



Submission from the International Commission of Jurists to the African Commission on Human and Peoples' Rights on Reservations relating to access to abortion and the inconsistency of national laws in relation to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)

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1. Introduction

The International Commission of Jurists (ICJ) welcomes the call issued on 22 August 2025 for inputs on a draft advocacy framework for withdrawing reservations on some provisions of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Pursuant to that call, the ICJ makes the following submissions.

The ICJ recalls that the African Commission on Human and People's Rights (ACHPR) has recognized the urgent need to raise awareness and advocate for the withdrawal of reservations on some provisions of the Maputo Protocol to the African Charter on Human and People's Rights (The Protocol).¹ It did so particularly in its Resolution ACHPR/Res.632 (LXXXII) 2025,² recognizing the urgent need to raise awareness and advocate for the withdrawal of reservations on some provisions of the Maputo Protocol. Nine States Parties have entered reservations purporting to limit the scope of their obligations under the Protocol, which pose substantial impediments to realization of women's human rights including in sexual and reproductive health.

The Advocacy Framework responds to this Resolution by providing, among other things, legal and policy guidance on the implications of reservations under international law and best practices from States that have successfully withdrawn reservations.

The ICJ recalls that under international law, the prerogative of States to enter reservations to treaties to which they are party is not boundless. As the draft Framework points out, one such constraint is reflected in article 19 (c) of the Vienna Convention on the Law of Treaties,³ which provides that a State may not formulate reservations that are "incompatible with the object and purpose of the

¹ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, Available here: 37077-treaty-charter_on_rights_of_women_in_africa.pdf

² Resolution ACHPR/Res.632 (LXXXII) 2025 available here: [Resolution on the need to Raise Awareness for States to withdraw Reservations on some Provisions of the Maputo Protocol - ACHPR/Res.632 \(LXXXII\) 2025 | African Commission on Human and Peoples' Rights](Resolution on the need to Raise Awareness for States to withdraw Reservations on some Provisions of the Maputo Protocol - ACHPR/Res.632 (LXXXII) 2025 | African Commission on Human and Peoples' Rights)

³ Vienna Convention on the Law of Treaties 1969, Article 19 (c), Available here: [Vienna Convention on the Law of Treaties \(1969\)](Vienna Convention on the Law of Treaties (1969))

treaty". In considering what kinds of reservations would fit into this prohibited category, one has to take into account the special character of human rights treaties, as have various authorities such as the International Law Commission (ILC), the former Sub Commission on the Promotion and Protection of Human Rights and the UN Human Rights Treaty bodies.⁴ Human rights treaties do not merely concern the interests of State, but also the third-party beneficiaries, the rights holders.

As the ILC has established in their own guidelines, "in determining the compatibility of a reservation with the object and purpose of a treaty, account shall be taken of the indivisibility, interdependence and interrelatedness of the rights set out in the treaty."⁴ This is in line with the principle agreed by all States in 1993 in the Vienna Declaration and Programme of Action.⁵

The ICJ therefore considers that any reservations that would impair the essence of any right protected under the Maputo Protocol, should be considered incompatible with the object and purpose of the Protocol and therefore inadmissible. This certainly includes reservations made by States on access to safe abortion, which is also a component of the right to health. The Maputo Protocol guarantees the protection of a particular set of rights for women and girls in Africa, which is critical to its aim to eliminate all forms of discrimination, violence, and harmful practices against women.

It should be noted that there is a distinction between a reservation, and an interpretative declaration. A reservation "purport[s] to exclude or modify the legal effect of a treaty provision." Interpretive declarations or understandings are quite different. "Interpretative declarations ...unlike reservations, do not purport to exclude or modify the legal effects of a treaty. The purpose of an interpretative declaration is to clarify the meaning of certain provisions or of the entire treaty."⁵ It is not always clear whether some of what is purported to be a reservation to the

⁴ https://legal.un.org/ilc/texts/instruments/english/draft_articles/1_8_2011.pdf

⁵ <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declarationandprogramme-action>

⁵ See UN Treaty Handbook: <https://treaties.un.org/doc/source/publications/THB/English.pdf>

Protocol are not, instead, declarations with no real legal effect. For purposes of this submission, the ICJ will treat the purported reservations as reservations, but note that a full legal analysis is to make this determination on a case-by-case basis.

This submission provides an overview of the reservations entered by Kenya, Uganda, Algeria and Cameroon in relation to Article 14⁶ of the Protocol, which provides that "States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted." These reservations deal predominantly with women's right to health and reproductive rights. Kenya and Uganda have each entered reservations to Article 14(2)(c), primarily concerning the authorization of medical abortion, on the grounds of inconsistency with national laws or "moral" principles. Uganda has entered its interpretation of Article 14(1)(a) couched as a reservation, withholding its recognition of women's autonomy over fertility irrespective of marital status. Algeria's reservations to Articles 6, 7 and 14 has broader implications, potentially enabling the persistence of child marriage and restricting access to abortion, including for survivors of sexual violence. Cameroon does not appear to have entered a reservation to the Protocol but has entered interpretative declaration to the effect that it considers any construction of Article 14 justifying several enumerated practices "cannot be applied against the Government of Cameroon." This, though lacking in legal effect, should be removed.

[Collectively, these reservations and declarations illustrate the enduring tensions between international - particularly regional -human rights obligations and domestic legal arrangements, often informed by cultural and religious norms, governing reproductive health and autonomy across these States].

⁶ Article 14 of the Protocol to the African Charter on Human and People's Rights of Women in Africa: Article XIV HEALTH AND REPRODUCTIVE RIGHTS 1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes: a) The right to control their fertility; b) The right to decide whether to have children, the number of children and the spacing of children; c) The right to choose any method of contraception; d) The right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS; e) The right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices; f) The right to have family planning education.

2. An analysis of the state reservations to the Maputo Protocol measured against the ACHPR Advocacy Framework

The Maputo Protocol remains one of the most extensive regional human rights instruments promoting and protecting women's rights. Despite its progressive character, nine States Parties have entered reservations, including in relation to Article 14 on Health and Reproductive Rights, an in particular to Article 14(2)(c) which obliges States to authorize medical abortion in limited circumstances such as sexual assault, rape, incest, or when pregnancy endangers the health or life of the mother or the foetus. The ACHPR through its Advocacy Framework, has prioritized the withdrawal of these reservations because they significantly limit the realization of women's health, dignity, and equality across the continent.

2.1 Kenya

Kenya's reservation to Article 14(2)(c) concerns the issue of medical abortion, with the government citing an inconsistency between the Protocol and its national laws. The reservation is as follows "The Government of the Republic of Kenya does not consider as binding upon itself the provisions of Article 10(3) and Article 14(2)(c) which is inconsistent with the provisions of the Laws of Kenya on health and reproductive rights."

This reservation, which the ICJ considers to be incompatible with the object and purpose of the Protocol, has the effect of restricting the direct enforceability of the Protocol's reproductive health provisions and limits women's access to safe abortion, even in instances of rape, incest, or life-threatening pregnancies. The ACHPR highlights that such reservations undermine the Protocol's non-discrimination and equality provisions under Article 2 as well as the right to health under Article 14(1). Notably, Kenya's domestic law recognises the right to the highest attainable standard of health as encompassing sexual and reproductive health rights.⁷ The Court⁸ has further interpreted that Article 26(4) of the

⁷ Constitution of Kenya Article 43(1) and Health Act (Cap. 141) ss 3, 4, 6.

⁸ FIDA-Kenya and 3 Others versus Attorney General and 2 Others [2019] eKLR accessible <https://kenyalaw.org/caselaw/cases/view/175490/>.

Constitution⁹, allows medical abortion in certain circumstances, such as where a pregnancy endangers the life or health (including mental, psychological or physical health) of the mother. Thus, Kenya's continued reservation would appear overtaken by its national law. Under the Advocacy Framework, Kenya is encouraged to fully harmonize its domestic legal framework with the Protocol. This includes recognising the right to health as encompassing reproductive health in line with the Kenyan Constitution and the national law and incorporating exceptions for medical necessity and sexual violence. Through evidence-based dialogue and inter-ministerial consultations, Kenya should withdraw this reservation.

2.2 Uganda

Uganda entered two reservations, which are expressed in terms of a rejection of interpretations, both targeting the core of women's reproductive autonomy. The first concerns Article 14(1)(a) which protects a woman's right to control her fertility: "In respect to the women's right to control their fertility interpreted to mean; women entirely have the right to control their fertility regardless of their marital status. Uganda therefore rejects and interprets this article that would grant women independent control over fertility regardless of marital status, implying that reproductive decisions should be subject to the marital relationship. This interpretation serves impermissibly to limit women's autonomy and places their reproductive choices under male or familial authority, which conflicts with the Protocol's purpose of advancing individual dignity and equality before the law.¹⁰ The second reservation concerns Article 14(2)(c) on medical abortion. Uganda's position is to reject that the provision be "interpreted in a way conferring an individual right to abortion or mandating a State Party to provide access thereto. The State is not bound by this clause unless permitted by domestic legislation expressly providing for abortion." In effect, this means that even in the cases enumerated in the Protocol, rape, incest, or danger to the woman's health, access to abortion remains governed solely by national law. These interpretations

⁹ Article 26(4) of the Constitution of Kenya states, "*Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.*"

¹⁰ Articles 3 and 8 of The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

arguably do constitute real reservations, as they seem to purport to change the legal effects of the treaty. Irrespective of whether they are reservations or interpretive declarations, the ICJ considers them to be incompatible with the object and purpose of the Protocol. The ACHPR has made clear that restricting the enjoyment of the right to health and undermining the Protocol's objective to eliminate gender-based discrimination in health access. Through the Advocacy Framework, Uganda is called on to undertake legal and policy reviews, supported by human rights education and public health advocacy, to gradually align national laws with the Protocol's reproductive health guarantees. The ACHPR emphasizes that this process can respect national sovereignty while still advancing women's equality and dignity.

2.3 Algeria

Algeria has entered a broad reservation to Article 14, thereby excluding itself from obligations relating to women's health and reproductive rights. This general reservation is patently incompatible with the object and purpose of the Protocol and therefore invalid. It means that the Protocol has no effect in removing the obstructions to access to abortion even for rape survivors or for health-related reasons. It also does not allow the Protocol to serve its purpose in ending the continuation of child marriage, contrary to Article 6(b) which sets the minimum age of marriage at eighteen years. The ACHPR views this as one of the most restrictive reservations, as it affects several interrelated rights, including the right to health, dignity, and freedom from harmful practices. By clarifying that the limited grounds for medical abortion under Article 14(2)(c) are compatible with human dignity and public morality, Algeria could begin a process of withdrawal from those reservations. The ACHPR also calls for national dialogue with religious scholars and women's rights organizations to frame reproductive health as a component of social welfare and not as a deviation from cultural or religious norms.

2.4 Cameroon

Cameroon has not entered a reservation, but instead has issued an interpretative declaration concerning Article 14 specifying the following: "The acceptance of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of

Women in Africa should in no way be construed as endorsement, encouragement or promotion of homosexuality, abortion(except therapeutic abortion), genital mutilation, prostitution or any other practice which is not consistent with universal or African ethical and moral values, and which could be wrongly understood as arising from the rights of women to respect as a person or to free development of her personality. Any interpretation of the present Protocol justifying such practices cannot be applied against the Government of Cameroon. "

As noted above, this interpretation has no legal effect whatsoever and Cameroon remains bound by article 14 in the same manner as any other State Party. However, it does constitute an unfortunate expression of what State practices are likely to continue. The Advocacy Framework treats such interpretative declarations as opportunities for substantive engagement. The African Commission can encourage Cameroon to reinterpret its declaration in a manner consistent with constitutional guarantees of the right to life and health. Through such engagement, Cameroon could move away from its restrictive interpretation that is incompatible with the object and purpose of the protocol, recognizing that ensuring access for safe abortion within the meaning of Article 14(2)(c) is necessary to discharge the obligation to protect women's rights to life and health.

3. Broader Observations and Advocacy Pathways

Many of the reservations and declarations entered by these four States share a common pattern in that they relate to reproductive autonomy and ensuring safe and legal access to abortion under the limited circumstances envisaged in Article 14(2)(c). The Advocacy Framework identifies this as a regional challenge, where moral, religious, and cultural objections intersect with concerns about national sovereignty. From a human rights standpoint, maintaining these invalid reservations, undermines the integrated protection guaranteed by the Protocol. The denial or restriction of reproductive health services directly affects women's

rights to life,¹¹ dignity¹² and freedom from violence and harmful practices.¹³ The ACHPR has called on States to recognize that withdrawing these reservations is about fulfilling commitments to protect women's lives, health, and equality in accordance with universal African human rights principles. The Advocacy Framework further recommends that States conduct national consultations, establish inter-ministerial committees to review conflicting laws and work with civil society and faith-based groups to develop consensus. Such processes should culminate in the formal withdrawal of reservations through notification to the African Union Commission, as provided under Article 30 of the Protocol.

4. Conclusion

The reservations and declarations entered by Kenya, Uganda, Algeria, and Cameroon are plainly incompatible with the object and purpose of the Maputo Protocol and must be withdrawn. The Advocacy Framework provides a constructive roadmap for addressing this challenge through legal review, policy dialogue, and human rights education. The framework however needs to strongly address the role of the various human rights bodies to boldly declare reservations that undermine the core objectives of the Protocol as invalid. Withdrawing these reservations would not only strengthen the implementation of the Maputo Protocol but also reaffirm the shared African commitment to protecting the dignity, equality, and wellbeing of women and girls across the continent.

¹¹ Article 4 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

¹² Article 3 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

¹³ Articles 4 and 5 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

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