

## **Ethiopia's reservations to the Maputo Protocol: A compatibility analysis with the Protocol's object and purpose**

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### **Abstract**

In July 2018, following fifteen years of lobbying, the government of Ethiopia ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). Despite the delayed ratification, it was widely regarded as a pivotal addition to the national framework for protecting women and girls against widespread and systematic human rights violations. Nevertheless, upon ratification, Ethiopia entered six reservations and seven interpretative declarations, which hindered Ethiopian women and girls from fully benefiting from the provisions. The analysis in this paper centres on the three reservations and interpretative declarations on Articles 4(2)(a), 6(b) and 6(d), which respectively prohibit violence against women in the private sphere; set 18 as the minimum age of marriage and require mandatory registration of marriage. This raises a critical question as to their compatibility with the object and purpose of the Protocol, potentially risking their nullification under the Vienna Convention on the Law of Treaties (VCLT). This paper explores both the object and purpose of the Protocol, as well as Ethiopia's stated rationale for entering reservations and interpretative declarations at the time of ratification. Central to the discussion is a critical assessment of whether these reservations and interpretative declarations are compatible with the Protocol's object and Purpose.

**Key words;** Maputo Protocol, VCLT, object and purpose, compatibility, Ethiopia

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## Introduction

The Maputo Protocol was adopted by the African Union (AU) in July 2003, pursuant to Article 66 of the African Charter on Human and Peoples' Rights (African Charter), with the objective of strengthening the protection afforded to women and girls across the Continent. Its swift entry into force, merely 18 months after its adoption, positioned it as the most rapidly ratified human rights instrument in Africa, garnering acclaim as 'bill of rights for African women' (Budoo-Scholtz 2018). Drawing upon existing international human rights norms, the Maputo Protocol establishes a comprehensive legal basis that addresses the unique challenges confronting African women and girls (Viljoen 2012).

Ethiopia affirmed its commitment to promoting women's rights by signing the Maputo Protocol in June 2004 and ratifying it in July 2018, with the instrument of ratification deposited with the AU in September 2019. It was later incorporated into national law through Proclamation No. 1082/2018, commonly referred to as the Maputo Protocol Ratification Proclamation. At the time of ratification, Ethiopia entered six reservations and seven interpretative declarations, thereby delimiting the scope of its obligations under key provisions of the Protocol.

This paper focuses specifically on three articles: Article 4(2)(a), which prohibits violence against women (VAW) in both private and public settings;<sup>119</sup> Article 6(b), which calls 18 as the minimum marriageable age; and Article 6(d), concerning marriage registration. The selection of these provisions is deliberate, given that they represent prevailing challenges that have long confronted African women and girls, and constitute the progressive essence of the Protocol. It is, therefore, imperative to assess whether these reservations are compatible with the object and purpose of the Maputo Protocol, as incompatibility provides grounds for nullification. To unravel this, the paper employs a doctrinal method, which involves analysis of primary sources, including the

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<sup>119</sup> Maputo Protocol Ratification Proclamation art 3(2)(a).

Maputo Protocol, Maputo Protocol Ratification Proclamation No. 1082/2018, and parliamentary minutes, alongside relevant international legal instruments such as the Committee on the Elimination of Discrimination against Women (CEDAW) and the Vienna Convention on the Law of Treaties (VCLT). These are supplemented by secondary sources, including, explanatory notes, official reports, scholarly books, journal articles and research studies, which provide additional contexts to the assessment.

The paper is organized into six sections. The first section introduces the paper. The second section explores reservations to human rights treaties and their compatibility with the object and purpose of such instruments. The third section unpacks the object and purpose of the Maputo Protocol. The fourth section assesses the rationale behind Ethiopia's reservations and interpretative declarations to the Maputo Protocol. The fifth section, which forms the core of the article, assesses the compatibility of these reservations and declarations with the object and purpose of the Protocol. The sixth and final section provides the conclusion.

## **1. Reservations to Human Rights Treaties and Compatibility with Object and Purpose**

The VCLT regime on reservations is contained in articles 19-23, which, along with the definitional article, establishes what constitutes a reservation, the requirements it must meet to be accepted, and the consequences it will have. Article 2(1)(d) of the VCLT defines a reservation as a “unilateral statement, however phrased or named, made by a state, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State”.<sup>120</sup>

As opposed to reservations, the concept of interpretative declarations is not expressly defined by the VCLT. This lacuna is

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<sup>120</sup> Vienna Convention on the Law of Treaties (VCLT) 23 May 1969 art 2(1)(d).

addressed by the International Law Commission (ILC) Guide (Pellet 2023), which defines them as a unilateral statement of a state or international organisation party to a treaty, 'whereby that state or that organisation purports to specify or clarify the meaning or scope of a treaty or of certain of its provisions.'<sup>121</sup> The primary distinction between a reservation and an interpretive declaration thus lies on the intention of the state, rather than the nomenclature of the statement.<sup>122</sup> A statement of a state to exclude or modify certain provisions, regardless of what it is called, is considered a reservation. Conversely, it is not a reservation if a so-called 'reservation' merely clarifies the state's interpretation of a provision without excluding or altering it.<sup>123</sup> Despite the conceptual clarity, its practical distinction and application is often ambiguous, leading to statements that blur these lines (Wei 2001). This issue is particularly relevant in an Ethiopian context, where the so-called interpretative declarations have been employed in a manner that arguably alters provisions of the Maputo Protocol.

The VCLT takes a liberal approach to the right to make reservations as a matter of principle (Wei 2001). However, there are three exceptions: the first is when a treaty expressly prohibits reservations (article 19(a)); the second is when a treaty restricts reservations to particular matters (article 19(b)); and the third is when a reservation is inconsistent with the object and purpose of the treaty (article 19(c)). Among these, the object and purpose test is particularly relevant in assessing the permissibility of reservations, even when the treaty remains silent in the matter. The first step in applying the compatibility test is by determining the object and purpose of a treaty, which is not an easy task. To demonstrate this difficulty, Buffard and Zemanek (1998) describe a treaty's object and purpose as 'truly something of an enigma.' The VCLT, which uses

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<sup>121</sup> ILC Guide to Practice on Reservations to Treaties 2011 (ILC Guide) 1.2.

<sup>122</sup> The United Nations Human Rights Committee General Comment 24 (1994) on Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant (HRC GC 24) para 3.

<sup>123</sup> Ibid.

the phrase 'object and purpose' eight times,<sup>124</sup> neither defines what a treaty's 'object and purpose' are, nor does it offer any guidelines or methods for doing so. According to the ILC Guideline 3.1.5, a reservation is said to be incompatible with the object and purpose of a treaty when it affects an essential element of the treaty that is necessary to its general tenor, in such a way that the reservation impairs the *raison d'être* of the treaty.<sup>125</sup>

The International Court of Justice (ICJ), which established the test for the first time, did not provide comprehensive criteria that help to identify the object and purpose of a treaty (Hamid 2006). However, a look at its case laws suggest that the purpose and object of a treaty can be identified among other things based on a treaty title, preamble, provisions that establish the treaty's objective, and the article of the treaty that reveals 'the major concern of each contracting party' when the treaty was signed.<sup>126</sup> because it includes 'disparate elements' that are considered 'sometimes separately, sometimes together.'<sup>127</sup>

Recognising the complexities, the ILC stated that articulating 'a single set of methods' for identifying the object and purpose of a treaty is difficult given the potential variations of situations and their proclivity to change over time.<sup>128</sup> Consequently, it recommends the determination of object and purpose to be made in light of the VCLT rules of interpretation, which *inter alia* require a treaty 'to be interpreted in good faith in accordance with the ordinary meanings of its terms in their context and in light of its objective'. Once that is determined, it is critical to ensure that any reservations made to the treaty in question do not affect its object or purpose, or any clause vital to the attainment of the object or purpose, even if the clause is not part of the object or purpose of the

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<sup>124</sup> VCLT arts 18, 19(c), 20 31, 33, 41, 58(1) & 60.

<sup>125</sup> ILC Guide 3.1.5.

<sup>126</sup> ILC Commentaries on the Guide to Practice on Reservations to Treaties (2011) Commentary on Guideline 3.1.5 Incompatibility of a reservation with the object and purpose of the treaty (Commentary on Guideline 3.1.5) para 3.

<sup>127</sup> Commentary on Guideline 3.1.5.1 para 4.

<sup>128</sup> Commentary on Guideline 3.1.5.1 para 2.

treaty (Jonas & Saunders 2010).

## **2. Unpacking the object and purpose of the Maputo Protocol**

The question of whether Ethiopia's reservations and 'interpretative declarations' to the Maputo Protocol are 'compatible' with the Protocol's object and purpose hinged on the question of what its object and purpose are. It is thus important to identify the purpose and object of the Maputo Protocol. The overarching goal that motivated the adoption of the Maputo Protocol, as can be inferred from its preamble, was the recognition that, despite international human rights treaties having been ratified, African women and girls continue to suffer discrimination and harmful practices (Viljoen 2012). Responding to these assumptions and acting as a change agent, the Maputo Protocol seeks to achieve two interconnected goals. The first goal is to improve the implementation and fill normative gaps in existing women's rights standards, which is expected to contribute to the achievement of the second ultimate goal, which is to combat discrimination against women in Africa (Numadi 2024).

To begin with the first, the Maputo Protocol seeks to improve African women's actual enjoyment of relevant rights by consolidating existing women's rights standards for African countries, allowing the governments to meet their agreed-upon commitments, and expounding on specific and unique experiences of African women through the introduction of innovative provisions. In this light, it is reasonable to conclude that the Maputo Protocol seeks to strengthen the protection of women's rights already provided by existing instruments such as the CEDAW and the African Charter on the Rights and Welfare of the Child (African Children's Charter). States cannot, therefore, compromise their existing obligations by reserving the Maputo Protocol, as this would contradict the Maputo Protocol's goal of reinforcing existing standards (Banda 2006).

The non-regression principle in international human rights law, as reflected in Article 31 of the Maputo Protocol, prioritizes applying

any pre-existing standards that better support women's rights, whether found in domestic laws or other international or regional treaties binding on state parties. Article 31 emphasizes two main points: first, the Maputo Protocol seeks to advance and enhance protections for women; second, it opposes any actions that could undermine existing protections. Consequently, any steps related to the Protocol, including ratification, reservations, or interpretative declarations, must not reduce the level of protection already provided under other human rights treaties, such as CEDAW and the African Children's Charter, that apply to the states involved.

The overall objective and purpose of the Maputo Protocol, as implied by its preamble and substantive provisions, is the abolition of all forms of discrimination against women. All of the rights enshrined therein, which include civil, political, economic, social, and cultural rights, are woven together by the principle of equality and non-discrimination, which runs through them like a thread in confronting the continual discrimination, abuse and marginalisation of African women. The words "equality" and "non-discrimination" appear 24 times in the Maputo Protocol, either separately or together, including 9 times in the preamble and 15 times in the substantive provisions, demonstrating this. Article 2, the Maputo Protocol's core provision aimed at eliminating discrimination against women, calls on member states to take the necessary legislative, administrative, and other measures to eradicate all forms of discrimination against women, including corrective and positive action in areas where discrimination against women exists in law and in practice.

The goal of achieving gender equality is specifically realised in the elimination and modification of harmful practices that risk the health and general well-being of women, as well as any other practices that are founded on the notion that one sex is superior to the other, as reflected in articles 2(1)(b), 2(2) and 5 of the Maputo Protocol. To remove any doubt about its stance on harmful

traditional practice (HTP), the Maputo Protocol states that women have equal rights as men in marriage and divorce and re-emphasises the minimum age for marriage as eighteen years. As emphasised in the African Commission on Human and Peoples' Rights (African Commission) and African Committee of Expert on the Rights and Welfare of the Child (ACERWC) Joint General Comment on Child Marriage, the principle of gender equality and the elimination of discrimination serves as the foundation for interpreting all the Maputo Protocol's provisions, many of which recognise gender inequality as a root cause of women's discrimination. As a result, reservations to the Maputo Protocol's core provision, article 2, or to any other provisions that give specific application to its object and purpose, that is, fighting discrimination, are not permitted.

In light of the foregoing discussion , the following reservations to the Maputo Protocol provisions are incompatible with its object and purpose, and thus are not permissible:

- Any reservation to the entire sub-provisions or a portion of article 2 of the Maputo Protocol, which is its core provision aimed at eliminating gender discrimination;
- Any reservation made to any other provision or clause that is essential to prevent, address or remedy discrimination, whether as a cause or a result;
- Reservation to any Maputo Protocol's provision or clause that undermines existing women's protection in a state's domestic legislation or other global or regional treaties in force for that state party, even if that specific provision or clause has nothing to do with article 2, which prohibits discrimination against women, because the Maputo Protocol seeks to improve, not undermine, existing protection.

### **3. The justification behind Ethiopia's reservations and interpretative declarations to the Maputo Protocol**

While the Maputo Protocol Ratification Proclamation does not specify the reasons for Ethiopia's ratification of the Maputo Protocol, the discussions that preceded its ratification provide



valuable insights into this decision. The explanatory note from the Ministry of Foreign Affairs (MoFA) and the minutes from the Women's, Children's, and Youth's Affairs Standing Committee, as well as the Legal, Justice, and Democracy Affairs Standing Committee, highlight several key reasons for Ethiopia's ratification of the Maputo Protocol. First, ratifying the Maputo Protocol is seen as a crucial step in assisting the state to achieve the objectives outlined in the second National Human Rights Action Plan of Ethiopia.<sup>129</sup>

Second, this ratification acts as a commitment to comply with recommendations from the African Commission, which has urged Ethiopia to adopt the Maputo Protocol.<sup>130</sup> Third, it serves as a guideline to protect women and girls from various forms of violence while stimulating the country's commitment to achieve gender equality.<sup>131</sup> Fourth, the Maputo Protocol is in compliance with national legislations, meaning that no additional obligations, budgets, or institutional structures are required.<sup>132</sup>

Fifth, the ratification of the Maputo Protocol will not undermine the country's traditions and cultural beliefs, as the House of People Representative (HoPR) proposed reservations and 'interpretative declarations'.<sup>133</sup> Sixth, it supports the achievements of the state in implementing the United Nations (UN) and AU campaigns aimed at promoting girls' education and eradicating child marriage and female genital mutilation (FGM).<sup>134</sup> The seventh reason is that, the periodic report will be similar to the one that will be submitted to the CEDAW Committee and the African Commission, preparing

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<sup>129</sup> Ministry of Foreign Affairs 'Explanatory note to the Draft Proclamation to Ratify the Maputo Protocol' (2017) 9.

<sup>130</sup> Ibid.

<sup>131</sup> MoFA Explanatory Note 10.

<sup>132</sup> The Women's and Children's Affairs Standing Committee & the Legal, Justice, and Democracy Affairs Standing Committee to the HoPR (Standing Committees) 'Conclusions and recommendations of the joint committee on the draft proclamation to ratify the Maputo Protocol' (2018) 2; MoFA Explanatory Note (n 58) 10.

<sup>133</sup> Ibid.

<sup>134</sup> MoFA Explanatory Note 10.

the periodic report will not be an additional burden.<sup>135</sup> Finally, since the country is the host of the headquarters of the AU, and being under international pressure to ratify core human rights treaties, the Ministry states that the ratification will contribute to the reputation and image of the country.

It is reflected in the above justifications that the country is not willing to ratify human rights treaties that contradict with the national laws, and traditional beliefs. The justifications given by the MoFA and the Standing Committees also indicate hesitancy to accept human rights treaties that impose additional and costly obligations. Moreover, it is apparent from the documents that ratification of human rights treaties is more closely linked to the reputation of the country than addressing the situation of human rights. In this regard, Tornius (2023) argues that ‘Ethiopia’s incentive to ratify the Maputo Protocol are rather symbolic (solidarity with African solutions to African problems) than material (financial or security).’

With its extensive reservations to the provisions of the Protocol, Ethiopia depicts both its desire to become party to the treaty while at the same time seeking to exclude certain provisions perceived as being antithetical to its traditions and national laws. This section is thus devoted to provide an overview of the justifications that Ethiopia raised in entering reservations to the provisions of the Maputo Protocol. Although each of the reserved and declared provisions merits compatibility assessment, the scope of this paper is confined to registration of marriage, minimum marriageable age and prohibition of violence in the private setting, for the following reasons. Firstly, these provisions directly affect the lived experiences of Ethiopian women and girls and have spillover effects on the realization of other rights, including health, bodily autonomy, economic empowerment, and education. Second, these areas are widely contested and are central to advocacy not only in Ethiopia but across the continent. Finally, they often intersect with cultural and religious beliefs, which are frequently invoked to

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<sup>135</sup> MoFA Explanatory Note 10.

legitimize violations.

### **3.1 Mandatory registration of marriage**

Ethiopia has placed reservation on article 6(d) of the Maputo Protocol, which states that for a marriage to be legally recognised, it must be recorded and registered in line with national laws.<sup>136</sup> Article 28 of the Family Code and Registration of Vital Events and National Identity Card Proclamation No. 760/2012 requires every marriage, including a customary and religious marriage to be registered before the Officer of Civil Status. Moreover, article 94 of the Family Code requires marriage to be proved by presenting a legally valid certificate of marriage drawn up at or after the marriage ceremony.<sup>137</sup> The above requirements for marriage registration appear to be the same as article 6(d) of the Maputo Protocol. Nevertheless, the MoFA explanatory note stated that despite the provisions of the Proclamation and the Family Code, failure to register a marriage does not affect its validity. Therefore, the reservation over this particular provision is justified by the fact that every marriage that fulfils the essential conditions stipulated in the Family Code is valid regardless of registration.<sup>138</sup>

In support of this reservation, some scholars contend that compulsory marriage registration may negatively affect women who are legally married under customary or religious laws without any registration (Birhanu 2019). They, therefore, assert that this particular reservation prevents the dissolution of unregistered marriages, which most Ethiopian women are involved in. On the contrary, others argued that the mandatory registration of marriage is a vital step in eradicating early marriages, which are usually formed under customary and religious law (Ashine 2020). It is pertinent to emphasize that as an instrument adopted to address the plight of African women, its provision on mandatory marriage registration was not incorporated to affect those married under religious or customary laws. The provision instead envisaged to

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<sup>136</sup> Maputo Protocol Ratification Proclamation 3(1)(b).

<sup>137</sup> The Revised Family Code of Ethiopia (the Family Code) (2000) art 94.

<sup>138</sup> MoFA Explanatory Note 4.

eradicate child marriages and ensure that the consent of the intending spouse is free and informed. Accordingly, the author echoed the second point of view that the reservation to article 6(d) of the Maputo Protocol contributes to the prevalence of child brides in Ethiopia.

### **3.2 Prohibition of violence against women in the private sphere**

The Maputo Protocol brings about, among other things, progress by eradicating all forms of VAW, both in the public and private sphere. VAW is defined in article 4(a) of the Maputo Protocol in a comprehensive manner, which includes acts or threats of violence in both public and private realm.<sup>139</sup> Despite absence of explicit mention of marital rape, the prohibition of forced and unwanted sex in the private sphere in the Protocol, they can be considered as a direct reference to marital rape (Stefiszyn & Prezanti 2009). Moreover, the African Commission in its Guidelines for Combating Sexual Violence and its Consequences in Africa (Niamey Guidelines) affirmed that the definition of sexual violence applied regardless of the victim's relationship with the perpetrator.<sup>140</sup>

Despite the prevalence of marital rape in Ethiopia, article 620 of the Criminal Code criminalises rape committed outside wedlock, clearly excluding rape perpetrated by a marriage partner. Against this backdrop, Ethiopia placed a reservation on article 4(2)(a) of the Maputo Protocol stating that:<sup>141</sup>

“article 4(2)(a) shall be applicable in accordance with article 620 of the Criminal Code of Ethiopia that defines rape to be a forced sexual intercourse that occurs out of wedlock.”

During the discussion preceding the ratification of the Maputo Protocol, two pertinent questions were posed in relation to this particular reservation. The first is, according to articles 9(4) and 13(2) of the Constitution of the Federal Democratic Republic of

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<sup>139</sup> Maputo Protocol art 4(2)(a).

<sup>140</sup> The Guidelines on Combating Sexual Violence and its Consequences in Africa (2017) 15.

<sup>141</sup> Maputo Protocol Ratification Proclamation art 3(2)(a).

Ethiopia (FDRE Constitution), international agreements ratified by Ethiopia are part and parcel of the laws of the land, and Chapter three of the Constitution shall be interpreted in conformity with international human right treaties adopted by Ethiopia, which places the Maputo Protocol on an equal footing with national legislations including the Criminal and Family Code.

So what legal basis is used to interpret the provisions of the Maputo Protocol in conformity with the Criminal Code? was the first question.<sup>142</sup> Further, given the significance that criminalising sexual violence in the private sphere has on the realisation of gender equality and women empowerment, why should the government of Ethiopia amend its national law to better protect and promote women's rights instead of entering a reservation? was the second question.<sup>143</sup>

In response to the questions and entering the reservation, it was argued that even though the Criminal Code neither encourages nor reinforces marital rape, there is no applicable law that applies to rapes committed inside of marriage, preventing the provision from being implemented in Ethiopia.<sup>144</sup>

However, it is argued that the reservation will likely be withdrawn if a law that criminalises marital rape is adopted. There was also an argument that marital rape is a foreign concept that cannot be implemented in Ethiopia, as more than a million of women live in the rural areas and rely on their husbands for survival. It was further argued that since sexual intercourse is one effect of marriage, as stated in article 53 of the Family Code, criminalising marital rape has a negative effect on respect within the family, undermines the sanctity of marriage, and promotes divorce.<sup>145</sup> The reservation was, thus, entered to maintain the definition of rape enshrined in the Criminal Code.

It is clear from the above argument that the dignity and integrity of

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<sup>142</sup> Minutes of the Women Parliamentarians caucus (2018) 12.

<sup>143</sup> Ibid.

<sup>144</sup> MoFA explanatory note 7.

<sup>145</sup> MoFA explanatory note 3, minutes of the Women Parliamentarians Caucus 11.

women are sacrificed in order to safeguard the sanctity of marriage and the private nature of marital interactions. In this respect, the exclusion of marital rape from the Criminal Code and this particular reservation reveal patriarchal overtones that are firmly ingrained in the legal system, which has the effect of accepting the violation of women's rights as an unattainable subject.

### **3.3 Minimum age of marriage**

The Maputo Protocol under article 6(b) urges states to enact appropriate legislative measures that set the minimum age of marriage to be 18. The provision condemns early marriage and prohibits any exception that lowers the minimum marriageable age with the aim of protecting children. Following the same logic, the Family Code of Ethiopia under article 7 provided that ‘neither a man nor a woman who has not attained the full age of 18 shall conclude marriage.’ Despite this, the same provision granted the Ministry of Justice the power to grant a dispensation for no more than two years upon the application of the future spouses, parents, or guardians. However, there is no definition of what constitutes a serious cause, rather it is left to the discretion of the Ministry of Justice. It is also worth mentioning that, while most of the regional family codes of Ethiopia align with the federal family code provisions, Afar and Somalia regional states have yet to enact family law.

The delay has been largely attributed to customary and religious marriage practice, which continue to sustain high prevalence of child marriage in these regions (McGavock 2021). Against this background, Ethiopia has made a reservation to Article 6(b) of the Maputo Protocol to maintain its Family Code that allows marriage to be performed at the age of 16 in exceptional cases.<sup>146</sup>

This African-driven provision was specific about the absolute prohibition of child marriage and adequately captures the challenges that African girls face on a daily basis (Makau 2024). In *Association Pour le Progrès et la Defense Des Droits Des Femmes*

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<sup>146</sup> Maputo Protocol Ratification Proclamation art 3(2)(b).

*Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v Republic of Mali* case (2018), the African Court noted that the Malian Family Code, which allows the administrative authority to grant permission for girls to get married at the age of 15, is discriminatory, and violates article 6(b) of the Maputo Protocol and articles 2, 4(1), and 21 of the African Children' Charter. Although the provision in the Family Code of Ethiopia is gender neutral, due to the fact that early marriage disproportionately affects girls, it accelerates women to be child brides as early as 16. This undermines the provision's potential to help eradicate child marriage across the continent. Furthermore, as minors are often unable to provide informed consent, lowering the marriageable age results in unions that may lack the element of free and informed consent

#### **4. The compatibility of the reservations and 'interpretative declarations' with the Maputo Protocol's object and purpose**

Building on the preceding discussions on the object and purpose of the Maputo Protocol and Ethiopia's reservations to the provisions of the Protocol, this section seeks to assess whether Ethiopia's reservations to articles 4(2)(a), 6(b) and 6(d) of the Protocol are compatible with its object and purpose. It has been discussed in the previous section that reservations may jeopardise the object and purpose of the Maputo Protocol in at least three ways. First, if the reservation seeks to exclude or modify the protections provided by article 2, which aims to eliminate gender discrimination; second, if the reservation seeks to exclude or modify other provisions of the Maputo Protocol that give specific application to article 2; and third, if the reservation excludes or modifies any other protection under the Maputo Protocol when it was not previously made regarding the same rights under another human right treaties applicable to the state, even if it does not directly affect article 2.

##### **A. Assessing the compatibility of Ethiopia's reservation to the criminalisation of marital rape**

Ethiopia's reservation to article 4(2)(a) of the Maputo Protocol concerns the scope of the duty to prohibit and eradicate all forms of

VAW. Article 4(2)(a) expressly includes unwanted or forced sex in both the private and public spheres, thereby implying the prohibition of marital rape. Research by the Ethiopia Central Statistical (2016) Agency shows that 34% of married women have been emotionally, physically, or sexually abused by their spouses, with 10% reporting sexual abuse. Similarly, a survey conducted by the World Health Organisation (WHO) (2010) found that 59% of Ethiopian women are victims of sexual violence committed by their partners.

Despite these figures, Ethiopia entered a reservation stating that ‘Article 4(2)(a) shall be applicable in accordance with Article 620 of the Criminal Code,’ which, in effect, exempts a husband from prosecution for raping his wife. This reservation is particularly concerning in light of the high prevalence of intimate partner violence in the country.

In this context, the Author turns to an analysis of whether Ethiopia’s unilateral statement, effectively preserving the marital rape exemption, contradicts the Maputo Protocol’s dual and interrelated objectives: first, to combat all forms of discrimination against women (compatibility test one), and second, to enhance rather than dilute the existing protections of women’s rights that States are obliged to uphold (compatibility test two).

#### **i. Compatibility Test One: Fighting discrimination against women**

To determine whether marital rape perpetuates discrimination against women and thereby undermining the Maputo Protocol’s goal of eliminating discrimination, one first needs to understand the concept of discrimination, as well as how marital rape affects victims and plays a role in perpetuating discrimination. The Maputo Protocol defines discrimination against women as:<sup>147</sup>

“Any distinction, exclusion, restriction or any differential treatment on the basis of sex that has the objectives or effect of undermining or reversing the recognition, enjoyment, and exercise by women,

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<sup>147</sup> Maputo Protocol art 1(f).



regardless of their marital status, of human rights and freedoms in all spheres of life.”

Three important observations are crucial here. First, the definition encompasses direct discrimination, when women's rights are eroded or negated because of differential treatment, and indirect discrimination, which occurs when a general policy or measure, though framed neutrally, has disproportionately prejudicial effects on women, thereby affecting or nullifying women's rights in a particularly discriminatory manner. Second, to constitute discrimination, the difference in treatment or the distinction, exclusion or restriction must impair or nullify a woman's rights. Finally, the Maputo Protocol expressly states that a woman's marital status has no bearing on the definition of discrimination against her.

When viewed against this backdrop, there is no doubt that rape, whether within marriage or outside, is well within the ambit of discrimination against women. First, the marital rape exemption formulated by Ethiopia constitutes ‘distinction, exclusion, restriction or differential treatment on the basis of sex.’ As it is clear from the Maputo Protocol Ratification Proclamation, Ethiopia is willing to comply with the content of article 4(2)(a), provided that such compliance does not run counter to article 620 of the Criminal Code. This provision of the Criminal Code states:<sup>148</sup>

“Whoever compels a woman to submit to sexual intercourse *outside wedlock* [emphasis added], whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance, is punishable with rigorous imprisonment from five years to fifteen years.”

This provision exempts a man from prosecution for raping his wife, denying married women legal protection. Turning to the provision that deals about rape committed by a woman, it provides that a ‘woman who compels a man to sexual intercourse with herself, is punishable with rigorous imprisonment not exceeding five

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<sup>148</sup> The Criminal Code of the Federal Democratic Republic of Ethiopia (the Criminal Code) 2004 art 620(1).

years.<sup>149</sup> This provision, unlike the provision dealing with rape committed by men, does not establish the marital rape exemption. This begs the question of why the exemption is available only to men who rape their wives and not to women who rape their husbands. The author argues that married women face 'distinction, exclusion, restriction, or differential treatment on the basis of sex' due to the marital rape exemption.

Having discussed the existence of 'distinction, exclusion, restrictions, or differential treatment based on sex,' the next question is whether this exclusion and differential treatment impair or nullify a woman's rights. This necessitates an examination of the impact of marital rape on women's human rights. Researches indicate that marital rape has a variety of physical and psychological impact on victims ranging from depression to suicide (Devries et al.2013). Although historical myths persist, it was established that marital rape victims suffer long-lasting psychological or physical injuries that are as severe as or greater than those suffered by stranger rape victims, including humiliation, fear, torn muscles, fatigue, and injuries to private organs (Robinson 2017). Furthermore, miscarriages, stillbirths, infertility, and HIV infections are some of the gynecological consequences of marital rape (Belay and Yilak 2025). The marital rape exemption, which in effect allows the man to use force until the wife becomes submissive, thus restricts not only article 4(2)(a) of the Maputo Protocol, but also several of its provisions, regardless of whether they expressly mention violence. It jeopardises the right to dignity, the right to life, the integrity and security of the person, the right to equality in the family, the right to liberty, equal protection under the law, and non-discrimination, health and reproductive rights, the right to privacy, and freedom from cruel, inhuman, and degrading treatment, among other things.<sup>150</sup> Permitting men to rape their wives, for example, renders women's rights to control one's fertility, to decide whether to have children, the number of children, and

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<sup>149</sup> The Criminal Code art 621.

<sup>150</sup> CEDAW General Recommendation 19 on Violence against Women para 7.

their spacing, to choose any method of contraception, and to self-protection and protection against sexually transmitted infections, including HIV/AIDS, illusory.<sup>151</sup>

It also makes the woman's freedom from cruel, inhuman, and degrading treatment as provided under article 4(1) of the Maputo Protocol a chimera rather than a reality. First, marital rape inflicts severe pain and suffering on the victim by causing long-lasting psychological or physical injuries. Second, the pain and suffering are inflicted for a prohibited purpose that includes coercion, intimidation, or discrimination (Randall & Venkatesh 2015).

Furthermore, the marital rape exception, which views marriage as a license to rape one's wife and thus treats women as a form of sexual property of the husband, inhibits women's ability to enjoy equality in marriage and family relations as provided under article 6 of the Maputo Protocol (Randall & Venkatesh 2015). After all, it is impossible to have equal rights in a marriage where one is being subjugated through forced sex disguised as conjugal right (Segal 1996). Furthermore, the marital rape exception denies women from exercising their right to get equal protection and benefit of the law as recognised under article 8 of the Maputo Protocol. Indeed, there is nothing less rational than denying people protection from violent crime based solely on their gender and marital status (West 1990). In light of the above discussion, one can understand that the exclusion of married women from the protection of the law nullifies almost all rights recognised by the Maputo Protocol.

Marital rape, which impairs or nullifies the enjoyment by women of all the rights specified above, is thus discrimination as per the meaning of article 1(f) of the Maputo Protocol. Accordingly, the exemption of marital rape by Ethiopia implies discriminatory treatment in several ways. First, it legitimises a type of violence that disproportionately affects women. It condones men's illegitimate control over women, even allowing routine sexual assaults on them in order to maintain this control (Bajpai 2022). It, thus, preserves women's inferiority in the country and fortifies the inequality

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<sup>151</sup> Maputo Protocol art 14.

between men and women. Second, it discriminates between violence experienced by women and other types of violence (Randall & Venkatesh 2015). Third, it discriminates between violence experienced in the private sphere and violence experienced in the public sphere. It transgresses the right to equality and equal protection of law by discriminating between married and unmarried women. What could be more irrational than a law that prosecute and punishes sexual assault, unless the victim and assaulter are married? After all, how the dignity of a married woman is different from that of an unmarried woman?

By insulating and protecting a separate political system of subordination and violence against a separate class of women who are married, and thereby denies them protection of the laws available to others, the exemption reflects and perpetuates women's social subordination and discrimination. Taking a closer look at Ethiopia's justification for continuing to exempt marital rape from prosecution also exposes a very archaic understanding hidden behind the iron curtain of marriage: wives belong to their husbands, and marriage contracts provide an entitlement to sex. Ethiopia argues that criminalising marital rape would violate Ethiopian tradition and the sanctity of the family, and it would also be hard to prove.<sup>152</sup> These arguments are not only against the very objective of the Maputo Protocol but also, they are fallacious.

The first argument, which concerns the desire to maintain the integrity of Ethiopian tradition, is at odd with the Maputo Protocol, which sets clear criteria to distinguish cultural values that should be preserved from those that should be changed or eliminated. The Maputo Protocol defines 'positive African cultural values' as 'those founded on the principles of equality, peace, freedom, dignity, justice, solidarity, and democracy.'<sup>153</sup> It then calls 'any practice that

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<sup>152</sup> UN Statement 'CEDAW Committee Considers report of Ethiopia' Available on <https://www.ohchr.org/en/statements/2019/02/committee-elimination-discrimination-against-women-considers-report-ethiopia> . Accessed 21 October 2024.

<sup>153</sup> Maputo Protocol preamble para 10.

hinders or endangers the normal growth and affects the physical and psychological development of women and girls' to be eliminated.<sup>154</sup>

Specifically, article 2, which is the core provision of the Maputo Protocol, reiterates the prohibition of HTPs that endanger women's health and general well-being, as well as all other practices that emphasise the inferiority or superiority of one sex over the other, including, wife abuse and child marriages.<sup>155</sup> Article 5, another provision that gives effect to the principle of non-discrimination, also prohibit and condemn all forms of harmful practices which negatively affect the human rights of women. Thus, the argument of Ethiopia's government not to criminalise marital rape, which is rooted in patriarchal values and gender norms, cannot stand in light of the Maputo Protocol's purpose of eliminating all forms of discrimination and harmful practices against women.

The second justification provided by the Ethiopian government to exempt marital rape claims to maintain the sanctity of marriage i.e., the emotional and psychological unity between the spouses. However, the reality is far from this. The EDHS and WHO survey mentioned above shows that majority of marriages in the country are nothing but structures of violence for women. As to the third argument, it claims that marital rapes are difficult to prove. However, this argument does not hold water for two reasons. First, a crime cannot be condoned simply because it is difficult to prove. Second, leaving the implementation issue aside, criminalisation of marital rape would have a deterrent effect on prospective rapist husbands.

In light of the preceding discussion, the author contends that Ethiopia, by making an exception for sexual assault within marriage, shackles the very foundation of the Maputo Protocol, which is to eliminate all forms of discrimination and harmful practices against women.

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<sup>154</sup> Maputo Protocol preamble para 13.

<sup>155</sup> Maputo Protocol art 2(1)(b) & 2(2).

## **ii. Compatibility test two: The prohibition not to take regressive measure**

The Maputo Protocol seeks to strengthen the protection of women's rights already provided by existing instruments like CEDAW and the African Children's Charter, as is evident from its preamble. Meaning, it forbids any action of states, including ratification and reservations, from having the impact of rolling back or limiting the rights that women already enjoy in the relevant state. Therefore, using the Maputo Protocol as a vehicle, Ethiopia cannot compromise its current obligations under any other applicable global or regional treaties, as this would go against the Maputo Protocol's object of strengthening existing protection.

Evaluating Ethiopia's reservation to the criminalisation of marital rape against this purpose of the Maputo Protocol, it is evident that the reservation is actually backward-looking. Without making explicit reference to marital rape, various human right treaties (HRTs) to which Ethiopia is a party including the ICCPR, CEDAW and African Charter provide protection for women against VAW including marital rape (Randall & Venkatesh 2015). For instance, the CEDAW Committee has consistently condemned gender-based violence, including rape within the family, interpreting it as a form of discrimination.<sup>156</sup>

In its General recommendation No. 35, it specifically reaffirmed that gender-based violence constitute a systematic form of discrimination and emphasized that its prohibition has evolved into a principle of customary international law.<sup>157</sup> Grounding on its stance, the Committee, in its concluding observations expressed its concern about Ethiopia's failure to criminalise marital rape.<sup>158</sup>

Likewise, the HRC has repeatedly stated that VAW, including intimate partner sexual assault, is a form of discrimination that

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<sup>156</sup> CEDAW General Recommendation 19 on Violence against women para 1.

<sup>157</sup> CEDAW General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 para 2.

<sup>158</sup> Concluding observations on the combined sixth to seventh periodic report of Ethiopia, CEDAW Committee (27 July 2011), UN Doc CEDAW/C/ETH/CO/6-7 (2011) para 20.

requires appropriate criminal remedies. Similarly the Committee against Torture noted that states bear responsibility to prevent and protect victims from gender-based violence, such as rape, domestic violence, FGM, and trafficking.<sup>159</sup> In addition to this, several soft law instruments including the Declaration on the Elimination of Violence against Women (DEVAW) provides protection for women against violent act that occurs either in public or private life. Pursuant to the DEVAW, marital rape is a kind of VAW that forces women into a subordinate position to men.

From the above discussion, it is clear that Ethiopia was already under obligation to provide protection for woman against violence committed both in the public and private sphere. Thus, by formulating a marital rape exception to the Maputo Protocol, Ethiopia takes a regressive measure that is clearly against the Maputo Protocol's object of strengthening existing protection. To recap, Ethiopia's reservation to the criminalisation of marital rape is not compatible with the object and purpose of the Protocol as it undermines the two interconnected goals of the instrument i.e. strengthening existing women's rights standards and combating discrimination against women in Africa.

### **B. Assessing the compatibility of Ethiopia's reservation to the mandatory registration and minimum age of marriage**

The Maputo Protocol's tough stance on eradicating child marriage on the continent is reflected in articles 6(a) and 6(d), which explicitly prohibit marriage under the age of 18 and require every marriage to be recorded in writing and registered in accordance with domestic law respectively. These provisions have the triple benefit of preventing early marriage, ensuring the free and full consent of the prospective spouse, and providing legal certainty about the existence of marriage that fulfils all the essential conditions (Banda 2006). Despite the protective intent of these provisions, the reality on the ground reveals a significant gap between legal commitments and practice. According to the Ethiopian Demographic and Health

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<sup>159</sup> Committee against Torture, General Comment 2 on Implementation of article 2 by States parties' para 18.

Survey (EDHS) (2016) 40% of women aged 20-24 were married before they turned 18, while 60% of girls aged 15-19 were married before they turned 15 (Gavrilovic 2020). These figures point to entrenched social norms and systemic challenges, including poverty, gender inequality, and lack of enforcement of national laws prohibiting child marriage (UNICEF 2020).

Despite the widespread prevalence of child marriage, Ethiopia has entered reservations on both key provisions of the Maputo Protocol, which poses the question of whether the Protocol's object and purpose have a chance of being realised upon Ethiopia's ratification or has risked being achieved through the reservations. The author attempts to address this question through the lens of two compatibility tests.

### **iii. Compatibility Test One: Fighting discrimination against women**

The absence of marriage registration and exceptions to the minimum marriageable age create loopholes that disproportionately expose girls to child marriage which results in the violation of their fundamental rights (Lee-Rife 2012). There is also a broad consensus on the compulsory registration of marriage, concern remains that requiring mandatory registration of marriage leads to the invalidation of unregistered marriage, to the disadvantage of women. Nevertheless, article 6(d) of the Maputo Protocol, which requires mandatory registration of marriage, is not designed to annul unregistered marriages, but to ensure that the essential elements of marriage, such as consent and age are fulfilled across all forms of marriage, including religious and customary marriages (Hanmer and Elefante 2016).

It, therefore, plays a crucial role in ensuring that child marriage does not go unnoticed. This position is further endorsed by the CEDAW Committee in its General Recommendation on Article 16 of the CEDAW, which underscores that states parties should establish a legal requirement of marriage registration and conduct effective



awareness-raising activities to that effect.<sup>160</sup> Despite this, many African countries have failed to make marriage registration compulsory, often citing various practical challenges, including lack of awareness, weak infrastructure and prevalence of customary and religious practises (Musembi 2023). Yet, these challenges cannot excuse states from fulfilling this obligation, as failing to do so would compromise one of the most potent measures introduced by the Maputo Protocol to eradicate child marriage.

It is, therefore, worth noting that the requirement of mandatory registration of marriage under the Maputo Protocol, given the prevalence of child marriage across the continent, is deliberately structured to facilitate its eradication. The Protocol's purpose, therefore, should not be interpreted as invalidating unregistered marriages, as such an approach would hinder the overall objective of eliminating discrimination against women as expressed under article 2 of the Protocol. A reading of Article 6 (a)(b) and (d) in tandem offer a comprehensive legal basis for tackling child marriage. To further underscore the Maputo Protocol's objective of protecting women from discrimination through article 6(b) and (d), it is essential to address child marriage as both a by-product of and a driver of discrimination.

To begin with child marriage as a direct result of discrimination, it is imperative to examine why an exception to the legal age of marriage has been incorporated into the Family Code. A public consultation conducted during the revision of the Family Code informed that there were oppositions to the lifting of the legal age of marriage for women from 15 to 18 (Belay 2016). The public opinion to maintain 15 as a legal marriageable age was justified by a prejudiced fear that, because a large number of Ethiopian women live in rural areas without access to education, prohibiting them from getting married until they turn 18 would negatively affect them and their families (Belay 2016). This indicates that marriage was considered as a tool for parents to delegate the responsibility of

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<sup>160</sup> CEDAW General recommendation on article 16 of on Economic consequences of marriage, family relations and their dissolution para 26.

raising their daughter to a man who had the means to do so.

Although the legal marriageable age has been raised to 18, the Ministry of Justice has given the authority to excuse two years with the production of serious causes.<sup>161</sup> Despite the appearance of the dispensation as being gender neutral, given the negative public reaction and the reality in the country, the exception in the Family Code disproportionately targets girls and is strongly influenced by discriminatory norms that place women in inferior roles to men. The impact of allowing dispensation is further exacerbated by non-registration of marriages, which leads to marriages being consummated despite not meeting the prerequisites.

Meanwhile, child marriage is the toxic outcome of gender inequality and discrimination that disproportionately affects girls (Packer 2002). The tradition of dowry, which is often provided by the groom to the bride's family, for instance, is an impulse for many African parents to marry off their daughters instead of their sons (Nour 2009). Furthermore, African women's lives are insecure and predisposed to violence, which forces parents to resort to child marriage in order to escape the embarrassment that results from their daughter losing her virginity or getting pregnant out of wedlock (Getu et al. 2021). Likewise, the gender role assigned to women and the stereotype associated with the education of girls are proven to discriminately expose females to child marriage at a higher rate than their male counterparts.<sup>162</sup> These demonstrate child marriage to be the direct result of discrimination, which disproportionately affect women.

Child marriage, on the other hand, results in discrimination that robs girls of their childhood and future, making them prone to prejudice of different kinds.<sup>163</sup> From the inception of the marriage,

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<sup>161</sup> The Family Code art 7(2).

<sup>162</sup> Human Trafficking Search 'Contributing factors to child marriage in developing countries' 2017 .

Accessible on ; <https://humantraffickingsearch.org/2017530contributing-factors-to-child-marriage-in-developing-countries/> .Accessed on 20 October 2024.

<sup>163</sup> United Nation Human Rights office of the high Commission . Accessed on ;

child brides are denied the right to choose when and with whom to be married. And, due to a persistent practice of denying child brides the opportunity to pursue education and employment, girls who are married as minors are more likely to have a lower position in society (Kammerer 1918). Girls' capacity to negotiate safe sexual lives and assert autonomy over their bodies and their sexual and reproductive health is also hampered by power dynamics driven by age disparities.<sup>164</sup> This subjected young girls, among others, to marital rape, early and unwanted pregnancy, maternal mortality, school dropout and significantly heightened the likelihood of women contracting HIV compared to men.<sup>165</sup> It is evident from this that the practice of child marriage violates not only article 6 of the Maputo Protocol but also restricts the application of all of its provisions, resulting in the violation of women's rights to education (article 12), economic and social welfare (article 13), dignity (article 3), reproductive health (article 14), and life, integrity, and security (article 4), among others.

It goes without saying that child marriage is the most noxious manifestation of asymmetrical relations between men and women, which leads to the violation of the principles of gender equality and non-discrimination that serve as the guiding principles for interpreting the provisions of the Maputo Protocol. Despite the extensive discrimination associated with it, Ethiopia's reservation to the provision specifying the minimum age for marriage and requiring mandatory marriage registration enables children as young as 16 to get married.

This compromises the protections provided by the Maputo Protocol for African girls by infringing upon article 2 of the Maputo Protocol, which calls on states to combat all forms of discrimination

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<https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings> .Accessed on 17 September 2024.

<sup>164</sup> Human Rights Watch 'No way out: Child marriage and human rights abuses in Tanzania' 2014. Accessed on ;

[https://www.hrw.org/report/2014/10/29/no-way-out/child-marriage-and-human-rights-abuses-tanzania#\\_ftn30](https://www.hrw.org/report/2014/10/29/no-way-out/child-marriage-and-human-rights-abuses-tanzania#_ftn30) .Accessed 20 October 2024.

<sup>165</sup> Ibid

that endanger the lives of women and girls, mainstream gender in policies and legislations, take corrective and positive measures to eliminate *de facto* and *de jure* discrimination, modify traditional practices that manifest the superiority of one gender over the other, and encourage regional and global efforts aimed at eliminating discrimination.<sup>166</sup> In this light, Ethiopia's reservation to articles 6(b) and (d) of the Maputo Protocol impugns article 2 of the document, which is the core provision that gives effect to the overall object and purpose of eliminating discrimination against women and girls.

#### **iv. Compatibility Test Two: The prohibition not to take regressive measure**

Given the risks child marriage poses to the development and well-being of children, particularly for girls, several international HRTs place a high priority on its abolition (Arthur 2018). For instance, article 16 of the CEDAW calls for state parties to prohibit betrothal, impose a minimum age for marriage, and make marriage registration mandatory. Although not explicitly addressing child marriage, the Convention on the Rights of the Child (CRC) exhorts states to take all necessary measures to eradicate all traditional practices detrimental to children (Deane 2021). Compared to the CRC and CEDAW, the African Children's Charter is a progressive regional instrument that explicitly proscribes the minimum age of marriage to be 18 and makes registration of marriage compulsory.<sup>167</sup>

Despite the recognition of women's rights in the above HRTs, the Maputo Protocol embraces the threshold set out in the African Children's Charter and reiterates marriage registration as a legal requirement (Viljoen 2009).

This incorporation, as outlined in the preamble, seeks to strengthen the implementation of women's rights, which still continue to be violated despite the existing HRTs being ratified. Having said that, since one of the objectives of the Maputo Protocol is to advance and reinforce the protection of women's rights already provided in existing HRTs, using a reservation as a tactic to circumvent the

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<sup>166</sup> Maputo Protocol art 2.

<sup>167</sup> African Children's Charter art 21.

existing obligations contradicts the Maputo Protocol's goal of strengthening existing standards.

Alongside, with a view of combating child marriage in Africa, the ACERWC and the African Commission, jointly asserted the interrelatedness and interdependence of children's and women's rights, requiring the complementarity of the African Children's Charter and Maputo Protocol in eradicating child marriage.<sup>168</sup> Furthermore, by explicitly defining 18 as the minimum marriageable age, the Maputo Protocol eliminates the loophole created by article 16(2) of the CEDAW, which fails to do so. Considering the above, it is valid to argue that the specification of the minimum age for marriage and the requirement for compulsory marriage registration in the Maputo Protocol are intended to strengthen the protection of women's rights in existing HRTs.

Against this background, Ethiopia's reservation to article 6(b) and (d) of the Maputo Protocol that contain analogous provisions of other HRTs, which the state has ratified without reservation, runs against the Maputo Protocol's goal of strengthening existing standards. In addition, Ethiopia's reservation, which compromises the existing obligation of the state, contradicts the non-regression principle of international law that is enshrined in article 31 of the Maputo Protocol.

## **5. Conclusion**

Although Ethiopia took significant step by ratifying the Maputo Protocol after fifteen years of delay, accompanying the ratification with reservations and interpretative declarations dilutes the Protocol's potential to fully realize the rights of women and girls across the country. This concern further is heightened because some of the reservations, particularly those examined in this paper, constitute the progressive and innovative aspect of the Protocol. It is particularly evident that the justifications for nearly all reservations and interpretative declarations are grounded in the

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<sup>168</sup> Joint General Comment of the African Commission and the African Committee of Experts on the Rights and Welfare of the Child on Ending Child Marriage para 15.

desire to uphold the provisions of the national laws, which create an institutional environment that permits traditional and religious practices, often characterized by discrimination. Central to the foregoing argument is the fact that, despite the silence of Maputo Protocol on reservation, the VCLT permits reservation only if it is compatible with the object and purpose of the treaty.

Grounded in this principle, the assessment of the selected reservation made by Ethiopia reveals that the reservations central to this paper, namely minimum marriageable age, compulsory marriage registration and prohibition of violence in the private sphere, are indeed incompatible with the object and purpose of the Protocol, which among other things is to eradicate discrimination that has historically been associated with the plights of African women. This raises critical questions about the effectiveness of the Maputo Protocol in responding to the persistent and unique challenges faced by African women and girls. It also highlights concerns about the government's commitment to implementing progressive and innovative standards that could shield women from violations embedded in traditional and religious practices. The government of Ethiopia should, therefore, give due consideration to the withdrawal of these reservations, as such a step would represent a crucial step toward strengthening the Protocol's capacity to achieve its intended impact across the country.

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