



**The Right to Sustainable Development for Women in South Africa: A Critical Analysis of Article 19 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**

By

Ndzumbululo Mulaudzi

Student number: 18005663

A dissertation submitted in fulfilment of the requirements for the degree of  
Master of Laws (LLM)

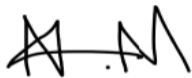
Department of Public Law  
Faculty of Management, Commerce and Law

University of Venda  
Supervisor: Dr UCA Mokoena

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## DECLARATION

I, Ndzumbululo Mulaudzi, student number 18005663, hereby declare that this dissertation for the Master of Laws (LLM) degree at the University of Venda, hereby submitted by me, has not previously been submitted for a degree at this or any other university, and that it is my work in design and execution and that all reference material contained herein have been duly acknowledged.

Signature: 

Date: 14 June 2024

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## Abstract

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (hereinafter referred to as the Maputo Protocol) highlights the importance of sustainable development for women in Article 19. This research delves into an analysis of this article. Section 9 of the Constitution ensures that everyone is treated equally under the law. This provision serves as a basis for supporters of women's rights to advocate for progress, in South Africa by focusing on initiatives that empower women. Various laws have been put in place to uphold this entitlement. The question remains; are they adequate, in addressing the challenges faced by women concerning equality and sustainable development? The focus of this study is to examine the existing framework aimed at promoting women's rights to development. The doctrinal research approach is utilised in this study. The current legal framework concerning the right to sustainable development may not be comprehensive enough to tackle the obstacles encountered by women. The objective is to evaluate the legal framework surrounding this clause and provide recommendations based on research findings.

**Key Concepts:** Women, sustainable development, equality

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## CHAPTER 1

### 1.1. Introduction

World leaders have a goal to eliminate poverty, hunger, disease, illiteracy, environmental harm and discrimination, against women as outlined in the United Nations Millennium Declaration.<sup>1</sup> Through the ratification of the Maputo Protocol, South Africa has committed to supporting the provision in Article 19 that specifically ensures women's right to sustainable development.<sup>2</sup> The concept of sustainable development has transformed over the years resulting in methods, for putting it into practice. One significant strategy is the notion of sustainable development, which though not obligatory, has been embraced by nations and groups as a guiding principle. Lately, there has been a growing emphasis on the concept of the right to sustainable development underscoring the importance of involving individuals, in decisions concerning development initiatives.<sup>3</sup>

Given that women have been seen as a group that lacks representation their progress is intricately tied to sustainable development, which reinforces the importance of implementing affirmative action measures outlined in Section 9. Additionally it can be argued that Section 24 of the Constitution is pertinent, in this context as it highlights the link, between environmental rights and sustainable development.<sup>4</sup> Affirmative action and sustainable development can be examined through different perspectives. Balancing the needs of the generation while safeguarding the ability of generations to fulfill their own needs is a core principle of sustainable development. This comprehensive approach recognizes the interconnectedness of social and environmental aspects emphasizing the importance of giving consideration to these elements, for long term prosperity and well-being. In contrast affirmative action entails initiatives and policies aimed at addressing discrimination against women, minorities

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<sup>1</sup> United Nations, United Nations Millennium Declaration, Resolution Adopted by the General Assembly, A/RES/60/1 (24 October 2005).

<sup>2</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005).

<sup>3</sup> Kevin Bubrski, 'Achieving Sustainable Development and Promoting Development Cooperation: United Nations Department of Economic and Social Affairs' (United Nations, 2008) 63.

<sup>4</sup> Constitution of the Republic of South Africa 1996, Section 9 & Section 24.

individuals, with disabilities and other marginalized groups. Through these measures marginalised communities can access opportunities and a fair chance to succeed.<sup>5</sup>

Ensuring opportunities, for marginalised groups through affirmative action is crucial for fostering sustainable development. By providing access to resources and opportunities it helps in building a society that is more just and equitable. This inclusive approach allows everyone to participate in and benefit from progress across sectors like the economy, society and environment. Implementing policies that promote gender equality in areas such as the workplace, education and entrepreneurship can empower women and girls boost their prospects and ultimately reduce disparities in income and poverty levels. Affirmative action helps address barriers and biases that have held back marginalised communities paving the way, for an inclusive and sustainable future.<sup>6</sup>

Sustainable development plays a role, in enhancing the impact of action by fostering a stable and robust environment conducive to implementing such policies. For example initiatives focused on reducing disaster risks and adapting to climate change within the context of sustainable development can empower, at risk communities to better withstand threats and natural disasters.<sup>7</sup> This proactive approach helps safeguard the progress achieved through affirmative action, from influences that are beyond the scope of policy control. The connection, between affirmative action and sustainable development highlights the significance of considering developmental aspects when creating policies and initiatives. By acknowledging the interconnectedness of social and environmental factors decision makers can design robust and long lasting strategies to tackle inequality and enhance the overall well-being of all community members.<sup>8</sup>

The Sustainable Development Goals (SDGs) established by the United Nations emphasize the role women play in accomplishing most of the SDGs. A significant

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<sup>5</sup> Uduak Archibong and Oluyinka Adejumo, 'Affirmative Action in South Africa: Are we Creating New Casualties?' (2013) 3 (1) Journal of Psychological Issues in Organizational Culture 18.

<sup>6</sup> The United Nations Entity for Gender Equality and the Empowerment of Women, 'Affirmative Action and Sustainable Development: A Compendium of Strategies and Best Practices' (2015).

<sup>7</sup> UNDP, 'Climate change adaptation' (2024) <https://www.undp.org/asia-pacific/climate-change-adaptation>.

<sup>8</sup> World Bank, 'The 2020 Atlas of Sustainable Development Goals: Stories and insights through innovative visuals' (World Bank, 1 May 2024) <https://blogs.worldbank.org/en/opendata/2020-atlas-sustainable-development-goals-stories-and-insights-through-innovative-visuals#:~:text=Expanding%20understanding%20of%20key%20trends,and%20addressing%20the%20climate%20crisis>.

number of goals explicitly underscore the importance of empowering and treating women equally. The World Bank's assertion that 'gender issues are crucial, for achieving development' echoes this understanding. The SDGs underscore the link, between achieving progress and promoting women's rights by prioritizing gender equality and women's empowerment across various development sectors. This comprehensive approach highlights the need to address gender disparities as an element of the global sustainable development agenda.<sup>9</sup> Although several of the Millennium Development Goals (MDGs) focused on women-related issues, Goal 7 specifically tackles sustainability without discussing the status of women or other aspects of their sustainable progress. The MDGs have now been replaced by the SDGs which adopt a perspective by incorporating women's empowerment and gender equality, into goals recognising the significant contribution of women, to sustainable development.<sup>10</sup>

The emphasis, on promoting women's empowerment and gender equality within sustainable development underscores the role these aspects play in driving substantial change and resistance against the current norms. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) serving as a roadmap for advancing women's rights and gender equality worldwide aligns with this perspective. The global community acknowledges the necessity of a rights-centered approach that tackles the obstacles and discriminatory behaviors that have historically hindered women's complete engagement and leadership in development processes by recognizing gender equality and women's empowerment as fundamental pillars of sustainable development. Ultimately, realizing the power of development and creating a fairer, more inclusive world hinges, on prioritizing gender justice and empowering women.<sup>11</sup> The CEDAW Optional Protocol encourages incorporating gender perspectives into every aspect of women's experiences.<sup>12</sup> The Maputo Protocol is

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<sup>9</sup> Report of the United Nations Entity for Gender Equality and the Empowerment of Women on Women and Sustainable Goals (25 September 2015) 12.

<sup>10</sup> United Nations, 'Millennium Development Goals' (Wikipedia, 2024) [https://en.wikipedia.org/wiki/Millennium\\_Development\\_Goals](https://en.wikipedia.org/wiki/Millennium_Development_Goals).

<sup>11</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted 18 December 1979, 1249 UNTS 13.

<sup>12</sup> Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, adopted 6 October 1999, entered into force 21 December 2000, WOM/1242.

widely recognized for being the document to explicitly safeguard the growth rights of African women shedding light on various facets of this concept.<sup>13</sup>

Since its founding, in 1987 to ensure the protection of society and its traditions, the concept of 'sustainable development' has gained importance and visibility. This recognition stemmed from the disaster at Chernobyl in the USSR, where sustainable development was proposed as a response to critical situations. Despite its use, there is still no accepted definition of sustainable development. In agreements specific definitions of sustainable development are rare with the initial definition provided by the World Commission, on Environment and Development (WCED) report being one of the first instances as:

Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It seeks to reconcile economic development with the protection of social and environmental balance.<sup>14</sup>

The definition provided above shows the interconnected nature of sustainable development and environmental conservation. This link aligns with the concepts outlined in Article 24 of the African Charter, which delves into sustainability as well as Article 18 of the Protocol concerning the right, to a sustainable environment.<sup>15</sup> Women face challenges when striving for development. South Africa ratified the Maputo Protocol on December 17 2004. Article 19 of the Maputo Protocol states that:

Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to:

- a) introduce the gender perspective in the national development planning procedures;
- b) ensure participation of women at all levels in the conceptualisation, decision-making, implementation, and evaluation of development policies and programmes;
- c) promote women's access to and control over productive resources such as land and guarantee their right to property;

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<sup>13</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005).

<sup>14</sup> Report on the World Commission on Environment and Development- Our Common Future, UN Doc. A/42/427 4 August 1987.

<sup>15</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) Art 18.

- d) promote women's access to credit, training, skills development, and extension services at rural and urban levels to provide women with a higher quality of life and reduce the level of poverty among women;
- e) consider indicators of human development specifically relating to women in the elaboration of development policies and programmes; and
- f) ensure that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.

The study primarily examines rights linked to sustainable development such, as the rights to development, a clean and healthy environment, access to information and participation, in decision-making. The Ministry of Women located within the Office of the Presidency serves as the entity overseeing South Africa's actions and responsibilities outlined in the Maputo Protocol.<sup>16</sup> The Ministry of Women aims to lead the way, in promoting gender equality and empowering women socially and economically.<sup>17</sup> The aim is to simplify the process by setting up guidelines, for applying both global regulations. It categorizes the Maputo Protocol under its 'additional mandate'. Depicts it as one of South Africa's commitments to promoting women's empowerment and gender equality on regional and international levels. The Ministry is striving to ensure effective implementation of the Maputo Protocol. Gender mainstreaming is being employed to promote gender equality across all government sectors involving Cabinet members, government organizations, the business community and civil society. While the Minister of Women in the Presidency holds responsibility, for advancing women's empowerment and gender equality this approach is being put into action to achieve that objective.<sup>18</sup>

The South African Constitution provides a structure, for implementing laws and policies aimed at promoting gender equality preventing discrimination and fostering change, within the country.<sup>19</sup> Identifying the impact of the Maputo Protocol can be

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<sup>16</sup> Victor Oluwasina Ayeni, 'The Impact of the African Charter and the Maputo Protocol in Nigeria' in Victor Oluwasina Ayeni (ed), *The impact of the African Charter and the Maputo Protocol in selected African states* (Pretoria University Law Press 2016) 218.

<sup>17</sup> Republic of South Africa, Department of Women, 'About Us' (Department of Women, 2024) <https://www.women.gov.za/about-us.html>.

<sup>18</sup> Republic of South Africa, Department of Women, 'About Us' (Department of Women, 2024) <https://www.women.gov.za/about-us.html>.

<sup>19</sup> Constitution of the Republic of South Africa, 1996.

approached in three ways.<sup>20</sup> Firstly, various government departments have initiated various legislation to enhance the implementation of the Maputo Protocol. For example, Schedule 2 of the Electoral Code of Conduct of the South African Electoral Act;<sup>21</sup> the Employment Equity Act;<sup>22</sup> the Promotion of Equality and Prevention of Unfair Discrimination Act;<sup>23</sup> the Labour Relations Act;<sup>24</sup> and the Basic Conditions of Employment Act,<sup>25</sup> to name a few. Secondly, documents discussing the development of the national legislation makes reference to the Maputo Protocol.<sup>26</sup> Lastly, some legal changes were inspired by decisions, from courts, in South Africa that referenced the Maputo Protocol.<sup>27</sup>

Women are impacted to an extent by the consequences of poverty, climate change inadequate health care systems, food insecurity and global economic and environmental challenges.<sup>28</sup> Women are, at a risk of experiencing poverty compared to men.<sup>29</sup> In the year 2022 a study showed that 47.0% of women, in South Africa were not actively participating in the economy.<sup>30</sup> Nearly half of working age women are currently not employed, which is almost double the percentage of their male counterparts. Globally women's participation, in the labour force stands at 47% while men's participation is higher, at 72%.<sup>31</sup> African women are not fully realizing their potential, in the workforce highlighting gender inequality. It is crucial, for the progress of women to be prioritized in South Africa. Statistics indicate that a higher percentage of women (52.2%) compared to men (46.1%) are living below the Upper Bound

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<sup>20</sup> United Nations Commission on the Status of Women, Report on the Implementation of Agreed Conclusions on Women's Empowerment and the Link to Sustainable Development (2020) 3.

<sup>21</sup> Electoral Code of Conduct of the South African Electoral Act 73 of 1998.

<sup>22</sup> Employment Equity Act 55 of 1998.

<sup>23</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>24</sup> Labour Relations Act 66 of 1995.

<sup>25</sup> Basic Conditions of Employment Act 75 of 1997.

<sup>26</sup> United Nations Commission on the Status of Women, Report on the Implementation of Agreed Conclusions on Women's Empowerment and the Link to Sustainable Development (2020) 3.

<sup>27</sup> United Nations Commission on the Status of Women, Report on the Implementation of Agreed Conclusions on Women's Empowerment and the Link to Sustainable Development (2020) 3.

<sup>28</sup> Prabuddh Kumar Mishra and Pratibha Tripathi, 'Women and Sustainable Development Goals' (2018) 12 Research Gate Publications 1.

<sup>29</sup> Johanna Kehler, 'Women and Poverty: The South African Experience' (2001) 3 Journal of International Women's Studies 41.

<sup>30</sup> Statistics South Africa, 'Nearly half of SA women are out of the labour force in Q2:2022' (Statistics South Africa, 23 August 2022) <https://www.statssa.gov.za/?p=15668> accessed 19 November 2022.

<sup>31</sup> Statistics South Africa, 'Nearly half of SA women are out of the labour force in Q2:2022' (Statistics South Africa, 23 August 2022) <https://www.statssa.gov.za/?p=15668> accessed 19 November 2022.

Poverty Line (UBPL).<sup>32</sup> In addition the research shows that 59.3% of households headed by men are, below the UBPL while this figure rises to 74.8% for households led by women.<sup>33</sup> Gender inequality is evident, in the likelihood of women living in poverty compared to men. The data suggests that this gap has remained relatively consistent, over the decade.<sup>34</sup> The concept of sustainable development encompasses both political aspects. This is because it requires governance, a goal that may prove difficult to achieve until there is gender equality, in the country.<sup>35</sup> The government must play a role, in ensuring the progress of women. Thus it is essential for this research to focus on women's sustainable development to provide recommendations on how South Africa can secure women's access to sustainable development and tackle the issue of gender inequality that affects women.

South Africa has ratified numerous international human rights instruments that do not explicitly address sustainable development. For instance, the CEDAW convention emphasizes promoting the potential of women to contribute to their nations and humanity while aiming to eliminate discrimination, against women.<sup>36</sup> The concept of sustainable development is not referenced in international human rights instruments, such as the International Covenant, on Civil and Political Rights<sup>37</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>38</sup> Both men and women have their rights protected by these instruments.

The United Nations General Assembly resolutions incorporate the concept of sustainable development.<sup>39</sup> Various declarations, such as the Declaration on the Right

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<sup>32</sup> Statistics South Africa, 'Living Conditions Survey' (Statistics South Africa, 13 October 2022) <https://www.gov.za/ss/statssa-living-conditions-survey> accessed 19 November 2022.

<sup>33</sup> Angie Bittar, 'Facts About Poverty in South Africa' *The Borgen Project* (14 August 2020) [www.borgenproject.org/poverty-in-South-Africa](http://www.borgenproject.org/poverty-in-South-Africa) (accessed 14 August 2022).

<sup>34</sup> Angie Bittar, 'Facts About Poverty in South Africa' *The Borgen Project* (14 August 2020) [www.borgenproject.org/poverty-in-South-Africa](http://www.borgenproject.org/poverty-in-South-Africa) (accessed 14 August 2022).

<sup>35</sup> Candice Stevens, 'Are Women the Key to Sustainable Development?' (2010) Boston University's Frederick S. Pardee Center for the Study of the Longer-Range Future 7.

<sup>36</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted 18 December 1979, 1249 UNTS 13.

<sup>37</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

<sup>38</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

<sup>39</sup> United Nations General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development' (21 October 2015) UN Doc A/RES/70/1.

to Development,<sup>40</sup> the Beijing Declaration and Platform of Action,<sup>41</sup> the UN Millennium Declaration,<sup>42</sup> the UN Sustainable Development Goals,<sup>43</sup> and legal decisions such as the Gabčíkovo-Nagymaros Project case (*Hungary v. Slovakia*) emphasize the importance of women's participation in achieving development.<sup>44</sup> This is also highlighted in events like the United Nations Conference on Environment and Development and Article 8(1) of the Declaration on the Right, to Development.<sup>45</sup> Resolution 35 of the Beijing Declaration emphasizes the importance of prioritizing women's development, by calling on all parties involved to;

Ensure women's equal access to economic resources, including land, credit, science and technology, vocational training, information, communication and markets, to further the advancement and empowerment of women and girls, including through the enhancement of their capacities to enjoy the benefits of equal access to these resources, inter alia, by means of international cooperation.<sup>46</sup>

The analysis, by the International Court of Justice on the Gabčíkovo-Nagymaros Project (*Hungary v. Slovakia*) sheds light on how sustainable development's intertwined with maintaining an environment. The court emphasizes that sustainable development entails striking a balance, between preserving the environment and promoting growth.<sup>47</sup> To ensure the advancement of women's rights to sustainable development countries must carry out measures as detailed in Article 19 of the Maputo Protocol. South Africa is obligated to adhere to these provisions as it has ratified the Protocol.<sup>48</sup> While sustainable development applies to both genders it is crucial to

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<sup>40</sup> United Nations General Assembly, Declaration on the Right to Development: resolution adopted by the General Assembly (4 December 1986) UN Doc A/RES/41/128.

<sup>41</sup> United Nations Specialised Conferences, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, United Nations, 27 October 1995, <https://www.refworld.org/legal/resolution/un/1995/en/73680> [accessed 14 May 2024].

<sup>42</sup> United Nations General Assembly, United Nations Millennium Declaration, Resolution Adopted by the General Assembly (18 September 2000) UN Doc A/RES/55/2.

<sup>43</sup> United Nations Department of Economic and Social Affairs, Report on Global Sustainable Development (2015).

<sup>44</sup> Gabčíkovo-Nagymaros Project (*Hungary/Slovakia*) (Judgment) [1997] ICJ Rep 7.

<sup>45</sup> United Nations General Assembly, Declaration on the Right to Development (4 December 1986) UN Doc A/RES/41/128 art 8(1).

<sup>46</sup> United Nations Specialised Conferences, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, United Nations, 27 October 1995,

<https://www.refworld.org/legal/resolution/un/1995/en/73680> [accessed 14 May 2024].

<sup>47</sup> Gabčíkovo-Nagymaros Project (*Hungary v Slovakia*) (Judgment) [1997] ICJ Rep 7.

<sup>48</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005 Art 19.

highlight the significance of women's rights, in achieving sustainable development. This particular aspect addresses political, economic and cultural challenges that women face.<sup>49</sup>

## 1.2. Research problem

The Constitution provides the structure, for creating laws that promote equality and support the empowerment of women.<sup>50</sup> The equality provisions, in the Constitution have been put into action since 1994 through numerous legislative measures. These laws include the Promotion of Equality and Prevention of Unfair Discrimination Act,<sup>51</sup> the Domestic Violence Act,<sup>52</sup> the Employment Equity Act<sup>53</sup> and the Criminal Law (Sexual Offences and Related Matters) Amendment Act,<sup>54</sup> among others. Additionally, several organizations were established to uphold Chapter 9 of the Constitution and promote democracy, such as the South African Human Rights Commission (SAHRC) and the Commission, for Gender Equality (CGE). Despite the frameworks aimed at safeguarding women's rights women continue to face opportunities, across various industries. With women comprising the majority of the population a significant portion of them are living in poverty. Gender disparity plays a role, in perpetuating poverty and undermining women's rights.<sup>55</sup> Gender inequality continues to pose a challenge to progress as outlined in Article 19 of the Maputo Protocol. The vulnerability of women is often linked to poverty and food insecurity with a connection, between hunger and gender disparities. According to the 2019 Marginalised Group Indicator report an estimated 40.6% of households led by women did not have any employed members.<sup>56</sup>

## 1.3. Aim and objective

### 1.3.1. Aim

The research aims to examine how South Africa safeguards women's right to sustainable development as outlined in Article 19 of the Maputo Protocol.

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<sup>49</sup> Ademola Oluborode Jegede and Ndzumbululo Mulaudzi, 'Article 19 Right to sustainable development' in Annika Rudman, Celestine Nyamu Musembi & Trésor Muhindo Makunya (eds), *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: a commentary* (PULP 2023) 400.

<sup>50</sup> Constitution of the Republic of South Africa 1996.

<sup>51</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>52</sup> Domestic Violence Act 116 of 1998.

<sup>53</sup> Employment Equity Act 55 of 1998.

<sup>54</sup> Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

<sup>55</sup> OXFAM International, 'Gender Justice and Women's Rights' ([www.oxfam.org/en/what-we-do/issues/gender-justice-and-womens-rights](http://www.oxfam.org/en/what-we-do/issues/gender-justice-and-womens-rights))[1].

<sup>56</sup> Marginalized Groups Indicator, 2020 ([www.statssa.gov.za](http://www.statssa.gov.za)) accessed 24 February 2022.

### 1.3.2. Objective

The objective of this research is to evaluate the enforcement of Article 19 of the Maputo Protocol, in South Africa by examining the legal framework of the country.

### 1.4. Research questions

The main question emanating from the aim of this study is as follows;

How effective is the legal framework, in South Africa in ensuring the execution of the provisions outlined in Article 19 of the Maputo Protocol?

The sub-research questions emanating from the main research question are;

- How has poverty and gender disparity impacted women's access to development as articulated in Article 19 of the Maputo Protocol particularly, in South Africa?
- What measures has South Africa taken to combat gender inequality and poverty to achieve sustainable development?

### 1.5. Research methodology

The study used doctrinal research methodology and incorporated both primary and secondary sources to address its research questions. Primary sources consulted in the study comprised the Constitution, literature, from the World Bank, government publications and legislation such, as the National Environmental Management Act.<sup>57</sup> Additionally, secondary sources consulted include articles from reputable academic journals, newspaper articles, scholarly books and writings by South African students on the subject matter.

### 1.6. Preliminary literature review

There is a focus, in the existing literature on the concept of sustainable development rights in South Africa for both genders. However, there is a lack of emphasis on development rights that specifically advance women's rights. Additionally, the attention given to article 19 of the Maputo Protocol, in research is limited. The importance of ensuring women's involvement in sustainable development cannot be understated, as it serves as a cornerstone for realizing the goals set out in Agenda 2030 and Agenda 2063 to transform the world. While Agenda 2063 may not explicitly mention Article 19 its objectives and principles are closely aligned with the values

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<sup>57</sup> National Environmental Management Act 107 of 1998.

outlined in that document. With a focus on promoting inclusion and gender equality Agenda 2063 is consistent with Article 19. Though literature does not specifically address Article 19 it offers insights that contribute to addressing research questions. The literature review begins by presenting scholars perspectives on the right to sustainable development and concludes by examining their views on sustainable development concerning women. Moreover, it highlights areas where existing literature falls short on this topic and discusses how scholars' insights will benefit this study.

Kotze, in his research, emphasized the importance of sustainable development, within the framework of the South African Constitution. He highlighted how the Constitutional Court has set guidelines to steer both the legislative branches toward progress.<sup>58</sup> Additionally, he stressed the necessity in a developing nation like South Africa to tackle issues such, as poverty, unemployment and infrastructure development to meet the SDGs.<sup>59</sup> The current researcher agrees with Kotze's insights as outlined in his study. Kotze's analysis is valuable as it will support the researcher's work by aligning with the principles outlined in the Constitution, Section 24.

The concept of sustainable development is considered both internationally and domestically. Paterson, in his research examined how South Africa implements laws related to development.<sup>60</sup> The scholar drew inference from the environmental rights clause, which mentions development as outlined in Section 24 of the South African Constitution,<sup>61</sup> and Section 1 of the National Environmental Management Act (NEMA), which provides for the definition of sustainable development.<sup>62</sup> Paterson's point of view, on sustainable development highlights the significance of integrating development principles into South Africa's legal framework. Within this context an examination of women's right to sustainable development in South Africa particularly focusing on Article 19 of the Maputo Protocol would need to assess how the Protocol aligns with South Africa's approach to sustainable development. Paterson suggests

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<sup>58</sup> Louis Kotze, 'The Constitutional Court's Contribution to Sustainable Development in South Africa' (2003) 6 Potchefstroom Electronic Law Journal 1.

<sup>59</sup> National Planning Commission, 'Our Future-Make it Work: National Development Plan 2030' ([www.gov.za/ndp-2030-our-future-make-it-work](http://www.gov.za/ndp-2030-our-future-make-it-work))[1].

<sup>60</sup> Alexander Paterson, 'Fuelling the Sustainable Development Debate in South Africa' (2006) 123 South African Law Journal 53.

<sup>61</sup> Constitution of the Republic of South Africa 1996, section 24.

<sup>62</sup> National Environmental Management Act 107 of 1998.

that sustainable development involves balancing progress with environmental factors and aims to promote a forward-looking approach that does not compromise the ability of future generations to fulfill their own needs. An evaluation of Article 19 of the Maputo Protocol could delve into how this provision relates to the core tenets of development including the emphasis on sustainability and social fairness.

An analysis of Paterson's perspective on development might center on how embracing development principles can help tackle the specific challenges faced by women in South Africa. For instance, policies geared towards sustainable development could address issues that disproportionately impact women, such as access to clean water, air quality concerns or climate shifts. Additionally, such policies could contribute to advancing gender equality by ensuring that women have opportunities for participation and access, to social services.<sup>63</sup> Paterson's viewpoint, on development offers a lens for examining women's right to sustainable development in South Africa particularly under Article 19 of the Maputo Protocol. Investigating how sustainable development principles can tackle the unique obstacles encountered by women in South Africa may enhance the comprehension of the connections, among development, gender equality and environmental sustainability.

Substantive equality is important in the realm of sustainable development. Periera conducted a study that delved into the connection, between equality and achieving sustainable development in South Africa. The scholar highlighted the challenges in linking equality with development due, to limited resources.<sup>64</sup> Moreover Periera emphasized the sustainability crisis the world is currently experiencing, with systems, like climate change and oceans reaching tipping points. This highlights the pressing need for countries to carefully consider resource allocation amidst growing stress, scarcity and variability. In the case of developing nations such as South Africa solutions to this issue should prioritize addressing escalating poverty levels, among women. Perieras insights are valuable for interpreting Article 19(c) of the Maputo Protocol concerning the empowerment of women, in accessing resources.

Furthermore, Periera further pointed out that the world is facing a sustainability crisis where it is approaching tipping points in many of its critical systems, such as climate

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<sup>63</sup> Alexander Paterson, 'Fuelling the Sustainable Development Debate in South Africa' 53.

<sup>64</sup> Laura Periera, 'The Role of Substantive Equality in Finding Sustainable Development Pathways in South Africa' (2014) 10 McGill International Journal of Sustainable Development Law and Policy 176.

change and oceans.<sup>65</sup> Therefore, countries need to think seriously about how to deal with the allocation of resources under conditions of increasing stress, scarcity, and variability. For developing countries like South Africa, the methods to deal with this problem should centered around measures to address the rising poverty, and specifically amongst women.<sup>66</sup> Periera's submission will be of aid in interpreting Article 19(c) of the Maputo Protocol on the promotion of women's access to resources.

Few studies focused on women and sustainable development. Shiny, in her study, focused on women's empowerment, which is a key factor in the context of sustainable development.<sup>67</sup> Shiny pointed out that sustainable development is only possible when both women and men enjoy equal opportunity to reach their potential, and such may be through gender justice.<sup>68</sup> The means and ways that were established in Shiny's study will assist in interpreting Article 19 for the purpose of this mini dissertation.

Women play an important role in the context of sustainable development. Housman's study focused on the role of women in sustainable development. In so doing, he pointed out that women need to be empowered by participating in decision-making in developing countries such as South Africa.<sup>69</sup> Women in developing countries have a long history of practicing sustainable, environmentally-sound development and have initiated smaller-scale development projects.<sup>70</sup> Despite their lack of power, women have succeeded in gathering support in terms of projects that aim at preventing environmental harm.<sup>71</sup> Therefore, empowering women would only serve to expand their positive influence. Housman's study will assist in interpreting Article 19(b), which provides for women participating in decision-making.

There are certain government and private institutions that promote women's right to development. Steven, in his study, provided an overview of how Chapter 9 institutions,

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<sup>65</sup> *Ibid* 177.

<sup>66</sup> Richard Matthew, 'Resource Scarcity: Responding to the Security Challenge' (2008) 1 International Peace Institute Journal 2.

<sup>67</sup> Jonah Elisa Shiny, 'Women Empowerment – A Key Factor to Sustainable Development in the Global Context' (2022) 5 International Journal of Law Management and Humanities 1722.

<sup>68</sup> *Ibid*.

<sup>69</sup> Robert Housman, 'The Muted Voice: The Role of Women in Sustainable Development' (1992) 4 Georgetown International Environmental Law Review 361.

<sup>70</sup> World Survey on the Role of Women in Development: Gender Equality and Sustainable Development 2015 ([www.unwomen.org/World-Survey-on-the-role-of-women-in-development-2014](http://www.unwomen.org/World-Survey-on-the-role-of-women-in-development-2014)) [2].

<sup>71</sup> Robert Housman, 'The Muted Voice: The Role of Women in Sustainable Development' 361.

as provided for in the Constitution, promote women's right to development.<sup>72</sup> His focus was on the SAHRC and the CGE. The reason behind the emphasis is because the SAHRC's mandate is to ensure the protection of human rights.<sup>73</sup> On the other hand, the CGE's mandate is to ensure gender equality.<sup>74</sup> Steven argues that the two institutions should sharpen their constitutionally protected responsibility, by creating an environment that is conducive to the right to development. Therefore, these institutions are designed to strengthen constitutional democracy, which is essential for women's right to development.<sup>75</sup> Steven's study will be of aid because the researcher will submit the progress of the institutions in promoting women's right to sustainable development as enshrined in Article 19 of the Maputo Protocol.

Although numerous scholars have written on the issue of sustainable development, there are few scholars who have focused on Article 19 of the Maputo Protocol. Thus, this dissertation critically analyses the right to sustainable development in the context of the Maputo Protocol in order to supplement the existing literature.

## 1.7. Definitions of key concepts

### 1.7.1. Sustainable development

Sustainable development refers to development that satisfies current demands without compromising the capacity of future generations to satisfy their own. It suggests that sustainable development is growth that satisfies current needs without compromising the capacity of future generations to satisfy their own. This definition is based on the idea that economic development must be pursued in a way that is socially and environmentally sustainable. Therefore, the goal of sustainable development is to strike a balance between social and environmental balance preservation and economic growth and development.

In practical terms, sustainable development requires that we use resources in a way that allows for their continued availability in the future, rather than depleting them at an unsustainable rate. It also means ensuring that economic development does not come at the expense of social equity or environmental health but rather

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<sup>72</sup> Clydenia Stevens & Nomthandazo Ntlama, 'An Overview of South Africa's Institutional Framework in Promoting Women's Right to Development' (2016) 20 Law, Democracy and Development 46.

<sup>73</sup> Constitution of the Republic of South Africa 1996, section 184.

<sup>74</sup> Constitution of the Republic of South Africa 1996, section 187.

<sup>75</sup> Constitution of the Republic of South Africa 1996, section 181(1).

supports these objectives. Overall, the concept of sustainable development recognises the interdependence between economic, social, and environmental factors in development and seeks to promote long-term well-being and prosperity for all while maintaining a healthy planet, and it seeks to reconcile economic development with the protection of social and environmental balance.<sup>76</sup>

#### 1.7.2. Women

Women are adult female human beings.<sup>77</sup>

#### 1.7.3. Gender equality

Gender equality refers to the principle of treating individuals of different genders with equal respect, value, and opportunities in all aspects of life. It means that men, women, and people of all genders are entitled to the same rights, privileges, responsibilities, and opportunities in areas such as education, employment, healthcare, politics, and the justice system. Gender equality acknowledges that gender is a social construct, and that gender roles and stereotypes can lead to discrimination and inequality. It seeks to eliminate gender-based discrimination and empower all individuals to fulfill their potential regardless of their gender. Gender equality is an important issue because it not only ensures fairness and justice for all individuals, but it also contributes to social and economic development. When everyone has equal access to education, healthcare, and employment opportunities, it leads to a more prosperous and stable society.<sup>78</sup>

#### 1.7.4. Gender inequality

A legal, cultural, or social situation where gender determines disparate opportunities and rights for women and men, characterised by unequal access to or benefit of rights and assumptions of stereotypical culturally and socially defined roles.<sup>79</sup>

Formal equality refers to the idea that everyone is treated the same under the law and has the same formal rights and opportunities. It emphasises formal legal and political

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<sup>76</sup> Report on the World Commission on Environment and Development- Our Common Future, UN Doc. A/42/427 (4 August 1987).

<sup>77</sup> Alex Bryne, 'Are Women Adult Human Females' (2020) 1(1) Springer Nature ([www.philaarchive.org](http://www.philaarchive.org)) accessed 6 January 2020.

<sup>78</sup> OXFAM International, 'Gender Justice and Women's Rights' ([www.oxfam.org/en/what-we-do/issues/gender-justice-and-womens-rights](http://www.oxfam.org/en/what-we-do/issues/gender-justice-and-womens-rights))[1].

<sup>79</sup> European Institute for Gender Equality ([www.eige.europa.eu/thesaurus/terms](http://www.eige.europa.eu/thesaurus/terms))[4]

equality, where individuals are considered equal in the eyes of the law regardless of their social and economic status, race, gender, or other characteristics.

On the other hand, substantive equality focuses on addressing the underlying inequalities that exist in society and seeks to ensure that everyone has equal access to opportunities and outcomes. It recognises that treating everyone the same under the law does not necessarily lead to equal outcomes and opportunities, as some individuals and groups may face systemic discrimination or barriers to their full participation and inclusion in society.

Substantive equality aims to address these underlying inequalities by considering the needs and circumstances of individuals and groups and providing them with targeted support and resources to help level the playing field. It recognises that in order to achieve true equality, it is necessary to take into account the historical and systemic factors that have contributed to unequal outcomes and opportunities.

#### 1.7.5. Poverty

Poverty refers to the combination of uncertain or non-existent income and lack of access to the resources needed to ensure sustainable living conditions.<sup>80</sup>

#### 1.8. Ethical consideration

The researcher familiarised herself with the plagiarism policy set out at the University of Venda and was diligent in ensuring that information derived from both primary and secondary sources is acknowledged and referenced. Furthermore, as contemplated in the University Plagiarism Policy, the researcher did not ‘fabricate information or conceal the truth or impart misleading information about the true contemporary position of the law’ regarding the women’s right to sustainable development in South Africa. The study used both primary and secondary sources of information regarding the subject matter and therefore, did not conduct any human interviews. This study was carried out with the utmost attention to integrity, and the researcher maintained objectivity.

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<sup>80</sup> The Gender Perspective (Food and Agriculture Organisation of the United Nations) <http://www.fao.org/gender/the-gender-perspective/en/>.

## 1.9. Structure of the study

### 1.9.1. Chapter 1

The chapter introduces the study and deals with the subject matter of the mini-dissertation, brief background, research problem, aims and objectives, research question, preliminary literature survey, proposed methodology, definition of key concepts, ethical considerations, proposed structure, and limitations of the study.

### 1.9.2. Chapter 2

The chapter critically analyses Article 19 of the Maputo Protocol regarding women's right to sustainable development. It thoroughly discusses Article 19(a) to (f) and focuses on challenges faced by South Africa with regard to ensuring the protection and promotion of the right to sustainable development.

### 1.9.3. Chapter 3

This chapter examines the South African legislative framework to understand whether South Africa recognises women's right to sustainable development, for example, the Constitution and NEMA.

### 1.9.4. Chapter 4

This chapter shows how South Africa ensures that women's right to sustainable development is implemented in comparison to other African countries such as Lesotho, Botswana, and Nigeria.

### 1.9.5. Chapter 5

This chapter makes conclusions, recommendations and suggests reforms.

## 1.10. Limitations of study

The major limitation of this study is the lack of prior research studies on the subject matter. As indicated in the literature review, most literature assessed Section 24 of the Constitution with regards to the right to sustainable development. Prior literature failed to assess Article 19 in the context of South African women.

## 1.11. Conclusion

This chapter provides introductory remarks to the study. It introduces the topic by outlining issues related to sustainable development. In so doing, the chapter indicated that the concept of sustainable development is closely related to the provisions of Section 9 of the Constitution in so far as affirmative action is concerned. The chapter also indicated that the term sustainable development, as derived from the provisions of the Maputo Protocol, is closely related to the environmental rights provided for in

Section 24. However, the chapter indicates that the focus is on sustainable development, contrary to the literature by majority of the scholars. This chapter indicated that despite all the legal framework existing on the provision for sustainable development for women, the same women are still living under unfavourable conditions. This ranges from being denied positions of higher ranks and so on. The study assumes that the legal framework on this right is not adequate to address the challenges faced by women. It is thus the aim and objectives of the study to interrogate the existing framework on the clause and come up with adequate solutions thereafter.

## CHAPTER 2

### An analysis of Article 19

#### 2.1. Introduction

The previous chapter provided the scope of this study and further outlined issues related to sustainable development. In addition, the chapter highlighted that sustainable development is closely linked to the affirmative action provisions in Section 9 of the Constitution.<sup>1</sup> It also pointed out that the idea of sustainable development, as derived from the Maputo Protocol, is closely tied to the environmental rights outlined in Section 24 of the Constitution.<sup>2</sup> The chapter further outlined that despite the existing legal framework for women's sustainable development, women still face unfavourable conditions, such as being denied higher-ranking positions.

This chapter aims to provide an analysis of Article 19 of the Maputo Protocol.<sup>3</sup> Additionally, this chapter will shed light on the challenges faced by South Africa in ensuring the safeguarding and advancement of the right to sustainable development. The subsequent sections will carefully analyse each component of Article 19, considering its relevance to South Africa's context and the obstacles encountered in achieving the protection and promotion of women's sustainable development rights. Through this examination, a deeper understanding of the Maputo Protocol and its implications for South Africa will be attained. This chapter will also focus on the numerous challenges that South Africa encounters in implementing Article 19 of the Maputo Protocol. It aims to shed light on the specific obstacles and difficulties faced by the country. These challenges encompass a range of issues, including socio-economic inequalities, inadequate resources and infrastructure, and systemic barriers that hinder the protection and promotion of women's right to sustainable development. By examining these challenges in detail, a comprehensive understanding of the complexities surrounding the implementation of Article 19 in South Africa will be achieved.

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<sup>1</sup> Constitution of the Republic of South Africa 1996, section 9.

<sup>2</sup> Constitution of the Republic of South Africa 1996, section 24.

<sup>3</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005 Art 19.

## 2.2. Article 19(a-f)

One of the longest sections of the Maputo Protocol is Article 19(a) through (f). It addresses key ideas like globalisation, productive resources, participation, gender perspectives, sustainable development, credit availability, and human development indicators. The first part of this chapter will unpack these concepts. Understanding these key concepts is crucial for effectively implementing and promoting women's right to sustainable development as outlined in Article 19 of the Maputo Protocol. Sustainable development aims to improve the well-being and quality of life for all people, particularly those impacted by poverty and inequality. It involves ensuring that future generations are not left with depleted economic, social, and environmental resources, which would result in an unsustainable future.<sup>4</sup> The concept of sustainable development emerged during the 1980s and became well-known after the release of the World Commission on Environment and Development (WCED) report in 1987.

The WCED defines sustainable development as:

Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It seeks to reconcile economic development with the protection of social and environmental balance.<sup>5</sup>

The definition of sustainable development provided by the WCED, also known as the Brundtland Commission, highlights the correlation between sustainable development and safeguarding the environment. This perspective aligns with Article 18 of the Maputo Protocol<sup>6</sup> and Article 24 of the African Charter on Human and Peoples' Rights,<sup>7</sup> both emphasising sustainability in relation to the environment. Article 18 of the Protocol recognises the significance of a sustainable environment and the right of individuals, including women, to live in a clean, safe, and healthy environment.<sup>8</sup> This provision recognises the relationship between sustainable development and environmental well-being, emphasising the need to protect the environment to ensure

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<sup>4</sup> A National Framework for Sustainable Development in South Africa: People – Planet- Prosperity July 2008, 6, [https://www.gov.za/sites/default/files/gcis\\_document/201409/nationalframeworkforsustainabledevelopment\\_a0.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/nationalframeworkforsustainabledevelopment_a0.pdf) [2].

<sup>5</sup> Report on the World Commission on Environment and Development- Our Common Future, UN Doc. A/42/427 (4 August 1987).

<sup>6</sup> Maputo Protocol Art 19.

<sup>7</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) Art 24.

<sup>8</sup> Maputo Protocol Art 18.

the enjoyment of human rights, including women's rights. Similarly, Article 24 of the African Charter on Human and Peoples' Rights emphasises the right to a satisfactory environment conducive to development. This provision acknowledges that environmental sustainability is a fundamental aspect of promoting and safeguarding human rights, including those of women.<sup>9</sup>

Section 24 of the Constitution recognises the right of all individuals to a safe and healthy environment. It emphasises the importance of environmental protection, conservation, and sustainable use of natural resources. The government has a duty to promote and secure ecologically sustainable development while considering ecological, economic, and social factors.<sup>10</sup> Furthermore, Section 24 emphasises the responsibility to protect the environment for present and future generations, reflecting the principle of intergenerational equity inherent in sustainable development.<sup>11</sup> Although Section 24 of the Constitution does not explicitly mention sustainable development, its provisions establish a foundation for environmental protection, ecological sustainability, and the integration of environmental considerations. These elements closely align with the principles of sustainable development, which aim to ensure the long-term well-being of both people and the environment in South Africa.<sup>12</sup>

Through the linkage of sustainable development with environmental protection, the WCED definition emphasises the imperative to pursue development in a manner that considers the long-term well-being of present and future generations. It recognises that environmental sustainability is a vital element in achieving sustainable development and ensuring the fulfilment of human rights, including women's rights.<sup>13</sup> The right to sustainable development for women means acknowledging and safeguarding women's rights to take part in and gain from development in a way that is fair and environmentally responsible. It involves promoting gender equality, social

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<sup>9</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) Art 24.

<sup>10</sup> Constitution of the Republic of South Africa 1996.

<sup>11</sup> Paul Henderson, 'Some Thoughts on Distinctive Principles of South African Environmental Law' (2001) 8 South African Journal of Environmental Law and Policy 146.

<sup>12</sup> Schoeman Law Incorporated, 'Environmental Right in Terms of the Constitution' 14 February 2018, [https://www.polity.org.za/article/environmental-right-in-terms-of-the-constitution-2018-02-14\[3\]](https://www.polity.org.za/article/environmental-right-in-terms-of-the-constitution-2018-02-14[3]).

<sup>13</sup> Report on the World Commission on Environment and Development- Our Common Future, UN Doc. A/42/427 (4 August 1987).

justice, and environmental sustainability.<sup>14</sup> In recent decades, there has been an increasing recognition of the importance of gender equality, women's empowerment, and the realisation of women's rights in achieving sustainable development.

This acknowledgment is evident in various international norms and agreements. For instance, principle 20 of the 1992 Rio Declaration on Environment and Development emphasised the essential role of women's full participation in sustainable development.<sup>15</sup> The Beijing Declaration and Platform for Action in 1995 urged governments to integrate gender perspectives into sustainable development policies and programs.<sup>16</sup> The outcome document of the United Nations Conference on Sustainable Development in 2012, titled 'The future we want', highlighted the significance of gender equality and women's empowerment across the economic, social, and environmental pillars of sustainable development.<sup>17</sup> It emphasised the promotion of gender equality and women's active involvement in sustainable development policies, programs, and decision-making at all levels.<sup>18</sup>

The International Court of Justice (ICJ), in the *Gabcikovo-Nagymaros Project case*, highlighted the connection between a sustainable environment and sustainable development.<sup>19</sup> The ICJ emphasised that the concept of sustainable development effectively captures the need to reconcile economic development with environmental protection.<sup>20</sup> The endorsement of sustainable development by the ICJ emphasises the interdependence of economic development and environmental conservation. It emphasises that development should not come at the cost of environmental degradation.<sup>21</sup>

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<sup>14</sup> Fallan Shayan, Mohabbati Kalejahi et al, 'Sustainable Development Goals (SDGs) as a Framework for Corporate Social Responsibility (CSR)' (2022) 14 Sustainability 1222.

<sup>15</sup> United Nations Conference on Environment and Development (UNCED), Rio Declaration on Environment and Development (12 August 1992) UN Doc A/CONF.151/26 (Vol. I).

<sup>16</sup> United Nations Specialised Conferences, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, United Nations, 27 October 1995, <https://www.refworld.org/legal/resolution/un/1995/en/73680> [accessed 14 May 2024].

<sup>17</sup> The Future We Want – Declaration of the UN Conference on Sustainable Development, Rio 2012, [2012] UN Doc, Rio+20, 20-22 June 2012.

<sup>18</sup> The Future We Want – Declaration of the UN Conference on Sustainable Development, Rio 2012, [2012] UN Doc, Rio+20, 20-22 June 2012.

<sup>19</sup> *Gabcikovo-Nagymaros Project (Hungary v Slovakia)* (Judgment) [1997] ICJ Rep 7.

<sup>20</sup> *Gabcikovo-Nagymaros Project (Hungary v Slovakia)* (Judgment) [1997] ICJ Rep 7 Page 78.

<sup>21</sup> *Gabcikovo-Nagymaros Project (Hungary v Slovakia)* (Judgment) [1997] ICJ Rep 7 Page 78.

Similarly, South African courts have applied the principles of sustainable development within the country's legal framework. In *Maledu and Others v. Itereleng Bakgatla Mineral Resources (Pty) Ltd.*, the Constitutional Court of South Africa recognised the importance of sustainable development and environmental protection in the context of mining activities.<sup>22</sup> The court emphasised the need to consider the social and environmental impacts of mining operations and to uphold the rights of affected communities to achieve sustainable development.<sup>23</sup> In *Maccsand (Pty) Ltd. v. City of Cape Town and Others*, the Supreme Court of Appeal emphasised the necessity of striking a balance between economic development and environmental protection.<sup>24</sup> The court emphasised the importance of adhering to sustainable development principles and conducting thorough assessments of environmental impacts while also implementing measures to mitigate them.<sup>25</sup>

#### 2.2.1. Article 19(a)- Gender perspective

Article 19(a) of the Maputo Protocol emphasises the need to include a gender perspective in sustainable development. It recognises that the way society defines the roles of men and women can sometimes make it harder to achieve sustainable development.<sup>26</sup> The gender perspective looks at how men and women are treated differently in society. It acknowledges that these differences can create unfairness and inequality, which can get in the way of sustainable development.<sup>27</sup> Gender roles in society assign different expectations, privileges, and opportunities to men and women. This often leads to imbalances in power, with men having more decision-making authority and control over resources.<sup>28</sup> As a result, women may face obstacles in accessing crucial resources that are necessary for their economic empowerment and active participation in sustainable development.<sup>29</sup>

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<sup>22</sup> *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Ltd* 2019 (1) BCLR 53 (CC).

<sup>23</sup> *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Ltd* 2019 (1) BCLR 53 (CC) para 81.

<sup>24</sup> *Maccsand (Pty) Ltd. v City of Cape Town and Others* CCT 103/11 [2012] ZACC 7.

<sup>25</sup> *Maccsand (Pty) Ltd. v City of Cape Town and Others* CCT 103/11 [2012] ZACC 7 para 23.

<sup>26</sup> Maputo Protocol Art 19(a).

<sup>27</sup> Cecilia Ridgeway & Lynn Smith-Lovin, 'The gender system and interaction' (1999) 25 Annual Review of Sociology 191.

<sup>28</sup> Community & Individual Development Association, 'Questions about culture, gender equality and development cooperation' (OECD, 2024) accessed 27 June 2023 <https://www.oecd.org/dac/gender-development/1850708.pdf>.

<sup>29</sup> Naznin Tabassum & Bhabani Shankar Nayak, 'Gender Stereotypes and Their Impact on Women's Career Progressions from a Managerial Perspective' (2021) 10 (2) IIM Kozhikode Society & Management Review 192.

Article 19(a) of the Maputo Protocol strengthens the dedication to gender equality and the empowerment of women, in line with constitutional assurances of equal rights and non-discrimination.<sup>30</sup> It highlights the significance of eradicating gender-based discrimination and fostering women's meaningful engagement in decision-making concerning sustainable development, encompassing economic, social, and environmental aspects.<sup>31</sup> This provision acts as a driving force for South Africa to establish policies, initiatives, and legal structures that prioritise gender equality and enable the empowerment of women. It urges the integration of gender considerations and perspectives into sustainable development endeavours, ensuring that the specific needs and experiences of women are adequately acknowledged and addressed.<sup>32</sup>

The Constitution of South Africa establishes a solid basis for advancing gender equality and safeguarding women's rights. It explicitly prohibits discrimination based on gender and upholds the principle of equal treatment under the law as provided for in Section 9.<sup>33</sup> These constitutional provisions align with the goals of Article 19(a) by recognising the significance of gender equality across all aspects of life, including sustainable development. The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) addresses various types of discrimination, including those based on gender, and provides mechanisms for addressing complaints and promoting gender equality in diverse sectors, including sustainable development.<sup>34</sup> Similarly, the Employment Equity Act aims to create equal opportunities and fair treatment in employment, specifically addressing gender-based discrimination and promoting gender equality in the workplace.<sup>35</sup> This act aligns with the principles of Article 19(a) by ensuring that women have equitable access to employment opportunities and can actively participate in economic development.

CEDAW centres on eradicating discrimination against women and promoting gender equality. CEDAW corresponds with the principles of Article 19(a) by highlighting the

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<sup>30</sup> Maputo Protocol Art 19(a).

<sup>31</sup> African Union, 'Maputo Protocol Scorecard & Index: A Stepping Stone Towards Achieving Women's Rights' (African Union, 28 July 2021) <https://au.int/en/articles/maputo-protocol-scorecard-index-stepping-stone-towards-achieving-womens-rights>.

<sup>32</sup> African Union, 'Maputo Protocol Scorecard & Index: A Stepping Stone Towards Achieving Women's Rights' (African Union, 28 July 2021) <https://au.int/en/articles/maputo-protocol-scorecard-index-stepping-stone-towards-achieving-womens-rights>.

<sup>33</sup> Constitution of the Republic of South Africa 1996, section 9.

<sup>34</sup> The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>35</sup> Employment Equity Act 55 of 1998.

significance of integrating gender perspectives across all domains of development, including sustainable development.<sup>36</sup> South Africa ratified CEDAW on 15 December 1995 without reservation.<sup>37</sup> Women in South Africa face various challenges in relation to Article 19(a) of the Maputo Protocol. Gender-based discrimination in a workplace, such as unequal pay, hinders women's professional growth and undermines their contribution to sustainable development.<sup>38</sup> Additionally, women bear a disproportionate burden of unpaid care work, which limits their time and opportunities for engagement in income-generating activities and participation in sustainable development initiatives.<sup>39</sup>

### 2.2.2. Article 19(b)- Participation

Article 19(b) of the Maputo Protocol highlights the significance of advancing gender equality and guaranteeing women's equal chances to engage in political and decision-making activities. It acknowledges the essential role of women's voices and viewpoints in the progress and operation of democratic societies.<sup>40</sup> Article 19(b) of the Maputo Protocol imposes a duty on governments and member states that have accepted the Protocol to implement measures and policies that foster equal participation of women in political and decision-making arenas. This encompasses guaranteeing women's access to political roles, such as the right to vote, stand for election, and hold leadership positions.<sup>41</sup> Article 19(b) of the Maputo Protocol is closely linked to Article 9 of the same protocol, which addresses the right of women to participate in political and decision-making processes.<sup>42</sup> Additionally, it aligns with Article 13 of the African Charter, which emphasises the right to participation.<sup>43</sup> Furthermore, it relates to the objective of Article 29 of the African Charter on Democracy, Elections, and

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<sup>36</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted 18 December 1979, 1249 UNTS 13.

<sup>37</sup> Convention on the Elimination of All Forms of Discrimination Against Women, 'Consideration of reports submitted by States parties under Article 18 of CEDAW: Combined second, third and fourth periodic report of States parties South Africa' (OHCHR, 18 December 2009) <https://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.ZAF.2-4.E.pdf>.

<sup>38</sup> Yolanda Boozen, 'The Impact of the Protocol on the Rights of Women in Africa on Violence Against Women in Six Selected Southern African Countries: An Advocacy Tool' (Centre for Human Rights, Faculty of Law, University of Pretoria 2009) 14.

<sup>39</sup> Gaelle Ferrant, Luca Maria Pesando and others, 'Unpaid Care Work: The Missing Link in the Analysis of Gender Gaps in Labour Outcomes' (OECD Development Centre 2014) 2.

<sup>40</sup> Maputo Protocol Art 19(b).

<sup>41</sup> Maputo Protocol Art 19(b).

<sup>42</sup> Maputo Protocol Art 9.

<sup>43</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) Art 13.

Governance, which aims to facilitate the active involvement of women in decision-making structures at all levels.<sup>44</sup>

The preamble of the Solemn Declaration on Gender Equality in Africa supports this position by recognising the limited participation of women in social, economic, and political decision-making structures, as well as the feminisation of poverty.<sup>45</sup> Similarly, Article 14 of CEDAW highlights the importance of women's participation in development and calls upon states to ensure their involvement in development planning, particularly in rural areas.<sup>46</sup> While Article 14 of CEDAW focuses on addressing discrimination and participation in rural areas, Article 19(b) of the Maputo Protocol does not make such a distinction. This indicates that Article 19(b) recognises the need for women's participation in both urban and rural development concerns throughout Africa. The Universal Declaration of Human Rights (UDHR), while not legally binding, its principles have gained widespread acceptance and influence in customary international law.<sup>47</sup> Customary international law refers to accepted practices and norms that are considered legally binding by states, even in the absence of explicit treaty obligations.<sup>48</sup> Within the UDHR, Article 21 recognises the right to participate in the governance of one's country and emphasises equal access to public service for all individuals.<sup>49</sup>

The Convention on the Political Rights of Women focuses specifically on women's political rights and participation. It affirms the right of women to vote, run for office, and hold public positions on equal terms with men.<sup>50</sup> The electoral laws in South Africa are designed to promote gender equality in political participation. For instance, the Electoral Act permits the utilisation of party lists incorporating quotas, which encourages the inclusion of women candidates on electoral rosters.<sup>51</sup> Women in South

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<sup>44</sup> African Charter on Democracy, Elections and Governance (adopted 30 January 2007, entered into force 15 February 2012) Art 29.

<sup>45</sup> Solemn Declaration on Gender Equality in Africa (adopted 6-8 July 2004).

<sup>46</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted 18 December 1979, 1249 UNTS 13 Art 14.

<sup>47</sup> Hurst Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law' (1995) 25 (287) Georgia Journal of International and Comparative Law 317.

<sup>48</sup> International Committee of the Red Cross, 'Customary International Humanitarian Law: Questions and Answers' (ICRC, 15 August 2005) <https://www.icrc.org/en/doc/resources/documents/misc/customary-law-q-and-a-150805.htm>.

<sup>49</sup> Universal Declaration of Human Rights (adopted 10 December 1948) Art 21.

<sup>50</sup> Convention on the Political Rights of Women (adopted 20 December 1952).

<sup>51</sup> Electoral Act 73 of 1998.

Africa encounter challenges regarding their participation, such as limited representation in decision-making processes, discriminatory practices and biases, difficulties in accessing information and resources, unequal power dynamics, socio-economic constraints, and concerns about violence and safety. Women's underrepresentation in leadership roles and discriminatory norms restrict their influence on sustainable development policies.<sup>52</sup> Furthermore, limited representation and meaningful participation in decision-making processes related to sustainable development hinder women's ability to shape policies and programmes that address their specific needs and perspectives.<sup>53</sup>

Limited access to education and technology hampers their ability to stay informed and engage effectively. Power imbalances and entrenched gender inequalities marginalise their voices in decision-making spaces. Socio-economic factors such as poverty and lack of resources hinder their full participation. High levels of gender-based violence undermine their safety and impede their active involvement.<sup>54</sup> In the case of *AgriSA v. Minister for Minerals and Energy*, the focus was on the rights of rural women concerning land and mineral rights, which have a significant connection to sustainable development.<sup>55</sup> The Constitutional Court recognised and protected the rights of rural women to actively participate in decision-making processes related to land and mineral rights. The court's decision emphasised the significance of gender equality and acknowledged the potential for sustainable development when women are included in decision-making and have access to and benefit from land and resource governance.<sup>56</sup>

The Constitutional Court recognition is in line with the principles of Article 19(b), ensuring the inclusion and involvement of rural women in decision-making processes that directly impact them.<sup>57</sup> The court's focus on gender equality and recognition of the positive impact on sustainable development through women's participation aligns with

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<sup>52</sup> Yolanda Boozen, 'The Impact of the Protocol on the Rights of Women in Africa on Violence Against Women in Six Selected Southern African Countries: An Advocacy Tool' 15.

<sup>53</sup> United Nations Human Rights, 'Women's Rights are Human Rights' (United Nations 2014) <https://www.ohchr.org/sites/default/files/Documents/Events/WHRD/WomenRightsAreHR.pdf>.

<sup>54</sup> United Nations Human Rights, 'Women's Rights are Human Rights' (United Nations 2014) <https://www.ohchr.org/sites/default/files/Documents/Events/WHRD/WomenRightsAreHR.pdf>.

<sup>55</sup> *AgriSA v Minister for Minerals and Energy* 2013 (4) SA 1 (CC).

<sup>56</sup> *AgriSA v Minister for Minerals and Energy* 2013 (4) SA 1 (CC).

<sup>57</sup> United Nations Human Rights, 'Women's Rights are Human Rights' (United Nations 2014) <https://www.ohchr.org/sites/default/files/Documents/Events/WHRD/WomenRightsAreHR.pdf>.

the broader aims of Article 19(b) and the promotion of women's rights and sustainable development,<sup>58</sup>

### 2.2.3. Article 19(c)- Access to productive resources

Productive resources encompass the assets, means, and abilities individuals and communities utilise to generate income and improve their well-being.<sup>59</sup> In the context of women's rights, it is crucial to ensure that women have access to and control over productive resources in order to promote their economic empowerment and advance gender equality.<sup>60</sup> Productive resources include land and property, financial resources, education and skills, technology, and information.<sup>61</sup>

The access of women to productive resources, as outlined in Article 19(c), is strongly connected to other rights, including the right to property stated in Article 14 of the African Charter<sup>62</sup> and Section 25 of the constitution.<sup>63</sup> Land is an asset that supports livelihoods, agriculture, and economic activities. However, gender disparities in land ownership and control can limit women's ability to secure land rights, which in turn restricts their economic opportunities and hinders their involvement in sustainable development initiatives.<sup>64</sup> Women's access to land and property rights is crucial for their economic empowerment and security. In many societies, women face barriers to land ownership, inheritance rights, and property ownership. Ensuring equitable access to land and property rights for women is important for their economic independence and participation in decision-making processes.<sup>65</sup>

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<sup>58</sup> United Nations Human Rights, 'Women's Rights are Human Rights' (United Nations 2014) <https://www.ohchr.org/sites/default/files/Documents/Events/WHRD/WomenRightsAreHR.pdf>.

<sup>59</sup> Department for International Development, 'Sustainable Livelihoods Guidance Sheets' (Department for International Development, accessed 27 June 2023) [http://www.glopp.ch/B7/en/multimedia/B7\\_1\\_pdf2.pdf](http://www.glopp.ch/B7/en/multimedia/B7_1_pdf2.pdf).

<sup>60</sup> United Nations New York, 'Women's Control over Economic Resources and Access to Financial Resources, Including Microfinance: World Survey on the Role of Women in Development' (United Nations 2009) 41 <https://www.un.org/womenwatch/daw/public/WorldSurvey2009.pdf>.

<sup>61</sup> Nyita Rao, 'Women's Rights to Land, Assets, and Other Productive Resources: Its Impact on Gender Relations and Increased Productivity' (UNIFEM 2006).

<sup>62</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) Art 14.

<sup>63</sup> Constitution of the Republic of South Africa 1996, section 25.

<sup>64</sup> The Gender Perspective (Food and Agriculture Organisation of the United Nations) <http://www.fao.org/gender/the-gender-perspective/en/>.

<sup>65</sup> Naila Kabeer, 'Women's Economic Empowerment and Inclusive Growth: Labour Markets and Enterprise Development' (School of Oriental and African Studies 4) <https://www.lse.ac.uk/gender/assets/documents/research/choice-constraints-and-the-gender-dynamics-of-lab/Women%27s-economic-empowerment-and-inclusive-growth.pdf>.

Financial resources play a crucial role in promoting the economic empowerment of women and advancing gender equality in the context of South Africa. Access to financial services and resources is vital for women to actively participate in the economy and make independent financial decisions.<sup>66</sup> In South Africa, there are targeted initiatives and programmes designed to promote women's financial inclusion. For example, microfinance programmes offer specialised financial services and small loans to women entrepreneurs and small business owners, recognising their potential as contributors to economic growth.<sup>67</sup> These programmes provide women with the necessary resources and support to succeed in their business endeavours.<sup>68</sup>

Financial literacy programmes also play a significant role in enhancing women's financial management skills and their ability to navigate financial systems effectively. By improving financial literacy, women gain the knowledge and confidence to make informed decisions about savings, investments, and managing their personal and business finances.<sup>69</sup> Furthermore, government policies and initiatives in South Africa, such as the National Treasury's Gender-Responsive Budgeting Framework, contribute to promoting financial inclusion, economic empowerment, and gender equality among women. These efforts prioritise addressing gender disparities in accessing financial resources and services.<sup>70</sup>

By promoting women's access to financial resources and creating an environment that supports their economic empowerment, gender-responsive financial policies and programmes in South Africa contribute to women's active participation in the economy, enabling them to make independent financial choices and positively contribute to the

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<sup>66</sup> Naila Kabeer, 'Women's Economic Empowerment and Inclusive Growth: Labour Markets and Enterprise Development' (School of Oriental and African Studies 4) <https://www.lse.ac.uk/gender/assets/documents/research/choice-constraints-and-the-gender-dynamics-of-lab/Women%27s-economic-empowerment-and-inclusive-growth.pdf>.

<sup>67</sup> Hanan Morsy, 'Women Self-Selection out of the Credit Market in Africa' (African Development Bank Working Paper 317, accessed 28 June 2023) <https://www.imf.org/en/Publications/fandd/issues/2020/03/africa-gender-gap-access-to-finance-morsy>.

<sup>68</sup> Sharda Naidoo and Anne Hilton, 'Access to Finance for Women Entrepreneurs in South Africa: Challenges and Opportunities' (Finmark Trust, November 2006) <https://www.ifc.org/wps/wcm/connect/dd73ba18-a3fd-4331-bca8-7ef9430a282c/Access+to+Finance+-+Women+in+South+Africa.pdf?MOD=AJPERES>.

<sup>69</sup> Bonga Wellington Garikai and Nelson Mlambo, 'Financial Literacy Improvement among Women in Developing Nations: A case for Zimbabwe' (2016) 4 (5) *Journal of Research in Business and Management* 29.

<sup>70</sup> Commission for Gender Equality, *Review of Implementation Report 2021 Government's Gender Responsive Budgeting Framework* (Commission for Gender Equality 2021) <https://cge.org.za/wp-content/uploads/2021/07/CGE-Gender-Responsive-Budgeting-Framework.pdf>.

overall development and well-being of the country.<sup>71</sup> Women's access to education and skills training is fundamental for their economic empowerment and engagement in productive activities. Investing in quality education and skills development for women can enhance their employment prospects, income generation, and entrepreneurial capabilities.<sup>72</sup> Bridging the digital gender gap and ensuring women's access to technology and information are crucial in today's digital era. Having access to technology such as mobile phones, computers, and internet connectivity enables women to access markets, information, and networks, opening economic opportunities.<sup>73</sup>

Women in South Africa face specific challenges regarding their access to productive resources for sustainable development, as outlined in Article 19(c) of the Maputo Protocol. These challenges include limited access to land ownership, difficulties in obtaining credit and finance, inadequate access to technology and information, discriminatory practices in the workforce, lack of skills and training, and socio-cultural norms and stereotypes.<sup>74</sup> Discriminatory inheritance laws and unequal land distribution hinder women's control over productive land. Unequal access to technology and information platforms hampers their engagement in sustainable agricultural practices and market opportunities. Discriminatory practices in the labour market restrict their economic empowerment and utilisation of their skills. Insufficient training opportunities and gender biases in education impede their capacity to effectively utilise productive resources.<sup>75</sup>

#### 2.2.4. Article (d)- Access to credit

The concept of access to 'productive resources' in Article 19(c) is closely related to 'access to credit' in Article 19(d) of the Maputo Protocol. This protocol focuses on

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<sup>71</sup> Sharda Naidoo and Anne Hilton, 'Access to Finance for Women Entrepreneurs in South Africa: Challenges and Opportunities' (Finmark Trust, November 2006) <https://www.ifc.org/wps/wcm/connect/dd73ba18-a3fd-4331-bca8-7ef9430a282c/Access+to+Finance+-+Women+in+South+Africa.pdf?MOD=AJPERES>.

<sup>72</sup> United Nations Entity for Gender Equality and Empowerment of Women, 'Facts and Figures: Economic Empowerment' (UN Women, July 2018) <https://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures>.

<sup>73</sup> Organisation for Economic Co-operation and Development, Bridging the Digital Gender Divide Include, Upskill, Innovate (OECD 2018) <https://www.oecd.org/digital/bridging-the-digital-gender-divide.pdf>.

<sup>74</sup> African Union Echo, 'African Year of Human Rights with Focus on Rights of Women' (African Union 2016) [https://au.int/sites/default/files/newsevents/workingdocuments/31192-wd-au\\_echo\\_magazine\\_-\\_web.pdf](https://au.int/sites/default/files/newsevents/workingdocuments/31192-wd-au_echo_magazine_-_web.pdf).

<sup>75</sup> The Gender Perspective (Food and Agriculture Organisation of the United Nations) <http://www.fao.org/gender/the-gender-perspective/en/>.

safeguarding women's rights in Africa.<sup>76</sup> Article 19(c) ensures that women have the right to access and control resources like land, capital, and technology, enabling them to participate in economic activities and contribute to their communities.<sup>77</sup> However, a significant obstacle for women is the limited access to credit. Financial institutions often require collateral, usually property ownership, when granting credit. Discriminatory property laws and unequal land rights make it difficult for women to meet these requirements.<sup>78</sup> Consequently, they struggle to access credit. Addressing this issue requires interventions that eliminate discriminatory laws and provide alternative collateral options. It also involves implementing financial inclusion programmes, improving financial literacy, and promoting women's property rights. These efforts aim to empower women economically and promote their equal access to credit and productive resources, fostering sustainable development.<sup>79</sup>

Credit refers to the funds that individuals can obtain from financial institutions, comprising the total amount available to them.<sup>80</sup> When it comes to women's access to credit, it is crucial to consider their specific needs within the policies and practices of financial and microcredit institutions, particularly the economically disadvantaged, such as poor women and female heads of households.<sup>81</sup> In addition to the Maputo Protocol, another important international instrument that highlights women's access to credit is CEDAW. While CEDAW addresses a broader range of issues, Article 14(g) specifically emphasises the importance of women's access to 'agricultural credit and loans, marketing facilities, appropriate technology, equal treatment in land and

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<sup>76</sup> Maputo Protocol Art 19(c)-(d).

<sup>77</sup> Maputo Protocol Art 19(c).

<sup>78</sup> Nayda Almodovar-Reteguis, Khrystyna Kushmir and others, 'Mapping the Legal Gender Gap in Using Property and Building Credit' (Women Business and the Law <https://thedocs.worldbank.org/en/doc/626611519938668327-0050022011/original/TopicNoteUsingPropertyandBuildingCreditEN.pdf>).

<sup>79</sup> Omika Bhalla Saluja, Priyanka Singh et al, 'Barriers and Interventions on the Way to Empower Women through Financial Inclusion: a 2 Decades Systematic Review (2000-2020)' (2023) 10 Humanities and Social Sciences Communications 2.

<sup>80</sup> Credit- Overview, How it Works, Credit Risk (February 26, 2020) <https://corporatefinanceinstitute.com/resources/knowledge/credit/credit/>.

<sup>81</sup> Hanan Morsy, 'Women Self-Selection out of the Credit Market in Africa' (African Development Bank Working Paper 317, accessed 28 June 2023) <https://www.imf.org/en/Publications/fandd/issues/2020/03/africa-gender-gap-access-to-finance-morsy>.

agrarian reform, as well as land resettlement schemes.<sup>82</sup> This provision sheds light on the scope of 'access to credit' under Article 19(c) of the Maputo Protocol.

CEDAW's General Recommendation 34 further emphasises the significance of women's equitable access to financial services for the development of their rural enterprises.<sup>83</sup> This recommendation recognises the need to provide women with fair opportunities to obtain financial resources, including credit, on non-discriminatory terms. By considering both CEDAW General Recommendation 34 and Article 14(g) of CEDAW, a comprehensive understanding of Article 19(c) of the Maputo Protocol is gained. This integrated interpretation emphasises the importance of ensuring women's access to credit not only for their economic empowerment but also for their participation in sectors such as agriculture and rural enterprises.<sup>84</sup>

Therefore, to fully address the concept of 'access to credit' under Article 19(c) of the Maputo Protocol, it is crucial to integrate the principles outlined in CEDAW, which emphasise equal treatment, financial inclusion, and the specific needs of women in accessing credit and financial services. Adopting an integrated approach allows policymakers, financial institutions, and relevant stakeholders to create an enabling environment that promotes women's economic empowerment through improved access to credit and other financial resources.<sup>85</sup>

#### 2.2.5. Article 19(e)- Indicators of human development

The human development index (HDI) is a widely used measure for evaluating a country's overall development.<sup>86</sup> It considers three essential dimensions: long and healthy life, education, and standard of living.<sup>87</sup> The first dimension, long and health life, is typically assessed by measuring life expectancy at birth. This indicator reflects the average number of years a person is expected to live and provides insights into a population's overall health and well-being. Higher life expectancies generally indicate

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<sup>82</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted 18 December 1979, 1249 UNTS 13 Art 14(g).

<sup>83</sup> Committee on the Elimination of Discrimination against Women General Recommendation No. 34 on the rights of rural women CEDAW/C/GC/34 Distr.: General 4 March 2016 para 67.

<sup>84</sup> Omika Bhalla Saluja, Priyanka Singh et al, 'Barriers and Interventions on the Way to Empower Women through Financial Inclusion: a 2 Decades Systematic Review (2000-2020) 2.

<sup>85</sup> United Nations Human Rights, 'Women's Rights are Human Rights' (United Nations 2014) <https://www.ohchr.org/sites/default/files/Documents/Events/WHRD/WomenRightsAreHR.pdf>.

<sup>86</sup> UNDP Human Development Reports, 'Human Development Index (HDI)' (UNDP, accessed 20 May 2023) <https://hdr.undp.org/data-center/human-development-index#/indicies/HDI>.

<sup>87</sup> UNDP Human Development Reports, 'Human Development Index (HDI)' (UNDP, accessed 20 May 2023) <https://hdr.undp.org/data-center/human-development-index#/indicies/HDI>.

better access to healthcare, sanitation, nutrition, and lower disease prevalence.<sup>88</sup> Education constitutes the second dimension of the HDI. It encompasses two aspects: access to education and educational attainment. Access to education evaluates enrolment rates at various levels, including primary, secondary, and tertiary education, indicating the availability of educational opportunities. On the other hand, educational attainment examines the average years of schooling and expected years of schooling, reflecting the quality and level of education received.<sup>89</sup>

The third dimension is the standard of living, which is measured by gross national income (GNI) per capita. GNI represents a country's total income, including both domestic and international sources, divided by its population. This dimension provides insights into individuals' economic well-being, including income, employment opportunities, and material possessions.<sup>90</sup> By considering these three dimensions, the HDI offers a comprehensive assessment of a country's development. It recognises that development encompasses not only economic factors but also the health and education of its citizens. The HDI enables comparisons between countries and assists policymakers in identifying areas for improvement and monitoring progress over time.<sup>91</sup>

In the South African context, women's health is influenced by factors such as gender inequality, poverty, and sexual and gender-based violence, as highlighted by the World Health Organisation. These factors contribute to significant health risks and disparities experienced by women in the country.<sup>92</sup> In South Africa, gender inequity aggravates health disparities, with women facing a higher burden of diseases compared to men. This includes a particular vulnerability to communicable diseases like HIV/AIDS, which remains a significant health concern.<sup>93</sup> Additionally, women encounter challenges related to maternal and perinatal health, leading to higher rates

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<sup>88</sup> Max Roser, 'Human Development Index (HDI)' (Our World in Data 2014) <https://ourworldindata.org/human-development>.

<sup>89</sup> Max Roser, 'Human Development Index (HDI)' (Our World in Data 2014) <https://ourworldindata.org/human-development>.

<sup>90</sup> Organisation for Economic Co-operation and Development, 'Gross National Income' (OECD, 2023) <https://data.oecd.org/natincome/gross-national-income.htm>.

<sup>91</sup> UNDP Human Development Reports, 'Human Development and the SDGs' (UNDP, 2019) <https://hdr.undp.org/content/human-development-and-sdgs>.

<sup>92</sup> WHO, 'Africa women's health' (WHO, 6 September 2022) <https://www.afro.who.int/health-topics/womens-health>.

<sup>93</sup> WHO, 'Africa women's health' (WHO, 6 September 2022) <https://www.afro.who.int/health-topics/womens-health>.

of maternal mortality and complications during pregnancy and childbirth.<sup>94</sup> The impact of poverty on women's health is notable, as those from low-income backgrounds often struggle to access quality healthcare services. Limited resources and inadequate access to nutritious food contribute to nutritional deficiencies, which adversely affect the health of women and their children.<sup>95</sup>

Sexual and gender-based violence poses further risks to women's health and well-being in South Africa. High rates of gender-based violence, including domestic violence, rape, and intimate partner violence, result in physical and psychological consequences for women. Such experiences increase the risk of injuries, sexually transmitted infections, and mental health disorders.<sup>96</sup> Girls and young women in South Africa are also affected by early pregnancies and child marriage. Early pregnancies can lead to health complications for young girls, impacting their overall well-being and educational opportunities. While child marriage is illegal, it persists in certain communities, exposing young girls to increased vulnerabilities and health risks.<sup>97</sup> Ensuring that states take into account the indicators of human development as outlined in Article 19(e) is an essential and justifiable aspect of safeguarding the right to sustainable development for women. The focus on human development factors in Article 19(e) of the Maputo Protocol establishes a connection with other articles within the protocol, such as Article 12, which addresses the right to education and training, and Article 14, which emphasises health and reproductive rights.<sup>98</sup> Additionally, it relates to Articles 15, 16, and 17 of the African Charter, which cover food security, health, and education, respectively.<sup>99</sup>

While neither the Maputo Protocol nor the African Charter explicitly defines the concept of 'standard of living,' Article 11 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) guarantees the right to an adequate standard of living for individuals and their families, including access to adequate food, clothing,

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<sup>94</sup> Judith Bale, Barbara Stoll and others, *Improving Birth Outcomes* (National Academic Press 2003).

<sup>95</sup> Rita Paul-Sen Gupta and Margaret L De Wit, 'The Impact of Poverty on Current and Future Health Status of Children' (2007) 12 (8) *Paediatric Health Child* 668.

<sup>96</sup> Indrian Govendor, 'Gender-Based Violence: An Increasing Epidemic in South Africa' (2023) 65 (1) *National Library of Medicine* 2.

<sup>97</sup> Gugu Mchunu and Karl Peltzer *et al*, 'Adolescent Pregnancy and Associated Factors in South Africa' (2012) 12(4) *National Library of Medicine* 426.

<sup>98</sup> *Ibid.*

<sup>99</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) Art 15-17.

housing, and continuous improvement of living conditions.<sup>100</sup> Several general comments issued by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) shed light on the notion of 'adequate standard of living' concerning the sustainable development of women. These comments highlight that ensuring an adequate standard of living for women includes access to food, housing, and healthcare. For example, CESCR General Comment 4 emphasises that adequate housing is a significant social and cultural right for all individuals, including women, and should not be subject to any form of discrimination. It also interprets the term 'family' to encompass female-headed households.<sup>101</sup> Similarly, General Comment 12 on the right to food emphasises the importance of food and the need to prevent discrimination.<sup>102</sup>

The consideration of human development indicators in line with Article 19(e) of the Maputo Protocol plays a vital role in advancing the right to sustainable development for women in Africa. The interconnectedness of various articles within the protocol, as well as relevant provisions in the African Charter and ICESCR, further emphasise the importance of ensuring access to adequate standards of living, education, health, and other fundamental rights for women in the pursuit of sustainable development.<sup>103</sup>

#### 2.2.6. Article 19(f)- Globalisation

The concept of globalisation is characterised by its complex and multifaceted nature. It encompasses the process of expanding business, services, and technologies on a global scale.<sup>104</sup> In the African context, a key aspect of globalisation is the opening up of the continent's economy and market system to the global market and its forces. This involves the diffusion of new technologies, exchange of goods and services, capital and financial flows, internationalisation of businesses and processes, and the movement of people, including working women and men, as highlighted by the

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<sup>100</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

<sup>101</sup> CESCR, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) (13 December 1991) E/1992/23, paras 1, 6.

<sup>102</sup> CESCR, General Comment No. 12: The Right to Adequate Food (Art. 11) (12 May 1999) E/C.12/1999/5, para 1.

<sup>103</sup> Christine Chinkin, 'The Protection of Economic, Social and Cultural Rights Post-Conflict' [https://www2.ohchr.org/english/issues/women/docs/Paper\\_Protection\\_ESCR.pdf](https://www2.ohchr.org/english/issues/women/docs/Paper_Protection_ESCR.pdf).

<sup>104</sup> Emeka Daniel Oruonye, 'Multinational oil corporations in Sub-Saharan Africa: An assessment of the impacts of globalisation' (2012) 2 International Journal of Humanities & Social Science 152.

International Labour Organisation Declaration on Social Justice for fair globalisation.<sup>105</sup>

While globalisation has brought advantages such as increased world trade and income for some of the world's poorest populations, it also has negative effects, particularly in the implementation of trade and economic policies.<sup>106</sup> Women in Africa tend to bear a disproportionate burden of the negative impacts of globalisation due to their limited participation in formal economic sectors and the labour market.<sup>107</sup> Their engagement is primarily in the informal sector, including small-scale business ownership and smallholding farming activities, which, in itself, reflects the feminisation of this sector. However, even these sectors are not immune to the adverse effects of trade liberalisation associated with globalisation. For example, resource-constrained women often face challenges in accessing credit due to a lack of collateral security, which excludes them from the benefits of property rights and trade liberalisation.<sup>108</sup>

Recognising the challenges posed by globalisation, the Constitutive Act of the African Union acknowledges the need to address them in order to achieve socio-economic development in Africa.<sup>109</sup> The AU Assembly's 2004 Decision on the social dimension of globalisation further emphasises that exclusion and marginalisation resulting from globalisation can threaten stability.<sup>110</sup> Earlier, an ILO report also warned about the potential threats to nationally based systems in Africa posed by globalisation. In this context, Article 19(f) of the Maputo Protocol aligns with the objectives set out in regional and international instruments, aiming to ensure that globalisation does not impede the development of vulnerable populations. It calls upon states to address the

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<sup>105</sup> International Labour Organisation, Declaration on social justice for a fair globalisation, adopted at the International Labour Conference, meeting in Geneva on the occasion of its Ninety-seventh Session, 10 June 2008.

<sup>106</sup> Ron Martin and others, 'Globalisation at a critical juncture?' (2018) 11 (1) Cambridge Journal of Regions, Economy and Society 3.

<sup>107</sup> Uchena Efobi, Belmondo Tanankem & Simplice Asongu, 'Female economic participation with information and communication technology advancement: Evidence from Sub-Saharan Africa' (2018) 86(2) South African Journal of Economics 231.

<sup>108</sup> *Ibid.*

<sup>109</sup> Constitutive Act of the African Union, adopted by the 36th Ordinary Session of the Assembly of the Heads of State and Government 11 July 2000, Lome, Togo.

<sup>110</sup> Decision on the final report of the Commission on the Social Dimension of Globalisation Doc. Assembly/AU/11 (V) Add.6, Assembly of African Union, Third Ordinary Session, 6-8 July 2004, Addis Ababa, Ethiopia.

negative effects of globalisation and work towards creating a more inclusive and equitable society for women and other marginalised groups.<sup>111</sup>

### 2.3. Conclusion

In summary, this chapter has explored the key concepts encompassed in Articles 19(a) to 19(f) of the Maputo Protocol, focusing on the rights and challenges experienced by women in South Africa within the context of sustainable development. These challenges encompass gender inequality, discrimination, economic disparities, poverty, rural marginalisation, gender-based violence, limited political representation, and barriers to accessing education and healthcare. These intersecting challenges create barriers that impede women's full and meaningful participation in sustainable development processes.

A detailed examination of South Africa's application of Article 19 of the Maputo Protocol more, especially how the nation recognises and defends women's right to sustainable development, will be the subject of the next chapter. With a focus on finding any gaps or inconsistencies within the legal framework and ensuring that it is in line with the principles outlined in Article 19, this analysis will examine South Africa's domestic laws, policies, and practices to determine the degree of protection and recognition offered for this fundamental right.

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<sup>111</sup> Mamounata Cisse, 'The challenge of globalisation in Africa: The trade union response' Labour Education 2001/2 No. 123, 11.

## CHAPTER 3

### The South African legislative framework

#### 3.1. Introduction

This chapter provides an in-depth analysis of Article 19 of the Maputo Protocol and its implementation within the South African context. The main objective is to examine how South Africa acknowledges and upholds the principles outlined in Article 19, which focuses on women's right to sustainable development. The chapter will assess the country's domestic laws, policies, and practices to determine the level of protection and recognition provided for this fundamental right. Following this introduction is a section on the South African legislative framework concerning Article 19 of the Maputo Protocol. This section will delve into the relevant laws, policies, and regulations that govern women's right to sustainable development in South Africa. The analysis will focus on identifying any potential gaps or inconsistencies within the legal framework and its alignment with the principles outlined in Article 19.

#### 3.2. Legislative framework

##### 3.2.1. The Constitution of the Republic of South Africa

In the context of the right to sustainable development of women in South Africa, the Constitution of the Republic of South Africa plays a crucial role. The Constitution serves as the supreme law of the country and provides a strong foundation for the protection and promotion of human rights, including women's rights.<sup>112</sup> Although the Constitution of the Republic of South Africa was adopted in 1996 and the Maputo protocol was only ratified in 2004, the South African Constitution does in many ways uphold the mechanisms of the protocol. The South African Constitution has been hailed as one of the best constitutions in the world<sup>113</sup> and one of the most advanced constitutions in history with a Bill of Rights that is 'considered among the most comprehensive of all Bills of Rights to date.'<sup>114</sup> The Constitution expressly states that courts must take into account international law when interpreting the Bill of Rights.<sup>115</sup> Further, courts are required by Section 233 to adopt an interpretation of any statute that is consistent with South Africa's obligations under international law. In this way,

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<sup>112</sup> Constitution of the Republic of South Africa 1996.

<sup>113</sup> John Dugard, *International Law: A South African Perspective* (Juta publishing 2007) 197.

<sup>114</sup> Erin Goodsell, 'Constitution, custom, and creed: Balancing human rights concerns with cultural and religious freedom in today's South Africa' (2007) 21 *BYU Journal of Public Law* 109.

<sup>115</sup> Constitution of the Republic of South Africa 1996, section 39(1)(b).

although the Constitution precedes the Maputo Protocol, it does uphold its mechanisms.<sup>116</sup>

Article 19 of the Maputo Protocol emphasises women's right to fully enjoy their right to sustainable development.<sup>117</sup> It encompasses various aspects, including gender equality in development planning, women's participation in decision-making processes, access to credit and training, consideration of gender-specific indicators in development policies, and mitigating the adverse effects of globalisation and economic policies on women.<sup>118</sup> The Constitution prominently emphasises the right to equality and protection against discrimination.<sup>119</sup> Section 9 of the South African Constitution is a critical part that deals with equality and non-discrimination. It has a significant impact on promoting and safeguarding women's right to sustainable development in the country.<sup>120</sup> Section 9(1) of the Constitution states: 'Everyone is equal before the law and has the right to equal protection and benefit of the law.'<sup>121</sup> This essential principle of equality guarantees that all individuals, including women, have equal legal protection and entitlement to benefits. It forms a solid basis for advancing gender equality and women's rights in diverse areas, including sustainable development.<sup>122</sup>

Section 9 of the South African Constitution provides a legal foundation for ensuring equal opportunities for women's sustainable development. For instance, everyone has the right to basic and higher education, which is enshrined and safeguarded by Section 29(1) of the constitution.<sup>123</sup> According to the clause, the state is required to gradually increase access to and availability of higher education. By being accessible, the state should work to eliminate obstacles to higher education.<sup>124</sup> In the realm of education, Section 9 guarantees that women and girls enjoy the same rights as men and boys to

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<sup>116</sup> Constitution of the Republic of South Africa 1996, section 233.

<sup>117</sup> Maputo Protocol Art 19.

<sup>118</sup> Maputo Protocol Art 19 (a)-(f).

<sup>119</sup> Constitution of the Republic of South Africa 1996, section 9.

<sup>120</sup> Republic of South Africa Combined Second Periodic Report under the African Charter on Human and People's Rights and Initial Report under the Protocol to the African Charter on the Rights of Women in Africa, August 2015.

<sup>121</sup> Constitution of the Republic of South Africa 1996, section 9(1).

<sup>122</sup> United Nations, 'Peace, dignity and equality on a healthy planet' <https://www.un.org/en/global-issues/gender-equality> (accessed 19 July 2023).

<sup>123</sup> Constitution of the Republic of South Africa 1996, section 29(1).

<sup>124</sup> Constitution of the Republic of South Africa 1996, section 29(1).

access quality education.<sup>125</sup> This encompasses equal access to schools, scholarships, and educational initiatives that foster their personal and professional development. By offering equal educational prospects, women are better prepared to engage in the workforce and contribute to sustainable progress.<sup>126</sup>

Section 9 of the South African Constitution prohibits gender discrimination in the workplace by upholding the principle of equality. According to Section 9(3) of the Constitution, the state cannot unfairly discriminate against anyone based on various grounds, including gender.<sup>127</sup> This means that individuals, regardless of their gender, should be treated equally and without any form of discrimination at work. In practical terms, this ensures that employers cannot unfairly treat women in matters of hiring, promotions, working conditions, or pay solely because of their gender.<sup>128</sup> Furthermore, Section 9 may provide a basis for extending its protection to other resources that contribute to sustainable development. For instance, it may be used to advocate for policies ensuring that women have equal access to credit and financial services to support their entrepreneurial ventures or small businesses.<sup>129</sup> This access to financial resources can empower women, enabling them to generate income, contribute to economic growth, and enhance their overall quality of life.<sup>130</sup>

The effective implementation and enforcement of women's rights provisions in the South African Constitution present significant challenges. Transforming these rights into tangible actions and outcomes, especially in marginalised areas, encounters obstacles.<sup>131</sup> Limited resources, inadequate institutional mechanisms, and lack of

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<sup>125</sup> Mzwandile Dlabazana, 'The Women's Charter for Accelerated Development: Setting a 25-year Vision and Agenda to Advance Women's Equality, Growth and Development' (19 August 2021) [www.parliament.gov.za](http://www.parliament.gov.za) accessed 19 July 2023.

<sup>126</sup> Rossie Vaughan, 'Gender Equality and Education in the Sustainable Development Goals' (2016) 1 (7) UNESCO 36.

<sup>127</sup> Constitution of the Republic of South Africa 1996, section 9(3).

<sup>128</sup> International Labour Organisation, 'Chapter VII Substantive provisions of labour legislation: The Elimination of Discrimination in Respect of Employment and Occupation' <https://www.ilo.org/static/english/dialogue/ifpdial/llg/noframes/ch7.htm> (accessed 19 July 2023).

<sup>129</sup> United Nations Human Rights Office of the High Commissioner, 'Realizing Women's Rights to Land and Other Productive Resources' (Second edition, 2020) page 20 [https://www.ohchr.org/sites/default/files/Documents/Publications/RealisingWomensRightstoLand\\_2ndedition.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/RealisingWomensRightstoLand_2ndedition.pdf) (accessed 19 July 2023).

<sup>130</sup> Ana Revenga and Sudhir Shetty, 'Empowering Women is Smart Economics' (2012) 49 (1) Finance and Development Journal Para 12.

<sup>131</sup> Parliament of the Republic of South Africa, 'Overview of Legislation, Programmes and Challenges Related to the Articles in Women's Charter for effective Equality' (28 October 2019) [www.parliament.gov.za](http://www.parliament.gov.za) (accessed 19 July 2023).

awareness hinder the proper promotion of women's right to sustainable development. Addressing these challenges requires a comprehensive approach involving various stakeholders. Strategies may involve gender-responsive budgeting, awareness campaigns, empowering gender-focused institutions, engaging with community leaders, capacity-building for service providers, and promoting data collection for evidence-based policies.<sup>132</sup> Overcoming these hurdles can bring South Africa closer to achieving gender equality and empowering women to participate fully in sustainable development.<sup>133</sup>

The case of *Government of the Republic of South Africa v. Grootboom* stands as a pivotal ruling by the Constitutional Court of South Africa, significantly reshaping the interpretation and application of socio-economic rights, with a particular focus on the right to access adequate housing, as enshrined in the country's Constitution.<sup>134</sup> The key constitutional provisions at issue in the case were Section 26 and Section 28(1)(c) of the Constitution and whether the government bore the responsibility to rectify socio-economic disparities and ensure access to essential services for those in need.<sup>135</sup> The Constitutional Court ruled in favour of the homeless community, shedding light on the state's imperative to rectify socio-economic disparities and ensure the realisation of fundamental rights for everyone. The court emphatically stated that the government's failure to provide adequate housing violated constitutional rights tied to dignity, equality, and life.<sup>136</sup> Although the case discussed Section 26 of the Constitution, by parity of reason, the judgement can be extended to cover the right to land and Section 25, which states that everyone has the right to property.

Article 19(c) of the Maputo Protocol specifically addresses women's access to and control over property and land rights. The *Grootboom* case, which was primarily based on the right to access adequate housing, entrenched in Section 26 of the Constitution, also discussed Section 25 of the Constitution, which provides for the right to

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<sup>132</sup> Department of Women Republic of South Africa, 'Gender Responsive Planning & Budgeting Framework' [https://static.pmg.org.za/180612Gender\\_Responsive.pdf](https://static.pmg.org.za/180612Gender_Responsive.pdf) (accessed 19 July 2023).

<sup>133</sup> United Nations Entity for Gender Equality and the Empowerment of Women, 'Challenges and Opportunities in Achieving Gender Equality and the Empowerment of Rural Women and Girls: 2018 Commission on The Status <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/62/CSW-Conclusions-62-EN.PDF> 4.

<sup>134</sup> *Government of the Republic of South Africa v Grootboom* (2001) 1 SA 46 (CC).

<sup>135</sup> *Government of the Republic of South Africa v Grootboom* (2001) 1 SA 46 (CC).

<sup>136</sup> *Government of the Republic of South Africa v Grootboom* (2001) 1 SA 46 (CC).

property.<sup>137</sup> The South African Constitution does not provide for a right to land, but by parity of reason, the judgement can be said to cover the right to land as per Article 19 of the Maputo Protocol. The *Grootboom* case tackles the broader socio-economic entitlement to suitable housing.<sup>138</sup> Both the constitution and the *Grootboom* case highlight governments' constructive responsibilities in realising these rights for marginalised segments, often including women. The principles of gradual achievement and governmental accountability are at the core of both, reflecting a dedication to sustainable development and societal fairness.

### 3.2.2. Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)

PEPUDA, known as the Promotion of Equality and Prevention of Unfair Discrimination Act, holds significant importance as a key legal framework in South Africa.<sup>139</sup> Its primary purpose is to uphold principles of equality and eliminate different forms of discrimination. Central to its objectives is the promotion of gender equality and the protection of individuals from unjust treatment, encompassing various factors, including gender.<sup>140</sup> Furthermore, PEPUDA's provisions closely align with the goals outlined in Article 19 of the Maputo Protocol. This convergence signifies a shared dedication to advancing women's right to fully experience sustainable development. It underscores the essential role of PEPUDA in fostering an all-encompassing and fair society for women in South Africa.<sup>141</sup>

The effective implementation of Section 3 of PEPUDA in South Africa is essential for upholding gender equality and eradicating gender-based discrimination, aligning with the objectives of Article 19 of the Maputo Protocol.<sup>142</sup> This section prohibits unfair discrimination, including discrimination based on gender, and plays a pivotal role in advancing women's right to sustainable development. Practically, the implementation of Section 3 entails several key actions and measures.<sup>143</sup> Firstly, it involves the establishment of legislation and policies that explicitly prohibit gender-based

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<sup>137</sup> *Government of the Republic of South Africa v Grootboom* (2001) 1 SA 46 (CC).

<sup>138</sup> Maputo Protocol Article 19(c).

<sup>139</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>140</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>141</sup> Report by the Women, Gender and Development Directorate (WGDD) of the African Union Commission, 'Maputo Protocol on Women's Rights: A Living Document for Women's Human Rights in Africa' page 4 (accessed 19 July 2023).

<sup>142</sup> Commission for Gender Equality, 'Report on Gender Transformation (2022/23)' page 12.

<sup>143</sup> Parliament of the Republic of South Africa, 'Overview of Legislation, Programmes and Challenges Related to the Articles in Women's Charter for effective Equality' (28 October 2019) [www.parliament.gov.za](http://www.parliament.gov.za) (accessed 19 July 2019).

discrimination in various sectors, including education, employment, healthcare, and property rights.<sup>144</sup> Secondly, awareness campaigns and public education initiatives are essential to inform the public about their rights and how to recognise and report instances of gender-based discrimination.<sup>145</sup> Thirdly, monitoring and enforcement mechanisms, facilitated by the South African Human Rights Commission (SAHRC), are crucial for ensuring compliance with the law and holding those responsible for discriminatory practices accountable.<sup>146</sup>

Section 3 of PEPUDA implementation in South Africa includes promoting workplace equality by ensuring equal opportunities for women to advance in their careers and receive fair pay.<sup>147</sup> Furthermore, efforts have been made to improve girls' and women's access to education and address issues of gender-based violence. Additionally, measures have been taken to protect women's land and property rights and provide equal access to healthcare services, including reproductive healthcare.<sup>148</sup> By effectively implementing Section 3 of PEPUDA and aligning it with Article 19 of the Maputo Protocol, South Africa aims to create a society where women have equal access to opportunities, resources, and services necessary for their sustainable development. This includes promoting gender equality in decision-making processes and ensuring women's active participation in shaping development policies and programmes.<sup>149</sup> The commitment to promoting gender equality and addressing discrimination is vital for empowering women and fostering their active participation in decision-making processes. Ultimately, this contributes to a more equitable and sustainable society, as envisaged by the Maputo Protocol.<sup>150</sup>

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<sup>144</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 section 3(1)(a).

<sup>145</sup> Council of Europe, 'Prevention of Gender-Based Violence' <https://www.coe.int/en/web/gender-matters/prevention-of-gender-based-violence> (accessed 19 July 2023).

<sup>146</sup> South African Human Rights Commission (SAHRC), Access to Justice <https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Justice%20Educational%20Booklet.pdf> page 9 (accessed 19 July 2023).

<sup>147</sup> International Labour Organisation, 'Chapter VII Substantive provisions of labour legislation: The Elimination of Discrimination in Respect of Employment and Occupation' <https://www.ilo.org/static/english/dialogue/ifpdial/llg/noframes/ch7.htm> (accessed 19 July 2023).

<sup>148</sup> Commission for Gender Equality, 'Investigation Report on the Forced Sterilisation of Women Living with HIV/AIDS in South Africa' (Case No: 414/03/2015) page 26.

<sup>149</sup> Commission for Gender Equality, 'Monitoring the Implementation of the Maputo Protocol (2019/2020)' page 60.

<sup>150</sup> African Union Commission, 'African Union ECHO Magazine' (2016) (African Union, 2023) <https://au.int/en/articles/maputo-protocol-scorecard-index-stepping-stone-towards-achieving-womens-rights>.

Section 4 of PEPUDA in South Africa plays a vital role in promoting gender equality and empowering women through the implementation of specific measures.<sup>151</sup> These measures are aimed at addressing historical disadvantages and discrimination that have hindered women's access to opportunities and resources, limiting their participation in sustainable development. By introducing targeted policies and programmes, South Africa seeks to rectify these disparities and foster a more equitable society where women can fully realise their potential.<sup>152</sup> One significant example of such measures is the introduction of gender quotas in politics, which encourages political parties to include a predetermined percentage of female candidates on their electoral lists.<sup>153</sup> As a result, there has been an increase in women's representation in government and parliament, contributing to a more diverse and inclusive political landscape.<sup>154</sup> Another area where special measures have been implemented is women's economic empowerment programmes. These initiatives provide women with access to microfinance, skills development programmes, and support for female entrepreneurs, enabling them to start and grow their businesses, thus contributing to economic growth and poverty reduction.<sup>155</sup>

Affirmative action in employment is also a measure adopted under Section 4, aimed at improving representation and equal opportunities for women in sectors where they have been historically underrepresented, such as engineering, technology, and leadership roles.<sup>156</sup> Additionally, gender-responsive education measures have been introduced to bridge gender gaps in the educational system. Initiatives like scholarships and incentives encourage girls' enrolment in schools, while efforts are made to remove barriers preventing girls from attending school, such as providing

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<sup>151</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 section 4.

<sup>152</sup> South Africa, 'Report on the Implementation of Agreed Conclusions on Women's Empowerment and the Link to Sustainable Development' (September 2020) [www.unwomen.org](http://www.unwomen.org) 4 (accessed 21 July 2023) .

<sup>153</sup> Miki Caul, 'Political Parties and the Adoption of Candidate Gender Quotas: A Cross National Analysis' (2001) 63 (4) The University of Chicago Press 1216.

<sup>154</sup> Elizabeth Asiedu, Claire Branstette *et al*, 'The Effect of Women's Representation in Parliament and Passing of Gender Sensitive Policies' <https://www.aeaweb.org/conference/2018/preliminary/paper/an5yEb5h>.

<sup>155</sup> Abraham Abebe & Meketaw Kegne, 'The Role of Microfinance Institutions on Women's Entrepreneurship Development' (2023) 17 (12) Journal of Innovation and Entrepreneurship 3.

<sup>156</sup> Julia Furtado, Antonio Moreira & Jorge Mota, 'Gender Affirmative Action and Management: A Systematic Literature Review on How Diversity and Inclusion Management Affect Gender Equity in Organizations' (2021) 11 (2) Department of Economics, Management, Industrial Engineering and Tourism Journal 3810.

sanitary facilities in educational institutions.<sup>157</sup> By implementing these targeted measures, South Africa demonstrates its commitment to advancing gender equality and creating an inclusive society. These efforts empower women to participate more actively in various aspects of life and contribute to the country's overall sustainable development goals.<sup>158</sup> Sections 6 and 7 of PEPUDA in South Africa are dedicated to addressing harassment and sexual harassment issues and aim to create secure and respectful environments for women.<sup>159</sup> Effective implementation of these sections involves proactive measures such as raising awareness about women's rights, providing training to institutions and workplaces, and establishing efficient reporting mechanisms.<sup>160</sup> By combatting harassment and sexual harassment, South Africa seeks to promote gender equality and empower women to actively participate in society and decision-making processes, aligning with the objectives of Article 19 of the Maputo Protocol.<sup>161</sup>

Section 13 of PEPUDA in South Africa plays a significant role in ensuring that individuals who have experienced discrimination, especially gender-based discrimination, can access appropriate remedies.<sup>162</sup> This provision aligns with the importance of taking measures to promote women's right to sustainable development, as emphasised in Article 19 of the Maputo Protocol. By outlining the legal recourse available to victims of discrimination, Section 13 seeks to address violations of women's rights and contribute to the realisation of their right to sustainable development. Through Section 13, PEPUDA establishes a framework that enables victims of gender-based discrimination to seek redress and justice. It provides a mechanism for individuals to present their grievances and pursue remedies through legal channels. This ensures that instances of discrimination based on gender are not overlooked or disregarded but are instead dealt with in a just and equitable manner.<sup>163</sup>

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<sup>157</sup> The United Nations Entity for Gender Equality and the Empowerment of Women, 'South Africa's Report on the Implementation of Agreed Conclusions on Women's Empowerment and the Link to Sustainable Development' (September 2020) [www.unwomen.org](http://www.unwomen.org) 4 (accessed 21 July 2023).

<sup>158</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 section 7 & 8.

<sup>159</sup> Commission for Gender Equality, Report on Gender Transformation (2022/23) page 12.

<sup>160</sup> Sandra Van Niekerk, 'Current law and practices concerning violence and harassment in the world of work Focusing on Convention 190 and Recommendation 206 (2019) 5.

<sup>161</sup> Moussa Mahamat, 'African Union Strategy for Gender, Equality & Women's Empowerment (2018-2028)' [www.au.int](http://www.au.int).

<sup>162</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>163</sup> National Strategic Plan on Gender Based Violence & Femicide (2020) [www.women.gov.za](http://www.women.gov.za).

In the landmark case of *September vs. Subramoney*, the court issued a ground breaking judgment, ruling that the refusal to allow transgender individuals to express their gender identity constitutes unfair discrimination in violation of the right to equality.<sup>164</sup> This significant decision emphasised the importance of recognising and respecting an individual's gender identity, setting a powerful precedent for advancing transgender rights and anti-discrimination laws in South Africa.<sup>165</sup> This case aligns with PEPUDA by recognising the refusal to allow transgender individuals to express their gender identity as a form of unfair discrimination.<sup>166</sup> This decision upholds the Act's principles of preventing unfair discrimination, safeguarding the right to equality, and explicitly addressing discrimination based on gender identity.<sup>167</sup> The remedies available under Section 13 encompass various forms, such as compensation, restitution, and other relief measures aimed at addressing the harm caused by discrimination.<sup>168</sup>

By providing effective remedies, PEPUDA seeks not only to redress the immediate harm experienced by victims but also to discourage future instances of discrimination. This contributes to creating an inclusive and supportive environment that enables women to fully enjoy their right to sustainable development.<sup>169</sup> Aligned with the provisions of the Maputo Protocol, PEPUDA's emphasis on remedies for gender-based discrimination supports the broader objective of promoting women's rights and empowerment. By ensuring that victims have access to remedies, South Africa demonstrates its commitment to upholding the principles of gender equality and striving for a society where women's rights are protected, allowing them to actively participate in and contribute to sustainable development.<sup>170</sup>

The PEPUDA legal framework in South Africa may encounter several potential gaps. Challenges in enforcement and implementation could arise due to limited resources, inadequate awareness, and insufficient institutional capacity, leading to delays and

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<sup>164</sup> *September v Subramoney NO and Others* (2019) 4 All SA 927 (WCC).

<sup>165</sup> *September v Subramoney NO and Others* (2019) 4 All SA 927 (WCC) Para 156.

<sup>166</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>167</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>168</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>169</sup> World Survey on the Role of Women in Development: 'Gender Equality and Sustainable Development 2015. United Nations Women' <https://www.unwomen.org/World-Survey-on-the-role-of-women-in-development> 2014.

<sup>170</sup> Commission for Gender Equality, 'Report on Gender Transformation (2022/23)' page 14.

inefficiencies in addressing discrimination cases and providing remedies to victims.<sup>171</sup> Some individuals, particularly those in marginalised or remote communities, might lack awareness of their rights under PEPUDA or face difficulties in accessing legal remedies, necessitating widespread dissemination of information about the law. Intersectional discrimination, where individuals experience discrimination based on multiple characteristics simultaneously, may not be fully addressed under PEPUDA, requiring more specific provisions or clarifications.<sup>172</sup> Regular monitoring and evaluation of the law's impact are essential to identify gaps and areas for improvement, but the absence of a robust monitoring mechanism might hinder this assessment. Additionally, certain vulnerable groups, such as migrant women, LGBTQ+ individuals, or indigenous women, may need additional tailored provisions for sufficient protection under PEPUDA.<sup>173</sup> Furthermore, the application of PEPUDA in the private sphere, including cases of discrimination within households or private institutions, could be limited, potentially leaving some women without adequate protection.<sup>174</sup>

### 3.2.3. Employment Equity Act

The Employment Equity Act in South Africa plays a crucial role in promoting workplace equality and addressing historical employment disparities.<sup>175</sup> It aligns closely with the goals outlined in Article 19 of the Maputo Protocol, emphasising the importance of taking measures to promote women's right to sustainable development. By analysing the provisions of the Employment Equity Act, it becomes evident how this law contributes to the advancement of gender equality and the empowerment of women within the framework of sustainable development. The Employment Equity Act in South Africa includes multiple provisions that are in line with the goals stated in Article 19 of the Maputo Protocol, which emphasises women's right to sustainable development.

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<sup>171</sup> Dorothy Ramodibedi, 'Women Empowerment and Gender Equality Bill [B50-2013]: public hearings with Minister' (2014) <https://pmg.org.za/committee-meeting/16819/> (accessed 29 July 2023).

<sup>172</sup> Sandra Fredman, 'Intersectional Discrimination in EU gender equality and non-discrimination role, Directorate Justice and Consumers' (2016) <https://www.coe.int/en/web/gender-matters/intersectionality-and-multiple-discrimination> (accessed 29 July 2023).

<sup>173</sup> Vanesa Yarwood, Francesco Chechi *et al*, 'LGBTQ + Migrants: A Systematic Review and Conceptual Framework of Health, Safety and Wellbeing during Migration' (2002) 19 (2) International Journal of Environmental Research and Public Health 19.

<sup>174</sup> South African Human Rights Commission (SAHRC), Access to Justice <https://www.sahrc.org.za> page 10 (accessed 29 July 2023).

<sup>175</sup> Employment Equity Act 55 of 1998.

Section 6 of the Employment Equity Act in South Africa is closely aligned with Article 19 of the Maputo Protocol, which emphasises women's right to sustainable development. This section specifically targets gender-based discrimination in the workplace by prohibiting unfair treatment on the basis of gender.<sup>176</sup> The Act aims to create an environment that ensures equal access to employment opportunities for women, enabling their full participation in the workforce and contributing to sustainable development.<sup>177</sup> By addressing discrimination, the Act promotes gender equality and empowers women to play a significant role in advancing society's progress. It not only targets direct discrimination but also addresses indirect discrimination, ensuring that policies and practices do not disproportionately disadvantage women.<sup>178</sup> Section 15 of the Employment Equity Act in South Africa addresses the need for affirmative action measures to promote employment equity and gender equality.<sup>179</sup> This aligns directly with Article 19 of the Maputo Protocol, recognising historical disadvantages and discrimination faced by women, hindering their access to opportunities for sustainable development. Through Section 15, the Employment Equity Act allows the implementation of affirmative action measures to counter past discrimination and enhance representation of designated groups, including women, in various sectors and organisational levels.<sup>180</sup>

These measures may include setting targets for women's recruitment and advancement in leadership roles and fields with historical underrepresentation. The Act aims to create a diverse and inclusive workforce reflecting the population demographics.<sup>181</sup> Ensuring women's participation in decision-making empowers them to contribute effectively to organisational strategies, fostering a supportive work environment, and driving productivity. Section 15's alignment with Article 19 reaffirms the commitment to women's right to sustainable development, emphasising affirmative action to ensure equal access to opportunities and resources.<sup>182</sup> The Employment

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<sup>176</sup> Employment Equity Act 55 of 1998.

<sup>177</sup> Employment Equity Act 55 of 1998.

<sup>178</sup> Motlhatelgo Matotoka and Kolawole Odeku, 'Untangling discrimination in the private sector workplace in South Africa: Paving the way for Black African women's progression to managerial positions' (2021) 21 (1) *International Journal of Discrimination and the Law* 47.

<sup>179</sup> Employment Equity Act 55 of 1998.

<sup>180</sup> Employment Equity Act 55 of 1998.

<sup>181</sup> Employment Equity Act 55 of 1998.

<sup>182</sup> Report of the Organisation for Economic Co-Operation and Development, 'Bridging the Digital Gender Divide: Include, Upskill, Innovate' (2018) <https://www.oecd.org/digital/bridging-the-digital-gender-divide.pdf> page 5.

Equity Act has some gaps that need attention. These include challenges in enforcing affirmative action measures and employment equity plans, as well as a lack of accountability for non-compliance by certain employers. The Act states that Chapter 3 only applies to designated employers. Designated employers are employers that employ 50 or more employees or have a total annual turnover as reflected in Schedule 4 of the Act, municipalities, and organs of state. An employer may also voluntarily apply to be a designated employer. Small businesses that make less than the minimum turnover stated in the schedule and that employ less than 50 people are consequently not covered by the Act, which could potentially leave women without equal opportunities in such organisations.<sup>183</sup> Consideration of intersectionality and the diverse challenges faced by women may also be inadequate. To have a greater impact, the Act may need to implement more comprehensive policies and stronger penalties for non-compliance. Addressing these gaps will require continuous review and improvement of the legal framework to promote workplace equity and women's rights to sustainable development.<sup>184</sup>

#### 3.2.4. Broad-Based Black Economic Empowerment Act

The Broad-Based Black Economic Empowerment (B-BBEE) Act in South Africa plays a crucial role in advancing economic inclusion and empowerment for historically disadvantaged individuals, including women.<sup>185</sup> In relation to article 19 of the Maputo Protocol, which emphasises promoting women's right to sustainable development, the B-BBEE Act aligns with the objective of uplifting women by facilitating their economic participation and progress. Section 9 of the Broad-Based Black Economic Empowerment (B-BBEE) Act plays a pivotal role in promoting gender equality and empowering women within South Africa's economic context.<sup>186</sup> This section specifically advocates for comprehensive black economic empowerment initiatives with a particular focus on advancing women. By acknowledging the significance of

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<sup>183</sup> Rudolf M. Oosthuizen, Louise Tonelli, Claude-Hélène Mayer, 'Subjective experiences of employment equity in South African organisations' (2019) 17 (1) SA Journal of Human Resource Management 2.

<sup>184</sup> Sandra Fredman, 'Intersectional Discrimination in EU gender equality and non-discrimination role, Directorate Justice and Consumers' (2016) <https://www.coe.int/en/web/gender-matters/intersectionality-and-multiple-discrimination> (accessed 29 July 2023).

<sup>185</sup> Broad-Based Black Economic Empowerment Act 53 of 2003.

<sup>186</sup> Broad-Based Black Economic Empowerment Act 53 of 2003.

gender equality, the Act recognises the historical economic challenges faced by women and aims to address them.<sup>187</sup>

Throughout history, women in South Africa have encountered systemic obstacles and economic disadvantages, which have restricted their access to opportunities and resources for economic advancement. Section 9 of the B-BBEE Act acknowledges these disparities and emphasises the necessity of targeted interventions to uplift and empower women in the economy.<sup>188</sup> The Act affirms that achieving gender equality is not solely a matter of social justice but also an economic imperative. Through the economic empowerment of women, the B-BBEE Act seeks to enable their full participation in the nation's economic development. When women are provided equal access to opportunities, education, training, and resources, they can make more meaningful contributions to the workforce and actively participate in various sectors of the economy.<sup>189</sup> The economic empowerment of women offers benefits not only to the individuals themselves but also to society and the overall national economy. Furthermore, increasing women's participation in the workforce and leadership roles can foster innovation, boost productivity, and drive overall economic growth.<sup>190</sup> Section 9 of the B-BBEE Act, with its emphasis on empowering women, aligns with the South African government's commitment to advancing gender equality and promoting women's rights to sustainable development.<sup>191</sup>

Section 10 of the Broad-Based Black Economic Empowerment (B-BBEE) Act holds significant importance in advancing gender equality within South Africa's economic landscape.<sup>192</sup> This provision specifically highlights the promotion of gender equality in economic empowerment and recognises the need for targeted interventions to increase women's representation and participation across various sectors. By aligning with Article 19 of the Maputo Protocol, Section 10 reinforces the call for measures to promote women's development and empowerment in economic spheres. Implementing Section 10 may involve measures such as gender-targeted skills

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<sup>187</sup> Broad-Based Black Economic Empowerment Act 53 of 2003.

<sup>188</sup> Johanna Kehler, 'Women and Poverty: The South African Experience' (2001) 3 (1) *Journal of International Women's Studies* 45.

<sup>189</sup> Broad-Based Black Economic Empowerment Act 53 of 2003.

<sup>190</sup> Report of the Organisation for Economic Co-Operation and Development, 'Bridging the Digital Gender Divide: Include, Upskill, Innovate' (2018) <https://www.oecd.org/digital/bridging-the-digital-gender-divide.pdf> page 7.

<sup>191</sup> Broad-Based Black Economic Empowerment Act 53 of 2003.

<sup>192</sup> Broad-Based Black Economic Empowerment Act 53 of 2003.

development programmes and mentorship initiatives for women in business. Furthermore, policies supporting work-life balance and inclusive procurement practices that promote the participation of women-owned businesses can be implemented.<sup>193</sup> Fostering a gender-responsive business culture and challenging traditional stereotypes and biases can contribute to building a more gender-inclusive economic ecosystem.<sup>194</sup> The Broad-Based Black Economic Empowerment (B-BBEE) Act in South Africa, despite its significant role in promoting economic empowerment and gender equality, faces several potential gaps within its legal framework. These gaps include challenges in effectively enforcing the Act's provisions, limited attention to intersectionality, and inadequate representation of women-owned businesses.<sup>195</sup>

### 3.2.5. National Policy Framework for Women's Empowerment and Gender Equality

The National Policy Framework for Women's Empowerment and Gender Equality<sup>196</sup> is a significant document that underscores the government's commitment to advancing gender equality and empowering women.<sup>197</sup> It aligns with the principles of Article 19 of the Maputo Protocol.<sup>198</sup> This policy document functions as a guiding roadmap for the government's initiatives to tackle gender disparities and foster an inclusive society where women actively participate in sustainable development endeavours.<sup>199</sup> The National Policy Framework for Women's Empowerment and Gender Equality aligns with Article 19 of the Maputo Protocol by addressing gender inequality and striving to remove barriers that impede women's access to opportunities, resources, and decision-making processes.<sup>200</sup> The policy demonstrates the government's commitment to fostering an inclusive society where women actively participate in

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<sup>193</sup> Gender Mainstreaming in Local Economic Development Strategies A guide 2010 <http://www.ilo.org/> (accessed 02 August 2023) 6.

<sup>194</sup> Patrice Braun, 'Building Gender-Transformative Innovation Ecosystems Supporting Women's Entrepreneurship' Expert Group Meeting (10 -13 October 2022).

<sup>195</sup> Angela Pike, Juliet Puchert & Willie Chinyamurindi, 'Analysing the future of Broad-Based Black Economic Empowerment through the lens of small and medium enterprises' (2018) 18 (1) Independent Research Journal in the Management Sciences 6.

<sup>196</sup> South Africa's National Policy Framework for Women Empowerment and Gender Equality <https://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/national%20policy%20for%20womens%20empowerment%20and%20gender%20equality%202008.pdf?vs=33> (assessed 24 September 2023).

<sup>197</sup> Office on the Status of Women, South Africa (unpublished) South Africa's National Gender Audit: 'An Analysis, Synthesis and Presentation of Findings and Recommendations at National and Provincial Levels Pretoria' 4.3.4.5.

<sup>198</sup> Maputo Protocol Art 19.

<sup>199</sup> Office on the Status of Women, South Africa (unpublished) South Africa's National Gender Audit: 'An Analysis, Synthesis and Presentation of Findings and Recommendations at National and Provincial Levels Pretoria' 4.3.4.5.

<sup>200</sup> A Strategic Framework for Gender Equality within the Public Service (2006-2015) Consultation Document [www.gov.za](http://www.gov.za) (accessed 02 August 2023) 12.

sustainable development. It acknowledges the importance of women's involvement in shaping policies and seeks to empower them economically.<sup>201</sup> Furthermore, it promotes women-owned businesses and targeted skills development programs. Through this framework, South Africa demonstrates its dedication to upholding the principles of the Maputo Protocol and advancing gender equality in the country.<sup>202</sup>

The Maputo Protocol encourages the incorporation of gender perspectives into all development initiatives. In line with this guidance, the National Policy Framework for Women's Empowerment and Gender Equality implemented in South Africa integrates gender considerations across all sectors and levels of governance.<sup>203</sup> This approach, known as gender mainstreaming, ensures that policy formulation and implementation account for the distinct needs and experiences of women and men. By promoting gender mainstreaming, the policy seeks to foster a more inclusive and responsive society, where women's active participation in decision-making processes is encouraged and gender disparities are effectively addressed.<sup>204</sup> Article 19 of the Maputo Protocol emphasises the significance of involving women in decision-making processes.<sup>205</sup> The National Policy Framework for Women's Empowerment and Gender Equality shares this focus by seeking to boost women's participation in areas like politics and governance. Increased representation of women in decision-making promotes inclusivity and gender equality, ensuring diverse perspectives are considered in shaping policies and fostering a more responsive and accountable governance.<sup>206</sup>

The National Policy Framework for Women's Empowerment and Gender Equality in South Africa is a comprehensive document; however, there are potential gaps in its legal framework that could affect its effectiveness. A notable obstacle that numerous policies encounter is the disparity between their formulation and successful

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<sup>201</sup> Office on the Status of Women, South Africa (unpublished) South Africa's National Gender Audit: 'An Analysis, Synthesis and Presentation of Findings and Recommendations at National and Provincial Levels Pretoria' 1.3.2.

<sup>202</sup> Office on the Status of Women, South Africa (unpublished) South Africa's National Gender Audit: 'An Analysis, Synthesis and Presentation of Findings and Recommendations at National and Provincial Levels Pretoria' 1.3.2.

<sup>203</sup> South Africa's National Policy Framework for Women's Empowerment and Gender Equality Prepared by: The Office on the Status of Women para 1.1.2.

<sup>204</sup> Gender Mainstreaming in Local Economic Development Strategies A guide 2010 <http://www.ilo.org/> (accessed 02 August 2023) 7.

<sup>205</sup> Maputo Protocol Article 19.

<sup>206</sup> South Africa's National Policy Framework for Women's Empowerment and Gender Equality Prepared by: The Office on the Status of Women para 1.7.

implementation. Despite having a strong policy framework, if there is a deficiency in enforcement mechanisms and commitment from relevant authorities, the policy's effectiveness may be restricted<sup>207</sup>. The National Policy Framework could encounter difficulties if it lacks adequate financial backing or if resources are not allocated efficiently to the programmes and projects aimed at advancing women's empowerment.<sup>208</sup>

### 3.2.6. National Development Plan (NDP)

The National Development Plan (NDP)<sup>209</sup> in South Africa is a comprehensive and long-term strategic framework that articulates the nation's vision for sustainable development and addresses various socio-economic challenges. It serves as a guiding roadmap for policymaking, resource allocation, and implementation across different sectors over an extended timeframe.<sup>210</sup> In relation to Article 19 of the Maputo Protocol, the NDP is noteworthy as it aligns with the principles of gender equality and women's empowerment. Article 19 highlights the significance of women's involvement in decision-making processes and the imperative to eliminate all forms of discrimination against women. The NDP recognises the pivotal role of gender equality in achieving sustainable development and acknowledges that empowering women is crucial for attaining the plan's objectives.<sup>211</sup> The NDP incorporates specific goals and targets pertaining to gender equality and women's empowerment, demonstrating the South African government's dedication to advancing women's rights and addressing gender disparities.<sup>212</sup> These objectives may encompass enhancing women's representation in leadership roles, combating gender-based violence, improving

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<sup>207</sup> Bob Hudson, David Hunter & Stephan Peckham, 'Policy failure and the policy-implementation gap: can policy support programs help?' (2019) 2(1) Centre for Health Services Studies 3.

<sup>208</sup> Bob Hudson and Others, 'Policy failure and the policy-implementation gap: can policy support programs help? (2019)' 7 RG.

<sup>209</sup> National Development Plan 2030: Our future-make it work National Planning Commission [www.gov.za](http://www.gov.za) (accessed 03 August 2023).

<sup>210</sup> National Development Plan 2030: Our future-make it work National Planning Commission [www.gov.za](http://www.gov.za) (accessed 03 August 2023).

<sup>211</sup> National Development Plan 2030: Our future-make it work National Planning Commission [www.gov.za](http://www.gov.za) (accessed 3 August 2023) page 200.

<sup>212</sup> National Development Plan 2030: Our future-make it work National Planning Commission [www.gov.za](http://www.gov.za) (accessed 3 August 2023) page 350.

women's access to education and healthcare, and fostering women's economic empowerment through targeted initiatives.<sup>213</sup>

Incorporating a gender perspective throughout the NDP is crucial, aligning with Article 19 of the Maputo Protocol. This entails considering gender-related factors in policy formulation, implementation, and evaluation across different sectors.<sup>214</sup> By doing so, the NDP aims to address the unique needs of women and men, promote gender equality, and empower women in various aspects of society. Integrating a gender perspective ensures that the plan's objectives are inclusive and responsive to the challenges faced by women, fostering a more equitable and progressive society in line with the principles of the Maputo Protocol.<sup>215</sup> One of the significant challenges that many policies encounter is the gap between their formulation and successful implementation. Even with a well-crafted plan, its effectiveness depends on its proper execution and enforcement. If relevant authorities lack commitment or if enforcement mechanisms are inadequate, the NDP's objectives may not be fully achieved.<sup>216</sup> As the NDP spans across various sectors and government departments, it requires effective coordination and collaboration among stakeholders. Without such coordination, there may be duplication of efforts, conflicting strategies, and fragmented implementation.<sup>217</sup> A robust monitoring and evaluation system is vital for tracking progress, assessing the impact of interventions, and identifying areas for improvement. Without comprehensive monitoring and evaluation, accurately measuring the NDP's impact and making necessary adjustments could prove challenging.<sup>218</sup>

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<sup>213</sup> Report of the Organisation for Economic Co-Operation and Development, Bridging the Digital Gender Divide: Include, Upskill, Innovate (2018) <https://www.oecd.org/digital/bridging-the-digital-gender-divide.pdf> (accessed 3 August 2023) page 8.

<sup>214</sup> Maputo Protocol Article 19.

<sup>215</sup> National Development Plan 2030: Our future-make it work National Planning Commission [www.gov.za](http://www.gov.za). (accessed 3 August 2023) page 24.

<sup>216</sup> Bob Hudson and Others, 'Policy failure and the policy-implementation gap: can policy support programs help?'(2019) 3 RG.

<sup>217</sup> Bob Hudson and Others, 'Policy failure and the policy-implementation gap: can policy support programs help?'(2019) 4 RG.

<sup>218</sup> *Ibid.*

### 3.3. Conclusion

In conclusion, this chapter presented a thorough analysis of how South Africa's legal framework aligns with Article 19 of the Maputo Protocol. The primary aim was to evaluate how the country implements the principles outlined in Article 19. Through a comprehensive review of local laws, policies, and operational procedures, this chapter aimed to uncover the extent to which South Africa translates these principles into concrete actions. This exploration of South Africa's dedication to gender equality and the advancement of women's rights within the realm of sustainable development has yielded valuable insights. By closely examining the existing legal framework, this chapter has both highlighted areas of strength and areas that necessitate further attention. The assessment of laws, policies, and regulations not only revealed the depth of the legal structure but also highlighted potential gaps or uncertainties that could impact the effective realisation of women's rights.

In the upcoming chapter, the analysis will be extended to compare South Africa's approach to women's rights within the context of sustainable development with that of other African countries, including Lesotho, Botswana, and Nigeria. The chapter will examine the strategies and practices employed by these nations to ensure the implementation of women's rights in the context of sustainable development, offering a valuable comparative perspective. This comparative study will provide a broader view of the regional landscape and offer insights into potential best practices and areas for improvement in South Africa's efforts to advance gender equality and women's rights.

## Chapter 4

### An analysis of the protection of women's rights and sustainable development practices in African countries

#### 4.1. Introduction

This chapter seeks to analyse women's rights and sustainable development practices across African countries, building upon the examination of South Africa's legal framework presented in the previous chapter. Botswana, Lesotho, and Nigeria have been selected for comparative analysis based on factors corresponding to Article 19 of the Maputo Protocol, which centres on the right to sustainable development. Botswana, Lesotho, and Nigeria have been selected for comparison since they encounter similar obstacles and opportunities in their pursuit of sustainable development, as outlined in the Maputo Protocol. For instance, all three nations are confronted with substantial environmental and economic issues that hinder their progress towards sustainable development. Botswana is currently contending with the environmental and societal ramifications of its mining sector, while Lesotho is grappling with the impacts of climate change on its agriculture and water resources. Nigeria, meanwhile, is facing challenges related to inadequate waste management and environmental degradation.<sup>1</sup>

From safari camps to one-of-a-kind attractions, these nations offer a wide variety of tourism experiences and offer insightful information about eco-friendly travel strategies and the potential for tourism-related economic growth. This is especially pertinent to Article 19, which highlights women's right to full participation in development policies and programs' conception, decision-making, execution, and assessment.<sup>2</sup> The comparative analysis can clarify how Article 19 is being implemented by looking at how these nations use their tourism industries to promote sustainable development while guaranteeing women's participation. For a comprehensive understanding of the opportunities and challenges in achieving the right to sustainable development as enshrined in the Maputo Protocol, it is imperative to consider the distinct socio-

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<sup>1</sup> African Union Commission, 'African Union ECHO Magazine' (2016)

[https://au.int/sites/default/files/newsevents/workingdocuments/31192-wd-au\\_echo\\_magazine\\_-\\_web.pdf](https://au.int/sites/default/files/newsevents/workingdocuments/31192-wd-au_echo_magazine_-_web.pdf).

<sup>2</sup> African Union Commission, 'Maputo Protocol Scorecard & Index: A Stepping Stone Towards Achieving Women's Rights' (African Union, 2023) <https://au.int/en/articles/maputo-protocol-scorecard-index-stepping-stone-towards-achieving-womens-rights>.

economic and political contexts of Botswana, Lesotho, and Nigeria.<sup>3</sup> In order to determine best practices and areas for improvement in advancing women's rights and sustainable development, South Africa, a regional economic powerhouse, can be compared to these nations. The African Union's efforts to give the Maputo Protocol's implementation and monitoring top priority through programs like the Maputo Protocol Scorecard and Index (MPSI) are in line with the choice of these nations.<sup>4</sup> Through the inclusion of South Africa and its neighbours in the comparative analysis, the study can make a valuable contribution to the wider continental endeavours aimed at guaranteeing accountability and adherence to the Protocol. This will ultimately promote women's rights and sustainable development throughout the African continent.

## 4.2. A Comparative Analysis of Botswana and South Africa

### 4.2.1. Ratification of Maputo Protocol

Botswana ratified the Maputo Protocol on 01 December 2023.<sup>5</sup> This is a significant achievement, as Botswana was previously one of the three African Union member states that had not signed or ratified the Protocol. The ratification comes after advocacy efforts by the Solidarity for African Women's Rights (SOAWR) Coalition, which conducted a ratification mission to Botswana in December 2022 and held a high-level convening in Nairobi in July 2023 to commemorate the 20th anniversary of the Maputo Protocol. During this convening, Botswana's Minister for Gender indicated the country's intention to join the rest of the continent in ratifying the protocol.<sup>6</sup>

### 4.2.2. Overview of Article 19 of the Maputo Protocol

Botswana has taken significant steps towards achieving Article 19(a) of the Maputo Protocol by integrating the gender perspective into national development planning procedures.<sup>7</sup> Through various initiatives and policies, Botswana has demonstrated a commitment to promote sustainable development with a focus on women's rights. The

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<sup>3</sup> Hanan Morsy, 'Women Self-Selection out of the Credit Market in Africa' (African Development Bank Working Paper 317, accessed 28 June 2023) <https://www.imf.org/en/Publications/fandd/issues/2020/03/africa-gender-gap-access-to-finance-morsy>.

<sup>4</sup> African Union Commission, 'Maputo Protocol Scorecard & Index: A Stepping Stone Towards Achieving Women's Rights' (African Union, 2023) <https://au.int/en/articles/maputo-protocol-scorecard-index-stepping-stone-towards-achieving-womens-rights>.

<sup>5</sup> 'Botswana has Ratified the Maputo Protocol!' SOAWR (1 December 2023) <https://soawr.org/2023/12/01/botswana-has-ratified-the-maputo-protocol/>.

<sup>6</sup> 'Botswana has Ratified the Maputo Protocol!' SOAWR (1 December 2023) <https://soawr.org/2023/12/01/botswana-has-ratified-the-maputo-protocol/>.

<sup>7</sup> Maputo Protocol art 19(a).

country has made efforts to address gender disparities and ensure that women actively participate in and benefit from development processes.<sup>8</sup> Botswana aligns with the principles of the Maputo Protocol by incorporating the gender perspective into national planning to protect and uphold women's rights, advancing gender equality and women's empowerment in the country. This strategic integration aims to create an environment where women are empowered, and their rights are safeguarded through inclusive and gender-sensitive policies and initiatives.<sup>9</sup>

Botswana has shown a strong dedication to advancing women's rights and participation in alignment with Article 19(b) of the Maputo Protocol.<sup>10</sup> The country has made significant strides in promoting women's active engagement in decision-making processes and political representation. This is evident through the country's active participation in advocacy missions and high-level consultative meetings with key government institutions, including the Ministry of Foreign Affairs, the Ministry of Justice, and the Ministry responsible for Gender Affairs.<sup>11</sup> Botswana has taken significant steps towards achieving Article 19(d) of the Maputo Protocol, which focuses on women's access to credit.<sup>12</sup> The country has made efforts to address the limited access to credit that many women face, a crucial aspect of economic empowerment. While there is still a need for more comprehensive measures to ensure equal access to financial resources, Botswana's ratification of the Maputo Protocol signals a commitment to advancing women's rights in this area.<sup>13</sup>

Botswana has made significant strides towards achieving Article 19(e) of the Maputo Protocol, which focuses on indicators of human development.<sup>14</sup> With a Human Development Index (HDI) score of 0.735 in 2019, Botswana falls within the high human development category, ranking 100 out of 189 countries.<sup>15</sup> This places Botswana

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<sup>8</sup> 'Botswana remains committed to the principle of elimination of all forms of discrimination and violence against women' (30 March 2024) <https://www.unwomen.org/en/get-involved/step-it-up/commitments/botswana>.

<sup>9</sup> Briefing for the Committee on the Elimination of Discrimination Against Women, 90th Pre-Sessional Working Group (3 June 2024 – 7 June 2024), with Respect to Violence Against Women in: Botswana Submitted by Strategic Advocacy for Human Rights (SAHR), April 2024.

<sup>10</sup> Maputo Protocol art 19(b).

<sup>11</sup> 'Ministry of Foreign Affairs' (Government of Botswana, 2024) <https://www.gov.bw/ministries/ministry-foreign-affairs>.

<sup>12</sup> Maputo Protocol art 19(d).

<sup>13</sup> World Bank, 'Financial Sector Assessment Program: Botswana' (World Bank, 2022).

<sup>14</sup> Maputo Protocol art 19(e).

<sup>15</sup> United Nations Development Programme, '2019 Human Development Report Launched in Botswana' (UNDP, 17 December 2019).

among the top countries in the region, with only Mauritius and the Seychelles ranking higher. The HDI serves as a crucial indicator for assessing progress in long-term human development, encompassing dimensions such as health, education, and standard of living. Botswana's commitment to enhancing these indicators reflects a dedication to improving the overall well-being and quality of life of its population. This aligns with the goals outlined in the Maputo Protocol to advance human development and ensure a decent standard of living for all its citizens.<sup>16</sup>

#### 4.2.3. Legal and Policy Landscape in Botswana

Botswana has made some progress in promoting gender equality and women's empowerment through its legal and policy landscape. The country has enacted various laws and policies aimed at addressing gender inequality and promoting women's rights.<sup>17</sup> For instance, Botswana has laws against gender-based violence, such as the Domestic Violence Act, which criminalises domestic violence and provides protection for victims.<sup>18</sup> Additionally, the country has policies aimed at promoting women's participation in decision-making processes, such as the National Gender Policy, which seeks to ensure that women are adequately represented in all sectors of society.<sup>19</sup>

Furthermore, Botswana has taken steps to address harmful traditional practices that disproportionately affect women and girls. For example, the country has banned child marriage, which is a significant step towards protecting the rights of girls and promoting their empowerment.<sup>20</sup> Botswana has also made efforts to address gender disparities in education, with policies aimed at increasing access to education for girls and promoting gender equality in the classroom.<sup>21</sup> Moreover, Botswana has made some progress in promoting women's economic empowerment. The country has policies aimed at increasing women's participation in the labour force and promoting

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<sup>16</sup> United Nations Development Programme, '2019 Human Development Report Launched in Botswana' (UNDP, 17 December 2019).

<sup>17</sup> United Nations Development Programme, 'Botswana remains committed to the principle of elimination of all forms of discrimination and violence against women' (UN Women, 30 March 2024) <https://www.unwomen.org/en/get-involved/step-it-up/commitments/botswana>.

<sup>18</sup> UNFPA, 'Gender-based violence' (UNFPA, 30 March 2024) <https://botswana.unfpa.org/en/topics/gender-based-violence-1>.

<sup>19</sup> 'Ministry of Foreign Affairs' (Government of Botswana, 2024) <https://www.gov.bw/ministries/ministry-foreign-affairs>.

<sup>20</sup> UN Women, 'Botswana remains committed to the principle of elimination of all forms of discrimination and violence against women (updated)' (UN Women, 30 March 2024), <https://www.unwomen.org/en/get-involved/step-it-up/commitments/botswana>.

<sup>21</sup> UNFPA, 'Gender-based violence' (UNFPA, 30 March 2024) <https://botswana.unfpa.org/en/topics/gender-based-violence-1>.

gender equality in the workplace. Examples include the National Policy on Gender and Development, which seeks to ensure that women have equal access to economic opportunities and resources.<sup>22</sup> Additionally, Botswana has implemented affirmative action policies aimed at increasing the representation of women in decision-making positions in both the public and private sectors.<sup>23</sup>

Botswana has made significant strides in promoting gender equality and women's empowerment. The country has made progress in equal treatment of women under the law, with an average Women, Business, and Law score improving from 38.1 to 63.8 between 2003 and 2023.<sup>24</sup> However, challenges remain, including addressing gender-based violence, voice and leadership, human capital development, and access to economic opportunities. The legal and policy landscape in Botswana includes laws and policies aimed at promoting gender equality and women's empowerment.<sup>25</sup> The National Policy on Women in Development, adopted in 1996, aims to address the situation of women in Botswana in an integrated and multi-sectoral manner. The policy focuses on eliminating negative economic and socio-cultural practices, enhancing women's health, promoting education and skills training, and promoting gender awareness in development planning.<sup>26</sup>

In addition, Botswana has ratified the CEDAW.<sup>27</sup> The convention emphasises the need to review all laws and customs to remove gender bias and provides for public human rights education, gender sensitisation, and legal services for women whose human rights have been violated. The National Women's Machinery was upgraded to a full-fledged government department, the Women's Affairs Department, in 1996/97. The

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<sup>22</sup> Afrobarometer, 'AD589: Batswana support gender equity, want greater government action to promote equal rights' (Afrobarometer, 2024), <https://www.afrobarometer.org/publication/ad589-batswana-support-gender-equity-want-greater-government-action-to-promote-equal-rights/>.

<sup>23</sup> UN Women, 'Botswana National Review for Implementation of the Beijing Platform for Action Beijing+25' (UN Women, June 2019).

<sup>24</sup> World Bank, 'Women, Business and the Law 2023 Report: Botswana Makes Significant Strides Toward Equal Treatment of Women Under the Law' (World Bank, 30 March 2023), <https://www.worldbank.org/en/news/press-release/2023/03/30/women-business-and-the-law-2023-afe-botswana-makes-significant-strides-toward-equal-treatment-of-women-under-the-law>.

<sup>25</sup> World Bank, 'In Botswana, an inclusive reform process is needed to advance women's economic participation' (World Bank, 26 April 2024), <https://blogs.worldbank.org/en/developmenttalk/botswana-inclusive-reform-process-needed-advance-womens-economic-participation>.

<sup>26</sup> UN Women, 'Botswana remains committed to the principle of elimination of all forms of discrimination and violence against women (updated)' (UN Women, 30 March 2024), <https://www.unwomen.org/en/get-involved/step-it-up/commitments/botswana>.

<sup>27</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted 18 December 1979, 1249 UNTS 13.

department is responsible for ensuring that a gender perspective permeates government policies, including the Population Policy, Land Policy, and Sports and Recreation Policy.<sup>28</sup> Despite these efforts, there is still a need for more training on gender planning and positive reporting of gender issues, especially for media personnel. The public's perception of gender equality and the advancement of women has changed since the UN Fourth World Conference on Women (1995), but there is still a need for more awareness-building efforts.<sup>29</sup>

#### 4.2.4 Comparison between Botswana and South Africa

A comparative analysis between Botswana and South Africa can provide valuable insights into the progress made towards gender equality and women's empowerment in both countries. Botswana has made significant strides in promoting gender equality and women's empowerment. In terms of gender equality and women's empowerment, Botswana has made progress in increasing women's representation in traditionally male domains, such as chieftainship and the priesthood, and has reviewed and removed discriminatory clauses from legislation.<sup>30</sup> The case of *Mmusi and Others v. Ramantele and Others* in Botswana involved a challenge to the Ngwaketse rule of customary law, which provides that only the last-born son may inherit his parents' dwelling house, excluding women from inheriting regardless of their rank in the birth order.<sup>31</sup> The High Court of Botswana declared the rule unconstitutional, a decision that constitutes a critical step towards gender mainstreaming in the country and sets the growth of Botswana's human rights jurisprudence in line with international human rights norms.<sup>32</sup> However, the judge failed to reconcile the two conflicting constitutional provisions at issue, namely Section 3, which affords equal protection of the law,<sup>33</sup> and Section 15, which permits discrimination in inheritance and other matters governed by one's law.<sup>34</sup>

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<sup>28</sup> UN Women, 'Botswana National Review for Implementation of the Beijing Platform for Action Beijing+25' (UN Women, June 2019).

<sup>29</sup> United Nations, 'Fourth World Conference on Women' (United Nations, 1995), <https://www.un.org/en/conferences/women/beijing1995>.

<sup>30</sup> Donald I. Ray, 'Reinventing African Chieftaincy in the Age of AIDS, Gender, Governance, and Development' (University of Calgary Press, 2011) 12.

<sup>31</sup> Obonye Jonas, 'Gender equality in Botswana: The case of *Mmusi and Others v Ramantele and Others*' (2013) 13 African Human Rights Law Journal 229-244.

<sup>32</sup> *Ibid.*

<sup>33</sup> Constitution of Botswana 1966, s 3.

<sup>34</sup> Constitution of Botswana 1966, s 155552.

In contrast, South Africa has made significant progress in constitutionalising gender equality rights, which shapes and informs gender-specific legislation in the country. The South African Constitution is one of the most progressive in the world regarding gender equality,<sup>35</sup> with provisions that recognise and protect women's rights.<sup>36</sup> The country has enacted various laws and policies aimed at promoting gender equality and women's empowerment, including the Promotion of Equality and Prevention of Unfair Discrimination (PEPUDA)<sup>37</sup> and the Employment Equity Act.<sup>38</sup> In South Africa, the Constitutional Court has made significant strides in promoting gender equality and combating domestic violence through landmark court decisions. The case of *Omar v. Government of the Republic of South Africa and Others*<sup>39</sup> involved an application for leave to appeal against the High Court's dismissal of an application to declare Section 8 of the Domestic Violence Act 116 of 1998 unconstitutional.<sup>40</sup>

The Constitutional Court upheld the Act, which serves an important social and legal purpose in addressing domestic violence and South Africa's obligations under the Constitution and international law to combat domestic violence. The Act's potential for affording police protection to the victims of domestic violence outweighs any possibility of manipulation.<sup>41</sup> The Domestic Violence Act in South Africa is a crucial component of sustainable development, as it seeks to safeguard victims of domestic violence and promote a culture of non-violence.<sup>42</sup> This aligns with sustainable development principles that prioritise social and environmental well-being. The case underscores the importance of effective governance and policy enforcement in tackling social and environmental challenges. The Constitutional Court's ruling underscores the need to uphold the rule of law and ensure that policies and laws are successfully implemented to meet their objectives.<sup>43</sup>

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<sup>35</sup> 'Inequality remains a challenge in South Africa, says Human Rights Commission' (South African Human Rights Commission, 21 March 2022) <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/3049-inequality-remains-a-challenge-in-south-africa-says-human-rights-commission> (accessed 24 May 2024).

<sup>36</sup> Constitution of the Republic of South Africa 1996, Section 1 & Section 9.

<sup>37</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>38</sup> Employment Equity Act 55 of 1998.

<sup>39</sup> *Omar v Government of the Republic of South Africa and Others* 2006 (2) BCLR 253 (CC).

<sup>40</sup> Domestic Violence Act 116 of 1998.

<sup>41</sup> *Omar v Government of the Republic of South Africa and Others* 2006 (2) BCLR 253 (CC).

<sup>42</sup> Domestic Violence Act 116 of 1998.

<sup>43</sup> *Omar v Government of the Republic of South Africa and Others* 2006 (2) BCLR 253 (CC).

Despite these efforts, both Botswana and South Africa still face challenges in achieving gender equality and women's empowerment. For instance, Botswana faces challenges related to gender-based violence (GBV), voice and leadership, human capital development, and access to economic opportunities.<sup>44</sup> Similarly, South Africa faces challenges related to the implementation of gender-specific legislation, with reports of inadequate resources and capacity to enforce the laws.<sup>45</sup> Botswana's impressive achievements in human development, as demonstrated by its high ranking on the Human Development Index (HDI), can provide valuable insights for South Africa.<sup>46</sup> South Africa can learn from Botswana by focusing on investments in education, promoting gender parity, enhancing healthcare services, fostering community involvement, and tackling poverty and inequality in order to improve its own human development and gender equality. By implementing initiatives that enhance educational opportunities, empower women and girls, improve healthcare facilities, and support community-driven development, South Africa can emulate Botswana's success and work towards creating a more equitable and sustainable future for all its citizens.

### 4.3. A Comparative Analysis of Lesotho and South Africa

#### 4.3.1. Ratification of Maputo Protocol

Lesotho ratified the Maputo Protocol, a significant legal framework for women's rights in Africa, on October 26, 2004. Since then, the Protocol has had an impact on the legal system of Lesotho, with several laws enacted following its ratification.<sup>47</sup> The Centre for Human Rights, University of Pretoria, played a crucial role in publishing the Maputo Protocol among government ministries and civil society organisations in Lesotho. The Centre also provided technical assistance for the compilation and filing of Lesotho's initial report on the Maputo Protocol to the African Commission in 2018.<sup>48</sup>

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<sup>44</sup> UNFPA, 'Gender-based violence' (UNFPA, 30 March 2024) <https://botswana.unfpa.org/en/topics/gender-based-violence-1>.

<sup>45</sup> Commission for Gender Equality, 'Assessing the Effectiveness of Gender Focal Persons in South Africa: Government's Response to CGE Findings and Recommendations 2023' (2023) 1 CGE Journal 1.

<sup>46</sup> United Nations Development Programme, '2019 Human Development Report Launched in Botswana' (UNDP, 17 December 2019).

<sup>47</sup> Frans Viljoen 'Modification of the Ratification of the Government of Lesotho' (2004) 16 Washington & LEE Journal of Civil Rights & Social Justice 11.

<sup>48</sup> Centre for Human Rights, University of Pretoria, 'The Centre for Human Rights coordinates African Charter and Maputo Protocol drafting workshop in Lesotho' (2017) 1.

#### 4.3.2. Overview of Article 19 of the Maputo Protocol

Lesotho's implementation of Article 19(a) of the protocol has been assessed in the context of the country's cultural and traditional practices. Lesotho has adopted policies aimed at promoting a society based on equality and justice for all its citizens, regardless of sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.<sup>49</sup> However, there are still gender disparities in Lesotho, particularly in areas such as adolescent birth rates, women's representation in parliament, and gender-based violence. The country also faces challenges in terms of gender data gaps, particularly in areas such as gender and poverty, physical and sexual harassment, women's access to assets (including land), and gender and the environment.<sup>50</sup> To address these challenges, Lesotho has implemented various policies and programmes aimed at promoting gender equality and women's empowerment. For example, the government has launched a grant scheme for micro-small and medium-sized enterprises (MSMEs) with less than 50 employees, providing up to LSL20,000 in matching grants to companies in the tourism sector, including hotels, restaurants, transport, and food sectors.<sup>51</sup>

In terms of Article 19(b), which focuses on participation, Lesotho has made efforts to promote women's participation in various ways. This includes the publication and dissemination of the Protocol among government ministries and civil society organisations.<sup>52</sup> Lesotho has also made progress in women's participation in national development initiatives for sustainable development. This is evident in the case of *Molefi Tse'pe v. the IEC*,<sup>53</sup> where the Court of Appeal upheld the reservation of 1/3 of seats for women on the local government council as a justified affirmative action under Section 18 of the Constitution of Lesotho<sup>54</sup> and the country's international human rights obligations under the African Charter<sup>55</sup> and the Maputo Protocol.<sup>56</sup>

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<sup>49</sup> The Kingdom of Lesotho Initial Report on the Implementation of the African Charter on Human and People's Rights: To the African Commission on Human and People's Rights, in Terms of Article 62, August 2000.

<sup>50</sup> Francis K. Mako, 'Gender and Politics: A Note on Gender Inequality in Lesotho' (1997) 12 *Journal of Social Development in Africa* 1, 5-14.

<sup>51</sup> UNDP Lesotho, 'Gender Equality, Women's and Youth Empowerment' (UNDP, 2023) <https://www.undp.org/lesotho/gender-equality-womens-and-youth-empowerment>.

<sup>52</sup> Maputo Protocol art 19(b).

<sup>53</sup> *Molefi Tse'pe v the IEC* [2019] CSIH 49, 2020 SC 37.

<sup>54</sup> Constitution of Lesotho, 1993, s 18.

<sup>55</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

<sup>56</sup> Maputo Protocol.

Lesotho has made some progress in implementing Article 19(c) of the Maputo Protocol.<sup>57</sup> The country has enacted several laws that promote women's access to productive resources, including the National Land Policy of 2015, which aims to ensure that women have equal access to land and property. The policy recognises the importance of women's access to land and property in promoting gender equality and women's empowerment.<sup>58</sup> The filing of Lesotho's initial report on the Maputo Protocol to the African Commission in 2018 was preceded by several trainings in which the scope and content of the Maputo Protocol and the African Charter and their implications for the people of Lesotho were discussed. This has helped to enhance the impact of the Maputo Protocol in Lesotho, as it has increased awareness and understanding of the Protocol among government officials, CSOs, and the general public.<sup>59</sup>

Lesotho's implementation of Article 19(e) of the Maputo Protocol, focusing on access to indicators of human development relating to women, has been influenced by various factors. These factors encompass various aspects of Lesotho's engagement with the Maputo Protocol.<sup>60</sup> Firstly, the Protocol has had a notable impact on Lesotho's legal system, shaping its framework and guiding subsequent legislative actions. Furthermore, efforts to publicise the Protocol have been evident with its publication among government ministries and civil society organisations.<sup>61</sup> Additionally, the level of impact of training sessions on the Protocol's scope and content, and the filing of shadow reports have enhanced the implementation of Article 19(e) in Lesotho. Furthermore, the ascension of Lesotho nationals to African Union decision-making structures has also contributed to the improved implementation of Article 19(e) in Lesotho.<sup>62</sup>

Lesotho's Constitution guarantees equality under Section 19, which provides that every person shall be entitled to equality before the law and to equal protection of the

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<sup>57</sup> Maputo Protocol art 19(c).

<sup>58</sup> National Land Policy of Lesotho (2015).

<sup>59</sup> The Kingdom of Lesotho Initial Report on the Implementation of the African Charter on Human and People's Rights: To the African Commission on Human and People's Rights, in Terms of Article 62, August 2000.

<sup>60</sup> Maputo Protocol art 19(e).

<sup>61</sup> Puleng Relebohile Letsie, 'Protecting the human rights of pregnant and parenting adolescents in Lesotho: 'What's culture got to do with it?' (2023) 27 Law, Democracy & Development 398.

<sup>62</sup> The Kingdom of Lesotho Initial Report on the Implementation of the African Charter on Human and People's Rights: To the African Commission on Human and People's Rights, in Terms of Article 62, August 2000.

law.<sup>63</sup> The Constitution also includes provisions on equality and non-discrimination. Section 18 provides for equality and non-discrimination in various aspects of life, including access to shops, hotels, lodging houses, public restaurants, eating houses, beer halls, places of public entertainment, and places of public resort.<sup>64</sup> The impact of globalisation on women's rights in Lesotho requires further analysis and attention. The African Union has recognised the challenges of globalisation and its potential impact on vulnerable populations, including women. Lesotho, as a member of the African Union, must promote and protect women's rights in the context of globalisation.<sup>65</sup>

#### 4.3.3. Legal and Policy Landscape in Lesotho

Lesotho has taken various legal and policy measures to address women's rights and sustainable development, aligning with the provisions of the Maputo Protocol. One of the most notable initiatives is the enactment of the Local Government Elections Act 2005, which reserves seats for women on the local government council.<sup>66</sup> This law demonstrates Lesotho's commitment to enhancing women's participation in decision-making processes, which is a key aspect of Sustainable Development Goal 5 on gender equality.<sup>67</sup> By ensuring that women are adequately represented in local governance, Lesotho is working towards promoting gender equality and empowering women to participate in decision-making processes that affect their lives and communities.

In addition to the Local Government Elections Act 2005, Lesotho has developed and implemented a gender-responsive National Strategic Development Plan II (NSDP II, 2018-2023).<sup>68</sup> This plan addresses gender equality in priority areas such as strengthening governance, accountability systems, and human capital. The plan includes a gender-responsive budgeting pilot initiative, which aims to promote equality and empower disadvantaged groups, including women. By integrating gender-responsive budgeting into its development plan, Lesotho is working towards ensuring

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<sup>63</sup> Constitution of Lesotho, 1993, s 19.

<sup>64</sup> Constitution of Lesotho, 1993, s 18.

<sup>65</sup> International Monetary Fund, African Dept, 'Kingdom of Lesotho: Selected Issues' (Country Report No 2023/269, 20 July 2023) <https://www.imf.org/en/Publications/CR/Issues/2023/07/19/Kingdom-of-Lesotho-Selected-Issues-536786>.

<sup>66</sup> Local Government Elections Act 2005.

<sup>67</sup> UNDP Lesotho, 'Gender Equality, Women's and Youth Empowerment' (UNDP, 2024) <https://www.undp.org/lesotho/gender-equality-womens-and-youth-empowerment>.

<sup>68</sup> The Kingdom of Lesotho Initial Report on the Implementation of the African Charter on Human and People's Rights: To the African Commission on Human and People's Rights, in Terms of Article 62, August 2000.

that resources are allocated in a way that promotes gender equality and empowers women.<sup>69</sup>

Lesotho has also taken initiatives to enhance women's economic empowerment. For example, the 'Her Empire' cohort, supported by UNDP, aims to enhance women's access to economic resources and empower women entrepreneurs.<sup>70</sup> Through training programs and mentorship, women's capacities in business management, finance, and markets are refined to enhance the sustainability and resilience of their enterprises. Efforts are made to integrate women into supply chains and provide opportunities for economic empowerment.<sup>71</sup> By promoting women's economic empowerment, Lesotho is working towards promoting gender equality and reducing poverty, which are key aspects of sustainable development.

Lesotho has also engaged in inclusive national reforms, including constitutional, security sector, parliamentary, and judiciary reforms, to address political and security challenges. Women's leadership and participation have been emphasised in these reforms, with women leaders overseeing oversight functions in key committees.<sup>72</sup> Efforts have been made to increase the representation of women and other underrepresented groups in parliamentary seats through proportional representation. By promoting women's leadership and participation in governance, Lesotho is working towards promoting gender equality and ensuring that women's voices are heard in decision-making processes that affect their lives and communities.<sup>73</sup>

These legal and policy measures demonstrate Lesotho's commitment to promoting women's rights and sustainable development. By addressing gender equality, women's economic empowerment, and inclusive governance, Lesotho is working towards promoting sustainable development and reducing poverty, which are key aspects of the Maputo Protocol.

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<sup>69</sup> World Bank, 'Lesotho - Gender Assessment' (World Bank, 2024)

<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099015105102231913/p1715600219ee403708dad08cfff91db633>.

<sup>70</sup> UNDP Lesotho, 'Unlocking Opportunities for Basotho Women to Sustain Women-led Enterprises and Job Creation' (UNDP, 4 November 2022) <https://www.undp.org/lesotho/blog/unlocking-opportunities-basotho-women-sustain-women-led-enterprises-and-job-creation>.

<sup>71</sup> UNDP Lesotho, 'Unlocking Opportunities for Basotho Women to Sustain Women-led Enterprises and Job Creation' (UNDP, 4 November 2022).

<sup>72</sup> World Bank, 'Lesotho - Gender Assessment' (World Bank, 2024).

<sup>73</sup> The Kingdom of Lesotho Initial Report on the Implementation of the African Charter on Human and People's Rights: To the African Commission on Human and People's Rights, in Terms of Article 62, August 2000.

#### 4.3.4. Comparison between Lesotho and South Africa

Lesotho and South Africa have implemented various legal and policy measures to address women's rights and sustainable development. However, they have faced different challenges and have adopted different strategies. In Lesotho, the status of women's rights has seen slow but gradual improvement. Progress has been made in areas such as domestic abuse, poverty, sexual violence, economic opportunity, and access to health care.<sup>74</sup> Government initiatives, paired with NGOs and international institutions, have been the main driver towards achieving equality for women in Lesotho. However, Lesotho ranks very low on women's rights internationally, with women more likely to live in poverty than men due to discriminatory practices that limit their employment opportunities. Women in Lesotho also face high rates of domestic abuse and sexual assault, and a lack of quality healthcare services is a major issue.<sup>75</sup>

Lesotho has implemented legal and policy measures to address women's rights, including the 2006 Legal Capacity of Married Persons Act<sup>76</sup> and the 2010 Land Act, which repealed gender inequality.<sup>77</sup> However, in practice, land possession and transmission dynamics generally undermine tenure security for women in Lesotho. For example, according to traditional practice and depending on the type of marriage conducted, a widow can lose her rightful share of property to her deceased husband's family, leaving her with no housing or livelihood alternative.<sup>78</sup>

South Africa, on the other hand, has adopted a more comprehensive approach to addressing women's rights and sustainable development. The country has implemented various strategies and practices to ensure the implementation of women's rights within the context of sustainable development. South Africa has ratified various international and regional human rights treaties, including CEDAW<sup>79</sup> and the Maputo Protocol.<sup>80</sup> South Africa has also implemented various policies and programmes to address gender inequality, including the National Policy Framework

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<sup>74</sup> World Bank, 'Lesotho - Gender Assessment' (World Bank, 2024).

<sup>75</sup> The Borgen Project, 'Progress Report on Women's Rights in Lesotho' (The Borgen Project, 20 April 2024) <https://borgenproject.org/womens-rights-in-lesotho/>.

<sup>76</sup> Legal Capacity of Married Persons Act 9 of 2006.

<sup>77</sup> Land Act 8 of 2010.

<sup>78</sup> Habitat for Humanity Lesotho, 'Lessons from Solid Ground: Country Case Study - Equality in Lesotho' (Habitat for Humanity, 28 January 2024) [https://www.habitat.org/sites/default/files/documents/solid-ground-case-study\\_gender-equality\\_Lesotho.pdf](https://www.habitat.org/sites/default/files/documents/solid-ground-case-study_gender-equality_Lesotho.pdf).

<sup>79</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted 18 December 1979, 1249 UNTS 13.

<sup>80</sup> Maputo Protocol.

for Women's Empowerment and Gender Equality (NPFWEGE)<sup>81</sup> and the Gender Equality Act. The country has also established various institutions to promote and protect women's rights, including the Commission for Gender Equality (CGE)<sup>82</sup> and the Office on the Status of Women (OSW).

In comparison to Lesotho, South Africa has adopted a more comprehensive approach to addressing women's rights and sustainable development. South Africa has implemented various strategies and practices to ensure the implementation of women's rights within the context of sustainable development. These include the ratification of international and regional human rights treaties, the implementation of policies and programmes to address gender inequality, and the establishment of institutions to promote and protect women's rights.<sup>83</sup> Lesotho's success in combating gender-based violence (GBV) and empowering women can serve as a valuable model for South Africa. By enacting comprehensive laws and policies, increasing community involvement, offering support services to victims, promoting education and awareness, and fostering collaborations, South Africa can learn from Lesotho's achievements.<sup>84</sup> This can involve implementing similar legislation, engaging communities in gender equality initiatives, providing assistance to GBV victims, conducting education campaigns, and forging partnerships across sectors. By adopting these practices, South Africa can make significant progress in addressing GBV and advancing women's empowerment, leading to a more just and sustainable future for all.

#### 4.4. A Comparative Analysis Between Nigeria and South Africa

##### 4.4.1. Ratification of Maputo Protocol

Nigeria ratified the Maputo Protocol on the Rights of Women in Africa on 16 December 2004, signifying its commitment to promoting and protecting the rights of women in Africa.<sup>85</sup> The Maputo Protocol, which is an addition to the human rights frameworks under the African Charter on Human and People's Rights, emphasises the urgent

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<sup>81</sup> South Africa, Office on the Status of Women, 'National Policy Framework for Women's Empowerment and Gender Equality' (Department of Social Development, 2008).

<sup>82</sup> Commission for Gender Equality Act 39 of 1966.

<sup>83</sup> Itumeleng Shale, 'The impact of the Maputo Protocol in Lesotho' in Susan Mutambasere, Ashwanee Budoo-Scholtz, and Davina Murden (eds), *The impact of the Maputo Protocol in selected African states* (Pretoria Law University Press 2023) 171.

<sup>84</sup> *Ibid.*

<sup>85</sup> Emma Lubaale, 'Article 2 Elimination of discrimination against women' in Annika Rudman, Celestine Nyamu Musembi, and Trésor Muhindo Mak (eds), *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A Commentary* (PULP Commentaries on African Human Rights Law) 171.

need to address the unique challenges and discrimination that women face across the continent. It provides a comprehensive framework for safeguarding and promoting women's rights in diverse spheres of life while addressing many critical issues, including violence against women, economic and political empowerment, reproductive rights, and access to justice.<sup>86</sup>

#### 4.4.2. Overview of Article 19 of the Maputo Protocol

Nigeria has made some progress in implementing the Maputo Protocol, particularly in terms of gender perspective, participation, and access to credit. The country has ratified the Protocol and has taken steps to align domestic legislation with its provisions. For example, the Gender and Equal Opportunities Bill, which is awaiting ratification by the National Assembly, seeks to guarantee the right to equality and prohibition of discrimination on the grounds of sex and gender in many areas of public and private life and ensure the prohibition of violence against women.<sup>87</sup> In terms of Article 19(a), the Nigerian Constitution prohibits discrimination based on sex in respect of any law in force in Nigeria or any executive or administrative action. The country has also made efforts to adopt gender-responsive approaches in the practices, attitudes, skills, and gender composition of personnel in the criminal justice system.<sup>88</sup> The Nigeria Police Force has a Gender Unit responsible for handling cases involving sexual and gender-based violence and the abuse of children and ensuring the implementation of a robust capacity-building plan for officers in gender-related issues.<sup>89</sup>

In terms of Article 19(b), the Nigerian Constitution guarantees the right to participate in government and political activities, and the country has made efforts to increase the representation of women in politics.<sup>90</sup> Section 42 of the 1999 Constitution of the Federal Republic of Nigeria prohibits discrimination based on sex (amongst other grounds) in respect of any law in force in Nigeria, or any executive or administrative action.<sup>91</sup> According to Section 15 of the Constitution, the prohibition of such

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<sup>86</sup> Maputo Protocol.

<sup>87</sup> Onyekachi Eni, Macpherson Uchenna Nnam and Udu Eseni Azu, 'The Right to Participate in Political and Decision-Making Process under the Maputo Protocol: Normative Masculinity and Nigerian Women' (2022) 18 *The Age of Human Rights Journal* 397.

<sup>88</sup> The Constitution of the Federal Republic of Nigeria 1999, s 42(1).

<sup>89</sup> Oluwa Moses Oluwafemi, 'Gender Inequality in Nigeria Police Force' (2019) 3(8) *International Journal of Research and Innovation in Social Science* 431.

<sup>90</sup> The Constitution of the Federal Republic of Nigeria 1999.

<sup>91</sup> The Constitution of the Federal Republic of Nigeria 1999 s 42.

discrimination is also a fundamental objective of state policy.<sup>92</sup> The Maputo Protocol emphasises the importance of women's participation in decision-making, and Nigerian politics still faces challenges in achieving gender parity.<sup>93</sup>

An example of the challenges faced in achieving gender parity in Nigerian politics is highlighted in the rejection of five gender bills presented to the National Assembly in March 2022.<sup>94</sup> These bills aimed to advance women's rights by providing special seats for women at the National Assembly and allocating 35% of political position appointments to women. This creates additional seats in the National Assembly and state constituent assemblies and commits to women having at least 10% of ministerial appointments. The rejection of these bills indicated a lack of interest in gender parity in politics, with only 21 out of 469 members of the National Assembly being women. This disparity falls short of the goal set by the National Gender Policy in 2006, which demands that 35% of women be involved in all governance processes, despite women making up about 49% of Nigeria's population.<sup>95</sup>

In terms of Article 19(c), the Nigerian Constitution recognises women's and men's equality before the law and requires the mainstreaming of gender perspectives into laws, protocols, and procedures within criminal justice systems.<sup>96</sup> The right to equality and equal protection for women under the law requires the adoption of gender-responsive approaches in the practices, attitudes, skills, and gender composition of personnel.<sup>97</sup> In terms of Article 19(d), the Maputo Protocol emphasises the importance of women's access to credit and financial services.<sup>98</sup> In Nigeria, the Gender and Equal Opportunities Bill, which is awaiting ratification by the National Assembly, seeks to guarantee the right to equality and prohibition of discrimination on the grounds of sex and gender in many areas of public and private life and ensure the prohibition of violence against women.<sup>99</sup> The bill also aims to promote women's access to credit,

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<sup>92</sup> The Constitution of the Federal Republic of Nigeria 1999, s 15.

<sup>93</sup> Maputo Protocol.

<sup>94</sup> Plural Policy, 'Nigeria's Specific Seats Bill' (2022) <https://pluralpolicy.com/blog/ng-specific-seats-bill/>.

<sup>95</sup> Tayo O. George, Christiana Adetunde, Oluwakemi Ijagbemi and Mercy Udume, 'Overcoming the Challenges of Women in Politics: Lesson for and from Nigeria' (2016) 14 Nigerian Journal of Sociology and Anthropology 146.

<sup>96</sup> The Constitution of the Federal Republic of Nigeria 1999.

<sup>97</sup> United Nations Office on Drugs and Crime, 'Toolkit on Gender-Responsive Non-Custodial Measures' (Vienna, 2020).

<sup>98</sup> Maputo Protocol 19(d).

<sup>99</sup> Plural Policy, 'Nigeria's Specific Seats Bill' (2022) <https://pluralpolicy.com/blog/ng-specific-seats-bill/>.

training, skills development, and extension services at rural and urban levels to provide women with a higher quality of life and reduce the level of poverty among women.<sup>100</sup>

In terms of indicators of human development, the Maputo Protocol emphasises the importance of women's access to education, health care, and other indicators of human development. In Nigeria, the government has implemented policies and programmes aimed at enhancing women's socio-economic conditions, but these programmes have not always been successful.<sup>101</sup> Women in Nigeria are more likely to live in poverty than men due to discriminatory practices that limit their employment opportunities. Women in Nigeria also face high rates of domestic abuse and sexual assault, and a lack of quality healthcare services is a major issue. In terms of globalisation, the Maputo Protocol acknowledges that it will be difficult to attain socio-economic development in Africa without addressing the challenges of globalisation.<sup>102</sup>

#### 4.4.3. Legal and Policy Landscape in Nigeria

The Maputo Protocol is a significant legal instrument that provides a comprehensive set of human rights for African women, covering civil, political, economic, social, cultural, and environmental rights. Nigeria ratified the Maputo Protocol in 2004, but it is yet to be domesticated.<sup>103</sup> The Protocol challenges old stereotypes about the role of women in society and places women as full, effective, and equal partners with men in the development of their communities. It also places a moral obligation on African Union Member States to promote equal opportunities for men and women to play meaningful roles in society.<sup>104</sup> The implementation of the Maputo Protocol in Nigeria has been slow, with several factors impeding its impact. These factors include lack of awareness, constitutional barriers, political barriers, structural barriers, and non-domestication.<sup>105</sup> However, some positive aspects of Nigeria's compliance with its obligations under the Maputo Protocol include the consideration of the Gender and

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<sup>100</sup> Plural Policy, 'Nigeria's Specific Seats Bill' (2022) <https://pluralpolicy.com/blog/ng-specific-seats-bill/>.

<sup>101</sup> Tochukwu S. Ezeudu, 'Challenges and Barriers to the Successful Implementation of Social Development Programs in Nigeria' (October 2023) 34(2) 74.

<sup>102</sup> Abigail Osiki, 'The impact of socio-legal inequality on women in the Nigerian domestic work sector' (2022) 26 Law, Democracy & Development 1.

<sup>103</sup> Maputo Protocol.

<sup>104</sup> Karen Stefiszyn & Alex Prezanti, 'The impact of the Protocol on the Rights of Women in Africa on violence against women in six selected Southern African countries: An advocacy tool' (University of Pretoria Centre for Human Rights, Faculty of Law, 2009) 18.

<sup>105</sup> Victor Oluwasina Ayeni, 'The Impact of the African Charter and the Maputo Protocol in Nigeria' in Victor Oluwasina Ayeni (ed), *The impact of the African Charter and the Maputo Protocol in selected African states* (Pretoria University Law Press 2016) 201.

Equal Opportunities Bill, 2016,<sup>106</sup> the enactment of the Violence Against Persons (Prohibition) Act of 2015,<sup>107</sup> and the National Strategy to End Child Marriage in Nigeria 2016-2021.<sup>108</sup>

The Nigerian government has taken measures to improve women's economic base, increase girl-child education, and ensure increased women's representation. This includes participation in both elective and appointive positions and expanding employment opportunities for women. Additionally, they aim to end gender-based violence and other forms of violence against women and children, accelerate equality between men and women, and promote and protect women's rights.<sup>109</sup> The African Human Rights Moot Court Competition has helped create awareness about the Maputo Protocol, and NGOs have played a crucial role in promoting awareness and the use of the Maputo Protocol through lawsuits, conferences, seminars, and workshops with different stakeholders.<sup>110</sup>

The National Health Act 2014 stands out as a significant piece of legislation that provides a comprehensive framework for the regulation, development, and management of the Nigerian health system.<sup>111</sup> This Act includes provisions that emphasise the right to health, access to healthcare services, and the promotion of reproductive health rights for all citizens. Complementing the National Health Act is the National Reproductive Health Policy, which serves as a guiding document to ensure the health and well-being of Nigerian women and men by facilitating access to quality reproductive health services. This policy addresses critical areas such as family planning, maternal and child health, and the prevention and management of reproductive health conditions, aligning with the objectives outlined in the Maputo Protocol regarding reproductive health rights.<sup>112</sup>

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<sup>106</sup> Plural Policy, 'Nigeria's Specific Seats Bill' (2022) <https://pluralpolicy.com/blog/ng-specific-seats-bill/>.

<sup>107</sup> Violence Against Persons (Prohibition) Act of 2015.

<sup>108</sup> Federal Ministry of Women Affairs and Social Development, National Strategy to End Child Marriage in Nigeria 2016-2021 (Federal Ministry of Women Affairs and Social Development 2016).

<sup>109</sup> Karen Stefiszyn & Alex Prezanti, 'The impact of the Protocol on the Rights of Women in Africa on violence against women in six selected Southern African countries: An advocacy tool' 18.

<sup>110</sup> Victor Oluwasina Ayeni, 'The Impact of the African Charter and the Maputo Protocol in Nigeria' The impact of the African Charter and the Maputo Protocol in selected African states 201.

<sup>111</sup> National Health Act 2014.

<sup>112</sup> Prof Ibrahim Abubakar et al, 'The Lancet Nigeria Commission: investing in health and the future of the nation' (2022) 399(10330) Lancet 1155.

Moreover, the National Strategic Health Development Plan and the National Health Insurance Scheme further bolster Nigeria's efforts to enhance healthcare access and quality. These frameworks include provisions that support reproductive health services, such as family planning and maternal and child health services, underscoring the country's commitment to advancing women's health and rights.<sup>113</sup> Despite these initiatives, challenges remain in ensuring equitable access to healthcare services, particularly for women and girls in underserved communities. This highlights the ongoing need for collaborative efforts among stakeholders to fully realise the objectives outlined in the Maputo Protocol.<sup>114</sup>

#### 4.4.4. Comparison between Nigeria and South Africa

South Africa has made significant strides in advancing women's rights and gender equality, evident in its successful domestication of the Maputo Protocol, which has led to the adoption of innovative laws and policies to protect women's rights. PEPUDA.<sup>115</sup> Additionally, South Africa has taken steps to promote women's representation in political life through constitutional provisions, showcasing a commitment to gender equality and inclusivity.<sup>116</sup>

On the other hand, Nigeria, despite ratifying the Maputo Protocol, has yet to fully domesticate it, highlighting a gap in the implementation of women's rights. The country faces challenges in translating international commitments into concrete actions at the national level, with calls from civil society organisations for the domestication and implementation of the Protocol's provisions.<sup>117</sup> Nigeria's progress in advancing women's rights is hindered by factors such as cultural practices, limited awareness among stakeholders, and the need for more political will and financial resources to fully implement the Protocol.<sup>118</sup>

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<sup>113</sup> Federal Ministry of Women Affairs and Social Development, National Strategy to End Child Marriage in Nigeria 2016-2021 (Federal Ministry of Women Affairs and Social Development 2016).

<sup>114</sup> Victor Oluwasina Ayeni, 'The Impact of the African Charter and the Maputo Protocol in Nigeria' The impact of the African Charter and the Maputo Protocol in selected African states 201.

<sup>115</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>116</sup> Kealeboga Maphunye, 'WHY PARTICIPATE IN ELECTIONS IF WE'RE NOT PROPERLY REPRESENTED?' (2013) 12(3) Journal of African Elections 146.

<sup>117</sup> Victor Oluwasina Ayeni, 'The Impact of the African Charter and the Maputo Protocol in Nigeria' The impact of the African Charter and the Maputo Protocol in selected African states 201.

<sup>118</sup> Muhammadu Buhari (GCFR), Endorsement of National Women's Economic Empowerment (WEE) Policy and Action Plan, (May 2023).

Nigeria's challenges in effectively enforcing its gender-specific laws provide important lessons for South Africa. Nigeria has faced challenges such as limited resources and capabilities for law enforcement, deeply ingrained sociocultural obstacles, a lack of cooperation among stakeholders, and ineffective monitoring and evaluation processes. These obstacles have impeded the impact of Nigeria's gender-specific legislation. By drawing from these experiences, South Africa can develop strategies to improve the implementation of its gender-specific laws.<sup>119</sup> This may include allocating sufficient resources and building the capacity of relevant agencies, launching extensive public awareness campaigns to address sociocultural barriers, promoting collaboration among various stakeholders, and establishing strong monitoring and evaluation systems. By learning from Nigeria's challenges, South Africa can enhance the effectiveness of its gender-specific legislation and make significant progress in advancing gender equality and women's empowerment.<sup>120</sup> Overall, the comparative analysis between Nigeria and South Africa underscores the importance of proactive legislative measures, political will, and financial resources in ensuring the effective implementation of women's rights within the framework of sustainable development. By learning from South Africa's best practices and addressing existing challenges, Nigeria can strengthen its commitment to gender equality and empower women to contribute meaningfully to societal development.

#### 4.5. Conclusion

In conclusion, this chapter has provided a comprehensive analysis of women's rights and sustainable development practices across various African countries, with a specific focus on Article 19 of the Maputo Protocol. The comparative examination of legal frameworks, policy approaches, implementation strategies, and socio-economic contexts has highlighted both the progress made and the challenges faced by African countries in advancing gender equality and women's rights. The chapter's findings underscore the significance of regional cooperation and the need for a concerted effort to address the complex and interconnected issues hindering women's empowerment and sustainable development in Africa.

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<sup>119</sup> South Africa, Office on the Status of Women, 'National Policy Framework for Women's Empowerment and Gender Equality' (Department of Social Development, 2008).

<sup>120</sup> South Africa, Office on the Status of Women, 'National Policy Framework for Women's Empowerment and Gender Equality' (Department of Social Development, 2008).

The insights gained from this analysis will inform policy, practice, and future research agendas, emphasising the importance of a collaborative and multidimensional approach to promoting gender equality and women's rights across the continent. As we move forward, it is essential to recognise the critical role that regional cooperation can play in driving progress towards a more equitable and sustainable future for all Africans.

The next chapter, Chapter Five, will provide a comprehensive conclusion to this dissertation, synthesising the key findings and recommendations from the preceding chapters. It will offer a final reflection on the significance of the Maputo Protocol in advancing women's rights and sustainable development in Africa.

## CHAPTER 5

### Conclusion and recommendations

#### 5.1. Conclusion

The first chapter of the research establishes the research framework by presenting the concept of women's right to sustainable development, as outlined in the Maputo Protocol Article 19, and its applicability to South Africa.<sup>1</sup> Regarding whether South Africa's legal system is sufficient for carrying out the protocol's requirements, it presents the primary research question. Sub-questions examine how South Africa's efforts to address these issues are being affected by poverty and gender inequality, as well as the rights of women to sustainable development. Along with discussing sustainable development concepts and methodologies, the chapter emphasises the importance of thoroughly analysing South Africa's legal framework. Doctrinal research employing primary and secondary sources is the used methodology. The chapter establishes a clear direction for the dissertation's investigation, despite the dearth of literature on the particular topic. In summary, Chapter 1 has effectively presented the research topic, defined the research problem, delineated the purpose and goals of the investigation, and furnished a well-defined framework for the remainder of the dissertation.

An in-depth examination of Article 19 of the Maputo Protocol and its implications for South Africa's efforts to protect and advance women's rights to sustainable development have been covered in Chapter 2. The challenges that South Africa faces in implementing Article 19 have been thoroughly examined in this chapter, with particular attention paid to issues like resource constraints, socioeconomic inequality, and systemic barriers that impede the protection of women's rights. A fuller comprehension of the barriers preventing women from enjoying their rights to sustainable development has been attained by delving into the intricacies of implementing Article 19 in the context of South Africa. The importance of tackling discrimination, gender inequality, economic disparities, and other related issues has been emphasised throughout the chapter to increase women's involvement in processes related to sustainable development. In general, Chapter 2 has offered insightful information about the complexities of Article 19 and its applicability to

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<sup>1</sup> Maputo Protocol.

advancing women's empowerment and gender equality in the context of sustainable development in South Africa.<sup>2</sup>

The legal system of South Africa has been thoroughly examined in Chapter 3 with regard to its compliance with Maputo Protocol Article 19. This chapter's main goal was to assess how well South Africa implements the ideas contained in Article 19 through actual policies and procedures.<sup>3</sup> This chapter has shed light on South Africa's commitment to gender equality and the advancement of women's rights within the context of sustainable development through a thorough analysis of domestic laws, policies, and operational procedures. This chapter has brought to light the areas that require further attention as well as the strengths of the current legal framework through a thorough examination. The evaluation of laws, policies, and regulations exposed possible gaps or inconsistencies that might hinder the effective realisation of women's rights to sustainable development in addition to revealing the depth and breadth of the legal framework. The chapter has emphasised how crucial it is to guarantee that South Africa's domestic legal system appropriately reflects and applies the principles enshrined in Article 19.<sup>4</sup>

Chapter 4 has conducted a thorough analysis of women's rights and sustainable development practices throughout several African nations. Through the inclusion of nations like Botswana, Lesotho, and others, the focus of this chapter has been broadened to offer a more comprehensive understanding of the regional context of gender equality initiatives in Africa. The chapter has examined the dynamics of women's rights and sustainable development practices through comparative analysis, assessing policy approaches, implementation strategies, socioeconomic contexts, and regional viewpoints, as well as legal frameworks and implementation strategies. In addition to highlighting the advancements made by African nations in the areas of gender equality and women's rights, this analysis has also pointed out the difficulties and roadblocks that stand in the way of women's empowerment and the region's sustainable development. The results presented in this chapter highlight how important regional collaboration is to the advancement of women's rights and gender equality in Africa.

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<sup>2</sup> Maputo Protocol.

<sup>3</sup> Maputo Protocol.

<sup>4</sup> Maputo Protocol.

## 5.2. Recommendations

The following recommendations are made to improve South Africa's implementation of Article 19 of the Maputo Protocol and advance women's right to sustainable development in light of the findings and insights from the mini-dissertation: South Africa should examine and modify its current laws and policies to guarantee complete compliance with the guidelines outlined in Article 19 of the Maputo Protocol. This entails filling in any holes or contradictions found in the analysis and making sure that women's rights to sustainable development are effectively protected and promoted by the national legal system. Additionally, laws and policies pertaining to women's rights and sustainable development should be put into effect and enforced effectively by the South African government. To guarantee that the legal provisions result in concrete results for women on the ground, this may entail the establishment of precise guidelines, the allocation of sufficient resources, and the implementation of monitoring and evaluation mechanisms.

Thirdly, resolving socioeconomic disparities, especially those that disproportionately impact women, should be the government's top priority. Targeted interventions to lower poverty, increase women's access to healthcare and education, and provide them with economic opportunities, particularly in rural areas, are all part of this. Additionally, women's empowerment and gender equality ought to remain top priorities for South Africa's development agenda. This entails combating detrimental gender norms and stereotypes, encouraging women to take on leadership roles and participate in decision-making processes, and addressing gender-based discrimination.

Furthermore, more funding should be allocated by the government to enhance data gathering and studies on women's rights and sustainable development. This entails breaking down data according to gender, performing gender-based analyses on a regular basis, and funding research that influences practice and policy. In conclusion, it is imperative that the government participates actively in the creation, execution, and oversight of policies and initiatives concerning women's rights and sustainable development, in collaboration with civil society organisations, women's rights groups, and grassroots movements.

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