

**71st ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND
PEOPLES' RIGHTS
BANJUL, THE GAMBIA
April - May 2022**

Statement by the Strategic Initiative for Women in the Horn of Africa (SIHA Network)

Honourable chairperson, honourable commissioners, state delegates, distinguished participants, representatives from human rights organizations and civil society, and all those concerned with the state of women's rights in Africa, thank you for this opportunity to participate in this platform by presenting the following statement.

Introduction

The Strategic Initiative for Women in the Horn of Africa (SIHA Network) was created by women activists from Somalia, Somaliland, Ethiopia, Sudan, South Sudan and Eritrea in the mid-1990s. For the past 25 years we have held a unique position working as a feminist regional civil society network operating in the politically volatile contexts of the Greater Horn of Africa. We work through and firmly believe in the collective power of African women.

In the Horn of Africa, the COVID-19 pandemic severely disrupted livelihoods, as major sectors of employment were closed, and supply chains were interrupted. In Ethiopia, Somalia, South Sudan, and Sudan political tensions and inequalities further contributed to the heightened state of instability in the region. Women in this region have found themselves increasingly targeted with sexual violence during this period because of the instability, economic insecurity, erosion of the rule of law, and weakened institutions, structures, and processes.

We take this space to advocate for holding nations of the Horn of Africa accountable to their commitments to African women, as parties to the African Charter on Human and Peoples' Rights, and to the ideals of The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol).

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Ethiopia

The climate in Ethiopia is dominated by a repolarization of ethnicity. Suspicion and animosity amongst communities has led to unmeasurable bloodshed. The media landscape is fueled by toxic public discourse and ethnocentric paranoia. Ethiopia's crisis has seen dire economic desperation as a result of the conflict and the pandemic, covert ideological social media campaigns, complete media black outs, armament of citizens, ethnic violence, and opportunistic interventions based on imperialist interests of global powers. All of these variables have not only left women vulnerable but compromised the recognition of their full humanity and rights.

The conflict in Ethiopia represents a failure to comply with the nation's commitment to peace and security as enshrined in Article 23 of the African Charter. Women have reported targeted sexual violence and assault, either as a tactic of punishment or intimidation against the regional or ethnic group to which they belong, or perpetrators taking advantage of the chaos to commit these crimes without fear of accountability. Just in the first two months after the fighting broke out in November 2020, there were 1,300 rape cases reported to authorities in Ethiopia. The perpetrators come from armed groups on both sides, in violation of Ethiopia's commitment to Article 11 of the Maputo Protocol, and Article 16 and 18 of the African Charter.

Survivors continue to face barriers to accessing justice. Most are pressured into silence or accepting arbitration through informal, customary courts where misogynistic biases are left unchecked and there are no avenues to appeal unjust proceedings or judgements. Ethiopia's modern and progressive constitution explicitly stipulates protection for the rights of women. Yet the constitution is frequently undermined by weak mechanisms of enforcement and prevailing patriarchal social norms. We commend the Commission's position in declining the joint investigation because of political interference and hope that the African Union further uses its influence and resources to oppose the gross human rights violations taking place in Ethiopia.

Sudan

In Sudan, sexual violence against women is continuously being weaponized as a part of a countrywide campaign of oppression after the coup of the 25th of October 2021. Sudan's legal framework still fails to address many crimes of sexual violence and hinders survivors from pursuing justice and holding perpetrators accountable. Ambiguities in the Criminal Act of 1991

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and the Evidence Act of 1994, leave significant room for the discretionary interpretation of individual police and court officials handling a given case. In the current context, perpetrators are primarily members of the armed forces and militias as the National Intelligence and Security Service Act of 2010 (NISS) and the Military Forces Act of 2007 give them exemptions from prosecution when performing their jobs with “good intention.” Any such exemption flies in the face of Article 3 of the African Charter which guarantees all equality before the law and equal protection by the law. More recently, the emergency order issued by the head of the military on the 25th of October permits the military forces and militia to use violence against civilians to implement the Emergency Act of 1997, which violates Sudan’s commitment to Article 5 and Article 18 of the African Charter.

From Khartoum to Darfur, female civilians, including young girls and political activists participating in weekly demonstrations against the coup are being directly targeted, with reports exceeding 15 cases of sexual violence and rape since the 31st of December. Some of these women were also detained and subjected to further sexual violence, in violation of Article 5 of the African Charter. In further violation of Article 5, Sudan has yet to amend the Criminal Act, the NISS Act and the Military Forces Act to criminalize the use of torture or any other form of cruel and inhumane punishment.

Somalia

A report from the Secretary-General to the Security Council (S/2021/312) in 2021 revealed that 419 cases of conflict-related sexual violence against 400 girls, 12 women, and 7 boys had been verified in Somalia. Most of these cases were found to be perpetrated by clan militias or Al-Shabaab, but the Somali Police Force or National Army were implicated in 41 of the cases. In the Somaliland region, the National Human Rights Commission reported 188 rape cases in 2021, five of them ending in femicide. This increase in sexual violence and sexual exploitation of female employees and jobseekers is enabled by a culture of blaming and stigmatizing survivors and the growing influence of misogynistic interpretations of Sharia law that have gained traction in Somalia, as Islamist militants have been expanding their sphere of influence by leveraging the vulnerability caused by food insecurity and lack of income-generating opportunities.

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This politically motivated fundamentalist ideology is compounded by weak legislation and laissez-faire enforcement, which often allows for cases of sexual violence to be resolved through customary or sharia courts where the fundamental priorities are to maintain peace between clans, rather than achieving justice for survivors. In many cases resolutions involve forcing the survivor to marry the perpetrator or arranging for a fee to be paid by the perpetrator's clan to the survivor's clan, as these options reduce the likelihood of further violence between the clans, at the expense of women's bodily agency and security. This trend violates the aims of Article 16 of the African Charter, which establishes Somalia's commitment to protecting the physical and mental health of all of its citizens. In Somaliland, the Rape and Sexual Offences Act, which was passed in 2018, has yet to be implemented due to the objections of religious militants who demanded that the government halt the Act's implementation. In Somalia a similar bill was proposed but never moved forward. In both cases the legislation was promising and resulted from consultations with women activists, yet in the end religious elders were able to halt definitive progress toward these key legal reform attempts.

Somalia has not yet ratified the Maputo Protocol. This inaction on the part of the Somali government constitutes a clear obstruction of the efforts to protect women from sexual violence and all forms of discrimination and runs against Somalia's commitments to protecting women's rights as enshrined in Article 18 of the African Charter.

South Sudan

In South Sudan, forced marriage, especially of girls under 18 has risen with the economic strife brought on by the pandemic due to the incentive of the dowry. This directly violates Article 6 of the Maputo Protocol, which establishes that all marriages require the "free and full consent of both parties," and that the minimum marital age be 18. Moreover, as the concept of 'marital rape' is not explicitly criminalized in South Sudanese law, girls forced into marriage have no legal protection against rape by the person they have been forced to marry. The equal rights of men and women within a marriage are not only established in Article 6 of the Maputo Protocol and Article 18 of the African Charter, but also indirectly through the 2011 Transitional Constitution of the Republic of South Sudan, which prohibits domestic violence. Unfortunately, these legal commitments are undermined by widespread normalization of the use of violence against women.

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Another driver of sexual violence has been the increase in inter-communal conflicts combined with prevalent gendered norms that portray the rape of women as a means to harm another community as a whole. The presence of conflict alongside significant economic hardship has also led to large numbers of unpaid, armed men who see the rape of women as payment for their services in the army, militia, or other combatant groups.

Contrary to the principles enshrined in Article 3 of the African Charter, sexual violence cases are often resolved in customary law settings rather than formal legal courts. As is the case in each of the countries addressed in this statement, in South Sudan the practice of resolving cases of sexual violence outside of formal courts, disadvantages women as customary courts are more susceptible to the influences of patriarchal bias and there are fewer mechanisms to correct for this bias. For example, when a girl child is raped and the rape results in pregnancy, it is quite common for a customary court to require the perpetrator to marry the child and pay the dowry, without facing any punitive consequences.

While South Sudan has yet to officially ratify the Maputo Protocol, the parliament passed a motion in favor of ratification. This is a clear indication that the Protocol is in alignment with lawmakers' goals for the country and as such we feel it is appropriate to hold South Sudan accountable to its commitment to ratify this document.

Conclusion

As parties to the African Charter on Human and Peoples' Rights the governments of Ethiopia, Somalia, South Sudan, and Sudan must be held accountable for having created an enabling environment for the ongoing instability and rampant sexual violence against women, as this violates numerous articles of the African Charter, including the right to physical and mental health (Article 16), the protection of women's rights (Article 18), and the right to peace and security (Article 23). In addition to their ratification of the African Charter, these countries have, in their own constitutions, or by indications of intent to ratify the Maputo Protocol, displayed some form of rhetorical commitment to protecting women from harmful and discriminatory practices like sexual violence. As documents written by and for Africans, we are deeply proud of the African Charter and the Maputo Protocol. We ask that the Commission utilize the influence,

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mechanisms, and resources at its disposal to impress upon the governments of Ethiopia, Somalia, South Sudan, and Sudan the urgency and importance of fully ratifying and domesticating the Maputo Protocol and ensuring that the protections enshrined on paper are translated into the lived realities of women without delay.

Recommendations

- 1) We therefore conclude this statement with the following recommendations for the African Commission on Human and Peoples' Rights:
- 2) Support advocacy through the African Union channels to increase state accountability for reducing sexual violence through policy reform and state compliance with the African Charter on Human and Peoples' Rights alongside other regional and international conventions and commitments.
- 3) To apply pressure to the government of Ethiopia to:
 - a. Fully domesticate the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) into Ethiopian law and rescind all reservations to the Protocol.
 - b. To investigate the use of sexual violence against women as a weapon during the conflict and hold perpetrators accountable.
 - c. Provide comprehensive support for survivors of sexual violence.
- 4) To apply pressure to the government of Sudan to:
 - a. Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) without reservations.
 - b. Implement the African Charter on Human and Peoples' Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
 - c. Amend the Criminal Act and the Criminal Procedure Act to ensure survivors are protected from adultery charges and guaranteed access to justice through formal court trials that diligently follow legal due process.
 - d. Amend the National Intelligence Security and Service Act and the Military Forces Act to abolish impunity for all forms of violence and harassment (including sexual violence) committed by military and security sector staff against civilians.
 - e. Enact legislation that aims to protect women who report sexual violence and provide services for them.

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- f. Strengthen mechanisms to investigate and prosecute perpetrators.
- 5) To apply pressure to the government of Somalia to:
- a. Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) without reservations.
 - b. Approve the Sexual Offenses bill that has been long promoted by women's rights activists/organizations and civil society in Somalia and Somaliland.
 - c. End impunity for agents of the security apparatuses and hold militarized perpetrators and others accountable for the crimes of sexual violence.
 - d. Subject the perpetrators of sexual violence to the statutory court ruling and limits and control the interventions of customary courts in cases of sexual violence.
- 6) To apply pressure to the government of South Sudan to:
- a. Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) without reservations.
 - b. End impunity for perpetrators of sexual violence.
 - c. End marriage of girls under 18 years old and all forms of forced marriage.
 - d. Provide support to survivors who wish to leave forced marriages.

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