamentary enactment on gender proactive reforms afford the judiciary an advanced legal framework to implement laws on eliminating all forms of discrimination against women.

Conclusion

The article advocates for an extension of the legal framework on women's rights in Ghana to confirm rigorous mechanisms for protecting women's rights. The article recommends an amendment of articles 22 and 27 of the 1992 Constitution to incorporate extensive gender-responsive policies and domesticate the Maputo Protocol by an Act of Parliament to address gender disparity that upholds the general principles of CEDAW and serves as a comprehensive and progressive legal framework for promoting gender

172 *ibid* art 1(2).

173 *ibid* art 2(1 and 3).

174 *ibid* art 130.

175 Wood CJ in *Brown v Attorney-General* 2010 SCGLR 183.

176 *Okudzeto Ablakwa and Another v Attorney-General and Obetsebi Lamptey* 2011 (2) SCGLR 986; *Ezuame Mannan v The Attorney-General and Speaker of Parliament* 2022 JELR 109828 (SC).

177 The Constitution of Ghana 1992 art 106; See Adinyira JSC in *James Kwabena Bomfeh v Attorney General* 2019 JI/14/2017.

178 The Constitution of Ghana (n 2) art 12, art 33(5), art 35 (5), art 40 and art 75.

179 *Justice Abdulai v The Attorney General* 2022 11/07/2022

180 The Constitution of Ghana (n 2).

equality and protecting women's rights. The reform should be distinct from the general fundamental human rights in articles 12 and 35(5) of the Constitution to address the unique forms of gender-based violence. The article further considers strategic litigation as a practical judicial measure to guarantee compliance by analysing the implementation of the Protocol in other jurisdictions through strategic litigation.

References

- Abantu for Development, 'Affirmative Action, the Guaranteed Way to Increasing Women's Representation in Decision Making Spaces in Ghana' *Ghana Today* (Accra, 18 January 2022) <<https://ghanatoday.gov.gh/opinion/affirmative-action-the-guaranteed-way-to-increasing-womens-representation-in-decision-making-spaces-in-ghana/>> accessed 4 February 2024.
- Adesina O, 'Article 9 of the Maputo Protocol and the Advancement of Political Rights for Women in Nigeria' (2024) *AJPSSI African Journal for the Psychological Study of Social Issues*.
- African Union Gender Policy (REV 2 /Feb 10, 2009)
<https://www.usip.org/sites/default/files/Gender/African_Union_Gender_Policy_2009.pdf> accessed 23 April 2024.
- Amnesty International, *Report 2022/23: The State of The World's Human Rights* (2023) 179
<<https://www.amnesty.org/en/location/africa/report-africa/>> accessed 23 April 2024.
- Association of Progressive Communications, 'Digital rights are Women's Rights!' (2021)
<<https://www.apc.org/en/pubs/digital-rights-are-womens-rights>> 18 February 2024.
- Barrigan H, 'Top 10 Facts About Girls' Education in Ghana' (2018)
<<https://borgenproject.org/top-10-facts-about-girls-education-in-ghana/>> 6 February 2024
- Bessah E, Raji O, Taiwo J, Ololade O, Strapasson A and Donkor E, 'Gender-based Variations in the Perception of Climate Change Impact, Vulnerability, and Adaptation Strategies in the Pra River Basin of Ghana' (2021) *International Journal of Climate Change Strategies and Management*.
- Bosak J, Eagly A, Diekman A and Sczesny S, 'Women and Men of the Past, Present, and Future: Evidence of Dynamic Gender Stereotypes in Ghana' (2017) *Journal of Cross-Cultural Psychology*.
- Bob-Milliar GM, 'Political Party Activism in Ghana: Factors Influencing the Decision of the Politically Active to Join a Political Party' (2012) *Democratisation*
<<http://dx.doi.org/10.1080/13510347.2011.605998>> accessed 6 February 2024.

- Burgess D and Desmond T, 'Women in Ghana: Progress, but Important Challenges Remain' (*The Conversation*, 6 March 2020) <https://theconversation.com/women-in-ghana-progress-but-important-challenges-remain-130065>> accessed 2 February 2023.
- Christopherson K, Yiadom A, Johnson J, Fernando F, Yazid H and Thiemann C, 'Tackling Legal Impediments to Women's Economic Empowerment (2022) International Monetary Fund paper.
- Coulibaly NA, 'The Impact of the Maputo Protocol in Ghana' in S Mutambasere, A Budoo Scholtz and D Murden (eds), *The Impact of the Maputo Protocol in Selected African States* (PULP 2023).
- Darkwah A, 'Education: Pathway to Empowerment for Ghanaian Women?' IDS Bulletin IDS Bulletin 28.
- Devlin C and Robert E, 'The Effect of Increased Women's Representation in Parliament: The Case of Rwanda' (2008) Parliamentary Affairs.
- Dickson A L, 'The Impact of the Maputo Protocol in Nigeria,' in S Mutambasere, A Budoo-Scholtz and D Murden (eds), *The Impact of the Maputo Protocol in Selected African States* (PULP 2023).
- Dowuona-Hammond C, Raymond A, and Francis X D T, 'Women's Survival in Ghana: What Has Law Got to Do with It?' (2020) <<https://doi.org/10.1177/2158244020941472>>
- Duffy H, *Strategic Human Rights Litigation – Understanding and Maximizing Impact* (Hart Publishing 2018).
- Duraiappah A K and Naeem S, 'Ecosystems and Human Well-being: Biodiversity Synthesis. Millennium Ecosystem Assessment.' (2005) World Resources Institute <<https://www.millenniumassessment.org/documents/document.354.aspx.pdf>> 7 February 2024.
- Dzah G, 'Transcending Dualism: Deconstructing Colonial Vestiges in Ghana's Treaty Law and Practice' in M Addaney, MG Nyarko and E Boshoff (eds), *Governance, Human Rights and Political Transformation in Africa* (Palgrave 2020).
- Fuchs G, 'Using Strategic Litigation for Women's Rights: Political Restrictions in Poland and Achievements of the Women's Movement' (2021) European Journal of Women's Studies.
- Georgetown Institute for Women, Peace and Security, 'Women and Climate Change Impact and Agency in Human Rights, Security, and Economic Development' (2015) <<https://giwps.georgetown.edu/wp-content/uploads/2017/09/Women-and-Climate-Change.pdf>> accessed 26 April 2024.

- ‘Ghana - Ratio of Girls to Boys in Primary and Secondary Education School Enrolment, Primary and Secondary (gross), Gender Parity Index’ (GPI, 28 December 2020) <<https://www.indexmundi.com/facts/ghana/ratio-of-girls-to-boys-in-primary-and-secondary-education>> accessed 6 February 2024.
- Gumedze S, ‘Bringing Communications before the African Commission on Human and Peoples’ Rights’ (2003) *African Human Rights Law Journal*.
- Gyekye-Jandoh A, ‘Gender in Ghanaian Politics: A Brief Analysis’ (Australian Institute of International Affairs, 24 November 2021) <<https://www.internationalaffairs.org.au/australianoutlook/gender-ghanaian-politics-brief-analysis/>> accessed 14 February 2024.
- Higgins T and J Fenrich, ‘Legal Pluralism, Gender, And Access to Land in Ghana’ (2012) *Fordham Environmental Law Review*.
- Hannan C, ‘The Role of ICT Policy in Empowering and Protecting the Rights of the Girl Child’ Parallel event at the Fifty-first session of the Commission on the Status of Women (5 March 2007) <<https://www.un.org/womenwatch/daw/csw/csw51/statements/CH/UNITAR%20ICT%20event.pdf>> accessed 26 April 2024.
- International Institute for Capacity Building in Africa Ghana, ‘Education Country Brief’ (2024) <<https://www.iicba.unesco.org/en/node/100#:~:text=According%20to%20the%20World%20Bank,79%25%20for%20girls%20in%202019>> accessed 13 April 2024.
- Kaledzi I, ‘Opinion: Make Sanitary Pads Zero Tax in Ghana’ *Africa Feeds* (Accra, 7 November 2018) <<https://africafeeds.com/2018/11/07/opinion-make-sanitary-pads-zero-tax-in-ghana/>> 6 accessed February 2024.
- King E and AM Hill, ‘Women’s Education in Developing Countries: Barriers, Benefits and Policies’ (1995) *The Journal of Developing Areas*.
- Kodzo A and Kludze P, ‘Constitutional Rights and their Relationship with International Human Rights in Ghana’ (2008) *Israel Law Review*.
- Kwabena AE, Kwamena S D and Kenneth S A, ‘Are Ghanaian Women Meeting the WHO Recommended Maternal Healthcare (MCH) Utilisation? Evidence from a National Survey’ (2021) *BMC Pregnancy Childbirth*.
- Kwami J, ‘Gendered Digital Inequities in African Contexts: Measuring and Bridging the Gaps’ (2021) *A Journal of Gender New Media and Technology* <DOI: 10.5399/uo/ada.2020.16.51.4 <https://scholarsbank.uoregon.edu/xmlui/handle/1794/26828>> accessed 14 February 2024.
- Lambrou Y and Grazia P, ‘Energy and Gender Issues in Rural Sustainable Development’ (Food and Agriculture Organization of the United Nations 2006) <<ftp://ftp.fao.org/docrep/fao/010/ai021e/ai021e00.pdf>> accessed 7 February 2024

- Leduc A, 'Strategic Alliances as an Impact Litigation Model: Lessons from the Sepur Zarco Human Rights Case in Guatemala' (2018) *Willamette Journal of International Law and Dispute Resolution*.
- Madsen DH, 'Affirmative Action in Ghana? Patriarchal Arguments and Institutional Inertia, 219' in Madsen DH (ed), *Gendered Institutions and Women's Political Representation in Africa* (The Nordic Africa Institute 2020).
- Madsen DH, 'Gender, Power and Institutional Change – The Role of Formal and Informal Institutions in Promoting Women's Political Representation in Ghana' (2019) 1 *Journal of Asian and African Studies*.
- Reinhart C, 'Related: Statement on International Women's Day' (1 March 2022) <<https://www.worldbank.org/en/news/press-release/2022/03/01/nearly-2-4-billion-women-globally-don-t-have-same-economic-rights-as-men>> accessed 19 February 2024.
- Sasu DS, 'Share of Labour Force in Ghana 2020, By Gender' (Statista, 12 December 2022) <<https://www.statista.com/statistics/1264009/labor-force-distribution-by-gender-in-ghana/>> accessed 4 February 2024.
- Segkulu L K, 'Women in Educational Leadership within the Tamale Metropolis Journal of Education and Practice' (2016) *Journal of Education and Practice*.
- Neltoft CL, 'Girls' Education in Ghana: Fighting Barriers Beyond Gender Parity' (GEP Transformation Education October 07, 2021) <<https://www.globalpartnership.org/blog/girls-education-ghana-fighting-barriers-beyond-gender-parity>> accessed 3 February 2023.
- Nyarko MG, 'The Impact of the African Charter and Maputo Protocol in Ghana' in Victor Ayeni (ed), *The Impact of the African Charter and the Maputo Protocol in Selected African States* (Pretoria University Law Press 2016).
- Nuamah AS, 'On the International Day of the Girl, it's a Good Time to Ask: Are Girls Safe in Schools?' (*The Washington Post*, 11 October 2018). <<https://www.washingtonpost.com/news/monkey-cage/wp/2018/10/11/on-the-international-day-of-the-girl-its-a-good-time-to-ask-are-girls-safe-in-schools/>> accessed 6 February 2024.
- Mensah-Kutin R, 'Case Study: Gender, Human Security and Climate Change in Ghana' (2008) <<https://wedo.org/wp-content/uploads/ghana-case-study.pdf>> accessed 12 February 2024
- OECD, 'Advancing Gender Balance in the Workforce: A Collective Responsibility: Gender Balance Network, Forum on Tax Administration.' (2020) <www.oecd.org/tax/forum-on-tax-administration/publications-and-products/advancing-gender-balance-in-the-workforce-a-collective-responsibility.htm> accessed 16 April 2024.

Plan International, '4 Steps to Advance Digital Equality for Girls' (2018) <<https://plan-international.org/case-studies/4-steps-to-advance-digital-equality-for-girls/>> accessed 14 February 2024.

The World Bank, 'Ghana: Gender Data Portal' <<https://genderdata.worldbank.org/countries/ghana/>> accessed 16 April 2024.

The Commission on Human Rights and Administrative Justice (CHRAJ), *Baseline Study Report on Access to Justice and Gender Based Violence Against Elderly Women Alleged As Witches in Ghana A Research Project by the Commission on Human Rights and Administrative Justice (CHRAJ)* (2022) <<https://chraj.gov.gh/wp-content/uploads/2022/05/Baseline-Study-Report-Access-to-Justice-Project.pdf>> accessed 23 April 2024.

Tobin S, 'What Causes Gender Gaps in the Labour Market?' (2017) <https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_566891/lang-en/index.htm> accessed 18 February 2024.

Tsikata D, *Affirmative Action and the Prospects for Gender Equality in Ghanaian Politics* (Women in Broadcasting and the Friedrich-Ebert-Stiftung 2009). <<https://library.fes.de/pdf-files/bueros/ghana/10484.pdf>> accessed 2 February 2024.

Tufeir A, 'The Nexus of Female Capital and North-South Labour Migration in Ghana a Potential Remedy from Microfinance' (2014) *Journal of Developing Societies*.

United Nations Women Watch, 'The UN Internet Gateway on Gender Equality and Empowerment of Women Fact Sheet Women, Gender Equality and Climate Change' <https://www.un.org/womenwatch/feature/climate_change/downloads/Women_and_Climate_Change_Factsheet.pdf> accessed 12 February 2024.

United Nations, 'United Nations Women and Elections Guide to Promoting and the Participation of Women in Elections: The Underrepresentation of Women in National Parliaments Inter-Parliamentary Union' <www.ipu.org> accessed 18 February 2024.

UNESCO Institute for Statistics, 'Ghana' (2021) <<https://uis.unesco.org/en/country/gh?theme=education-and-literacy>> accessed 6 February 2024.

United Nations Development Programme, 'Resource Guide on Gender and Climate Change' (2009) <<https://www.undp.org/sites/g/files/zskgke326/files/publications/Resource.pdf>>

United Nations Human Rights, 'Strategic Litigation for Sexual and Gender-based Violence: Lessons Learned' <<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/OHCHR-StrategicLitigationforSV-workshopreport-web.pdf>> accessed 18 February 2024.

United Nations Special Rapporteur on the Right to Peaceful Assembly and of Association - Clément Voulé Digital Space and the Protection of Freedoms of Association and Peaceful Assembly in Africa (Consultative Meeting With UU Special Rapporteur Clément Voulé Intercontinental Hotel, Nairobi, Kenya 21-22 February 2019) - <https://www.icnl.org/wp-content/uploads/Final-Communique-UN-Consultation-Africa.pdf>> accessed 2 February 2024.

United Nations Women, 'Political Participation of Women in Asia and the Pacific' <<https://asiapacific.unwomen.org/en/focus-areas/governance/political-participation-of-women#:~:text=Women's%20political%20participation%20is%20a,ensuring%20better%20accountability%20to%20women>> accessed 6 February 2024.

Warioba I, 'The Impact of The Maputo Protocol in Tanzania' in A Mutambasere, B Scholtz and D Murden (eds), *The Impact of the Maputo Protocol in Selected African States* (PULP 2023).

Westminster Foundation for Democracy, *The Costs of Politics in Ghana* (2018) <https://www.wfd.org/sites/default/files/2022-02/Cost_Of_Politics_Ghana.pdf> accessed 13 April 2024.

Cases

Bhe and Others v The Magistrate, Khayelitsha and Others 2005 (3) CCT 49/03.

Brown v Attorney-General 2010 (6) SCGLR 183.

Commission Nationale des Droits de l'Homme et des Libertés v Chad 1974 (92) (ACHPR).

Dorothy Njemanze and Three Others v The Federal Republic of Nigeria 2017 (8) ECW/CCJ/JUD/08/17.

Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt 2011 (85) ACHPR 85.

Ezuame Mannan v The Attorney-General and Speaker of Parliament 2022 JELR 109828 (SC).

Ghana Lotto Operators Association and Others v National Lottery Authority 2007 SCGLR 1088 1096.

Hadijatou Mani v Niger Koroua v the Republic of Niger 2008 (06).

James Kwabena Bomfeh v Attorney General 2019 JI/14/2017.

Justice Abdulai v The Attorney General 2022 (7).

Kenneth Good v the Republic of Botswana 2010 (5) 313/05) 2010 Achpr 106.

Magaret Banful and Henry Nana Boakye v Attorney-General 2017 (7) Writ no. JI/7/2016.

Mary Sunday v The Federal Republic of Nigeria 2018 ECW/CCJ/APP/26/15.

New Patriotic Party v Attorney-General 1997 (1) GLR 378.

Rebeca Gyumi v Attorney General Misc 2016 (5).

Republic v High Court (Commercial Division) Accra; ex parte Attorney-General (NML Capital Ltd & Republic of Argentina, Interested Parties) (2013-2014) 2 SCGLR 990.

Shibi v Sithole and Others 2004 (3) CCT 69/03.

South African Human Rights Commission and Another v President of the Republic of South Africa and Another CCT 2003 (50).

The Commissioner of CHRAJ and Two Others v Ghana National Fire Service and Anor 2017 (63) HR/0063/2017.

Women Against Violence and Exploitation in Society (WAVES) v The Republic of Sierra Leone 2018 (18) ECW/CCJ/APP/22/18.

Constitution

The Constitution of Ghana, 1992.

The Constitution of Uganda, 1995.

Legislation

Criminal Offences Act of Ghana, 1960 (Act 29).

Domestic Violence Act of Ghana, 2007 (Act 732).

Labour Act 2003 of Ghana (Act 651).

Matrimonial Causes Act 1971 of Ghana (Act 367).

The Law of Marriage Act 1971 of Tanzania [Cap 29 RE 2002].

International Treaties and Conventions

African (Banjul) Charter on Human and Peoples' Rights adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

Protocol to the African Charter on Human and Peoples' Rights on The Rights of Women in Africa Adopted by the 2nd Ordinary Session of the Assembly of the Union.

The UN's CEDAW/C/GC/30 Convention on the Elimination of all Forms of Discrimination Against Women 1979 was adopted and opened for signature, ratification, and accession by General Assembly resolution 34/180 (CEDAW).