

briefing paper

The Implementation Gap:
Unpacking Article 14 of the
CEVAWG and Civil Society
Engagement



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Executive Summary

This briefing paper explores how African women's rights organisations and feminist legal actors should engage with the African Union Convention on Ending Violence Against Women and Girls, known as CEVAWG. It calls for a deliberate, informed, and movement-led approach to the Convention, one that prioritises justice, institutional accountability, and the lived realities of African women and girls, rather than pursuing symbolic ratification for its own sake.

At the centre of this analysis is a significant concern with the designation of the African Commission on Human and Peoples' Rights as the Convention's monitoring and implementation body under Article 14. While this may appear procedurally consistent with the African human rights system, it presents substantial challenges. The Commission continues to face serious institutional weaknesses, particularly its restrictive interpretation of Article 59(1) of the African Charter, which enforces blanket confidentiality on decisions and pleadings. This practice severely undermines transparency, limits access to justice and excludes civil society from meaningful participation. The process leading to the adoption of CEVAWG was further compromised by the exclusion of key feminist legal actors and a failure to integrate insights from ongoing reform initiatives, including the African Union Reform Initiative, the Arusha Initiative, and the Article 59(1) Campaign. These omissions suggest a process shaped more by political considerations than by inclusive and accountable design.

The risks of building normative frameworks without ensuring credible and well-resourced enforcement mechanisms are well documented. Experiences with the Maputo Protocol and jurisprudence from the ECOWAS Community Court of Justice illustrate this danger. In cases such as *Hadijatou Mani*, *Mary Sunday*, and *E.I. v Nigeria*, the ECOWAS Court failed to recognise gender-based violence as a form of discrimination. These outcomes contradict international standards and reflect a broader pattern of institutional failure. Courts that lack specialisation and gender competence produce inconsistent and regressive decisions, which ultimately deny justice to women. This history reinforces the need for mechanisms that not only exist in form but also function effectively in practice.

In light of these concerns, this paper proposes a two-pronged approach to engaging with the CEVAWG Convention, recognising the need for consensus and the concerns raised by many women's rights organisations.



Step One

Pause and
Reflect

1. Rethinking Engagement: Why Specialised Mechanisms Matter

Temporarily halt ratification to allow for a structured review of the Convention. This includes assessing its strengths and gaps, determining the significance of those gaps, and consulting widely with stakeholders.

- **Conditional Progress:**

If gaps are deemed manageable, proceed with ratification, supported by a critical, informed strategy addressing normative and institutional challenges, integrating lessons from past experiences and aligning with broader AU reforms.

- **Review and Restart:**

If gaps are fundamental, advocate for reopening the Convention to ensure meaningful stakeholder input and alignment with the lived realities of women and girls across the continent.

Together, these approaches affirm the need for engagement that goes beyond ratification. The long-term value of CEVAWG will depend not only on its adoption but also on whether it is supported by institutions that work, informed by users who understand the system, and capable of delivering meaningful change for women and girls across Africa. Our engagement with the Convention on Ending Violence Against Women and Girls

(CEVAWG) arises not from a position of abstract critique but as active users of the African human rights system - litigators, advocates, and monitors - who need instruments that are not only normatively ambitious but structurally implementable. Our focus is not on assessing the entirety of the Convention, but on raising concerns about whether this instrument, as currently conceived, can be used effectively within the ecosystem of litigation and accountability that we work in every day.

As women's rights organisations (WROs) and feminist actors operating within regional accountability mechanisms, we are acutely aware that progressive norms alone do not guarantee justice. Without robust, transparent, and inclusive institutional frameworks, the potential of such treaties risks being undermined. The assumption that CEVAWG can now proceed smoothly along the path of ratification and implementation, without critical reflection on its foundations, is deeply problematic.

What we have witnessed is a process that bypassed the meaningful inclusion of experienced users of the African human rights system. The push to adopt a glass-half-full approach, without confronting procedural shortcomings, has resulted in a treaty that risks being disconnected from the very actors and mechanisms necessary for its success. From the limited consultation that shaped its drafting to the premature post-adoption rollout, the process has largely excluded those with hands-on experience navigating regional mechanisms to hold states accountable. The treaty was presented at major platforms, such as the Commission on the Status of Women (CSW)

and the African Commission on Human and Peoples' Rights, before it was made publicly accessible to the African people. Meanwhile, organisations that litigate, advocate, and monitor violations, as well as those who routinely engage with these systems, were not consulted during the drafting, design, or implementation of the framework. This is part of a broader, systemic pattern of marginalising feminist expertise from institutional reform processes.

There was no meaningful consultation with the Litigants' Forum, comprising organisations with practical knowledge of the African Commission's jurisprudence. Neither were insights drawn from ongoing initiatives focused on reforming and strengthening continental accountability mechanisms, including:

- a. The **AU Reform Initiative**, which focuses on the future of accountability mechanisms in the ongoing AU institutional reforms;
- b. The **Arusha Initiative**, which focuses on improving the independence and integrity of continental adjudicatory bodies through reform of the election and appointment processes for judges and commissioners;
- c. The **Article 59(1) Campaign**, a pan-African effort by litigants and CSOs to secure a progressive interpretation of Article 59(1) by the ACHPR confidentiality rules, enhance transparency, and restore the Commission's credibility

These represent missed opportunities to integrate crucial insights from users who understand both the potential and limitations of the system. We are particularly concerned with the weaknesses in the Convention's implementation architecture, most notably Article 14.

There is also a broader reflection to be had within the feminist movement. In some instances, advocacy has inadvertently legitimised underperforming institutions by aligning with their processes without interrogating whether they are fit for purpose. A focus on developing new normative frameworks without ensuring mechanisms for enforcement risks symbolic victories that fail victims and survivors. And by adapting to what institutions are willing to offer, rather than challenging them to be bold and effective, we risk entrenching weak systems.

Our movement is not monolithic, and our strategies must reflect that. For those of us who engage with legal instruments to hold states accountable, this moment demands honesty. Is this the right instrument? Is it structurally usable? Can the process now be opened up to include those whose voices were previously excluded?

We believe that raising these questions is not a rejection of CEVAWG's purpose, it is an effort to ensure it becomes more than a legal text. It is a call to make it a living instrument, shaped by those who will use it, to serve those it was meant to protect.



1.1. Lessons from the ECOWAS Court jurisprudence on Violence against Women

ISLA's engagement with the ECOWAS Community Court of Justice (ECCJ) was aimed at advancing feminist jurisprudence and ensuring that states are held accountable for violence against women through the due diligence standard. However, the Court's treatment of these cases reveals a long-standing and systemic failure to understand gender-based violence as a form of discrimination, reinforcing the urgent need for specialised mechanisms to interpret and apply women's rights standards effectively. This failure is not new. It can be traced back to the *Hadijatou Mani v Niger* case, where the Court recognised slavery but failed to fully address the gendered dimensions of sexual violence and the discriminatory nature of the state's inaction. This gap has persisted through to more recent cases, including *Mary Sunday v Nigeria* (2017) and *E.I. v Nigeria* (2021) as detailed below.



E.I. v Federal Republic of Nigeria (2021)

In this case, a young woman who had been raped waited eight years without a conclusion to her trial. ISLA sought to intervene as *amicus curiae* to provide guidance on the state's due diligence obligations to prevent, protect, prosecute, and punish violence against women. The ECCJ rejected the amicus brief, stating that rape was a private matter and not one of public interest.

This reasoning reflects a troubling and outdated public-private divide. Rape was viewed not as a matter of state accountability but as a personal dispute. This categorisation is inconsistent with international and regional norms, which treat gender-based violence as a human rights violation and a form of discrimination. The ECCJ failed to engage with these standards or hold the state accountable, despite the fact that the claim was brought against the government, not the individual perpetrator.

Mary Sunday v Federal Republic of Nigeria (2017)

In this case, the plaintiff suffered horrific burns inflicted by her fiancé, a police officer. ISLA again attempted to intervene as amicus to highlight the discriminatory nature of the violence and the state's obligations under regional and international law. The ECCJ refused to hear the submission, citing that the brief had not been translated into French, despite no prior request for translation.

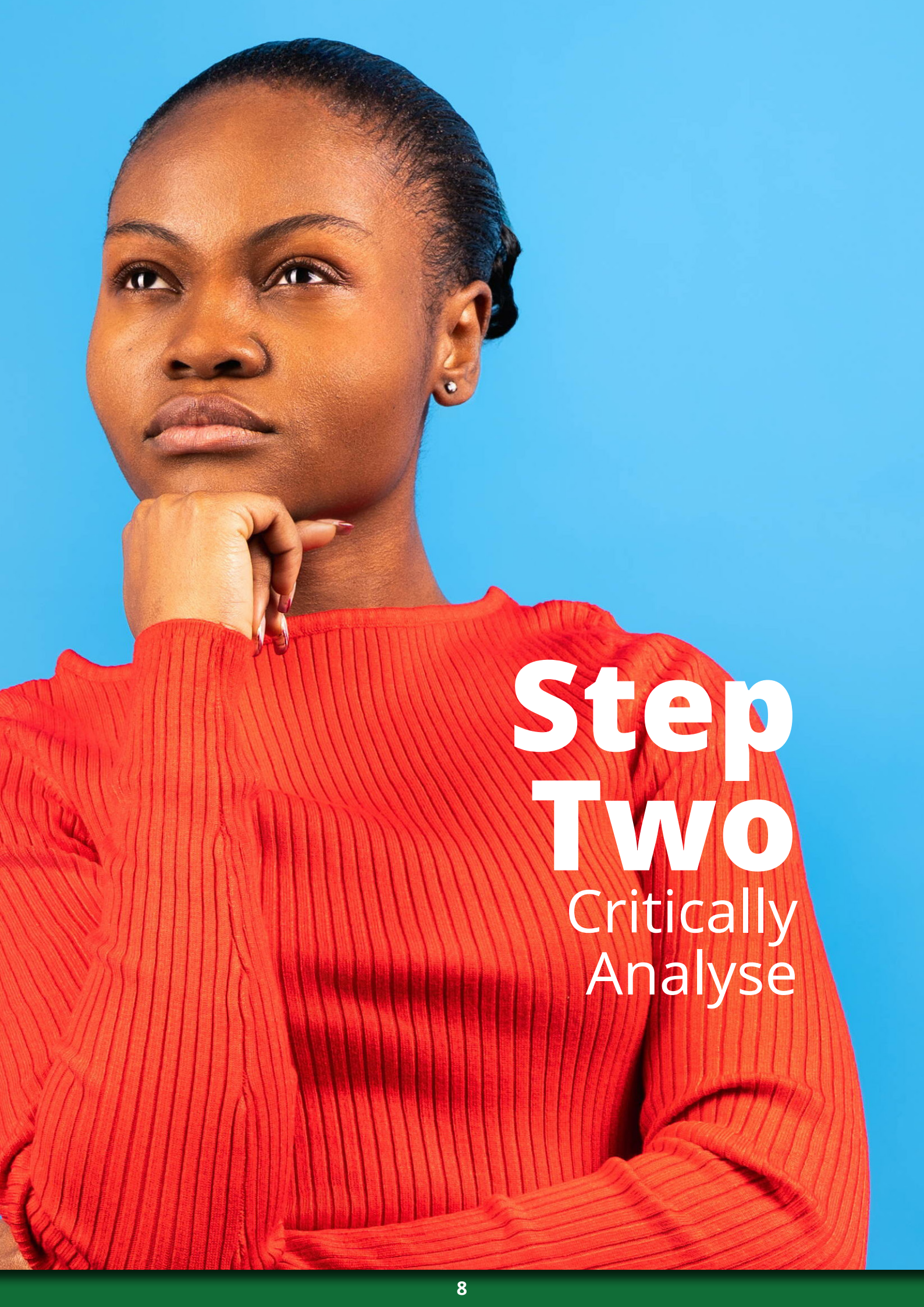
On the merits, the Court ruled that because the violence occurred within the domestic sphere and the perpetrator acted in a private capacity, the state could not be held liable. The ECCJ ignored the perpetrator's status as a police officer and failed to consider the systemic and discriminatory nature of domestic violence, again framing it as a private matter.

Together, these cases above show that without specialised knowledge and frameworks, generalist courts often produce weak, regressive, and inconsistent outcomes in cases involving gender-based violence. These outcomes reflect deeper procedural and substantive problems. Procedurally, the Court's Rules do not clearly accommodate amicus interventions, leaving acceptance at the discretion of judges. Substantively, the ECCJ has consistently failed to apply the due diligence principle,

misinterpreted the role of the state, and refused to see gender-based violence as a public concern rooted in structural inequality.

This is not just about poor outcomes in individual cases. It is about **a pattern of jurisprudence that fails women**. When courts are not specialised, when they lack the frameworks and expertise to understand the gendered nature of harm, they reinforce the very inequalities they are meant to address. The ECOWAS Court's decisions in these and earlier cases demonstrate how general human rights bodies, without proper grounding in women's rights law, can produce harmful interpretations and missed opportunities for justice.

This reality underscores the need for **specialised, well-resourced mechanisms** capable of handling gender-based violence as a form of discrimination. Bodies interpreting CEVAWG, for example, must not replicate the mistakes of the ECCJ Court. If mechanisms are not fit for purpose, if they cannot understand or apply core principles of equality, non-discrimination, and due diligence, they risk undermining the rights they are meant to protect. We must insist that regional human rights mechanisms not only exist but also work. Feminist jurisprudence must be central to how violence against women is adjudicated. Without this, justice remains elusive, and the law continues to fail those most in need of its protection.



Step Two

Critically
Analyse

2. Limitations of the treaty: lack of an implementation mechanism

Across many African countries, there are progressive legal frameworks in place to protect the rights of women and girls. Yet, time and again, the challenge lies not in the absence of laws but in the failure to implement them effectively. This persistent gap between legal development and enforcement underscores a critical lesson: the framing of any new legal instrument must be accompanied by a clear, well-resourced plan for implementation. That includes not only allocating adequate resources and political support, but also ensuring that the mechanism entrusted with enforcement is strong, efficient, and appropriate for the task.

Article 14 of the CEVAWG provides that:

1. *States Parties shall ensure the implementation of this Convention and shall include, in their periodic reports to the African Commission on Human and Peoples' Rights, as required under Article 62 of the African Charter on Human and Peoples' Rights, the legislative and other measures undertaken to end all forms of violence against women and girls.*
2. *In the implementation of this Convention, the African Commission on Human and Peoples' Rights shall have the mandate to interpret the provisions of the Convention in accordance with the African Charter on Human and Peoples' Rights.*

3. *The African Commission on Human and Peoples' Rights may refer matters of interpretation and enforcement on any dispute arising from the application or implementation of this Convention to the African Court on Human and Peoples' Rights.*
4. *Where applicable, the African Court on Human and Peoples' Rights shall have the mandate to hear disputes arising from the application or implementation of this Convention.*

In accordance with Article 14, the Convention designates the African Commission on Human and Peoples' Rights (ACHPR) as the institution responsible for monitoring and implementation. While this may appear somewhat "logical" within the African human rights framework, it raises significant concerns given the Commission's current institutional challenges.

We engage with AU mechanisms not as observers but as users, relying on them to enforce legal standards and secure remedies for rights violations. Yet the ACHPR, in its current state, faces significant institutional challenges that compromise its protective function. The Commission's handling of Article 59(1) of the African Charter is one such example.

Instead of treating transparency as a foundational principle, the Commission has adopted, and publicly defended, an interpretation of Article 59(1) that imposes blanket confidentiality over communications, pleadings, and decisions until AU endorsement. This restrictive approach is not only *anomalous by global standards* but also widely seen as a design flaw within the African system. The African Court on

Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child do not have similar limitations. What is especially concerning is that the current ACHPR does not view this interpretation as a weakness to be addressed, but as a feature to be preserved, something that makes the body "unique." In defending this practice, the ACHPR reinforces procedural opacity and limits access to justice, contrary to the principles that underpin most regional and international human rights systems. The provision is capable of a progressive interpretation that centres state accountability for human rights violations and justice for victims. Still, it remains vulnerable to state interference because the interpretation depends on the capacity and willingness of the ACHPR. In 2006, the ACHPR adopted an interpretation of Art 59(1) that did not negate the purpose of the Charter.

At the heart of this crisis lies the Commission's restrictive and regressive interpretation of **Article 59(1)** of the African Charter. A provision originally intended to safeguard sensitive communications has been transformed into a rationale for excessive and unjustified confidentiality. This has resulted in the systematic delay or non-publication of adopted decisions, limited access to pleadings, and the erosion of civil society participation. The ACHPR now withholds final decisions from litigants indefinitely, citing the need to await consideration of its activity report by the African Union. This justification is legally tenuous, especially given the AU's decision to limit the length of the report in a way that precludes the inclusion of full decisions in the

ACHPR's activity report. In practice, the AU does not receive or review these decisions. In the past, the activity report of the ACHPR was considered during the January and mid-year summits. The AU adopted a decision that requires the ACHPR to report annually, during the January summit. The implications are that decisions adopted throughout the year, including those made during the extraordinary summits of the ACHPR, must wait until the preceding year for symbolic consideration by the AU.

This approach, which prioritises secrecy over accountability, violates regional legal standards under Articles 60 and 61 of the African Charter and contradicts international fair trial norms, including Article 14 of the International Covenant on Civil and Political Rights (ICCPR). It also stands in stark contrast to the procedural openness found in other regional human rights systems. The consequences are significant: litigants are left without access to timely rulings, amici curiae cannot file due to a lack of pleadings, and civil society organisations are effectively shut out from coordinated advocacy and monitoring.

Several victims are waiting for decisions made in 2023 and 2024, which the ACHPR refuses to share. The decisions are also not immediately shared by the ACHPR after the summit. In March 2024, we were informed that the ACHPR had decided in a case where we represent a victim of trafficking. Fifteen months later, in June 2025, we are still without a decision. The ACHPR has informed us that it is unable to share the decision because the African Union has not published its report for the January 2025 summit, which reflects that it has adopted the ACHPR's activity report.

This is not an isolated example; another counterpart has experienced receiving a decision that references a case they have yet to receive. Another counterpart reported receiving a decision in July 2024 that was adopted in August 2023. These developments are regularly tracked and discussed by the litigants' group, a group that represents over sixty NGOs and private practitioners that litigate before the ACHPR. There have been attempts to engage the ACHPR over the years, and these have not led to a resolution.

While the rules of procedure allow for individuals and organisations who wish to intervene as *amici curiae*, this procedure is not possible because of the blanket confidentiality. The ACHPR does not publish a cause list. It is not possible to know the cases that are pending before the ACHPR. Victims and their lawyers are prohibited from publicising or discussing their cases. There were times when NGOs received letters from the ACHPR demanding that they remove pleadings of their cases from their websites. In a recent engagement with the ACHPR, during the 83rd session of the ACHPR in October 2024, a current commissioner and former chairperson of the ACHPR intervened in a panel discussion and clarified that there was no prohibition on parties who wanted to publish their decisions. Shortly after the session, the secretariat clarified that the commissioner was expressing a personal opinion. The prohibition stands. Some NGOs have taken to publishing their decisions in defiance of the rule.

The complementarity between the Commission and the Court, as outlined in Article 14(3) of the CEVAWG, reveals a

deeper historical dysfunction within the African human rights system. The African Commission has consistently failed to fulfil its complementary role with the African Court. To date, to our knowledge, the Commission has referred only one case to the African Court on Human and Peoples' Rights, namely the African Commission on Human and Peoples' Rights v. The Republic of Kenya (Ogiek case). This longstanding reluctance to engage the Court highlights an institutional stalemate and raises serious concerns about the effectiveness of the complementarity framework in practice. Assigning the Commission the lead role in enforcing the Convention reflects a failure to acknowledge the systemic weaknesses that continue to undermine its mandate.

Article 59(1) and the principle of complementarity are not the only challenges facing the ACHPR. The Arusha Initiative and the Coalition for the Independence of the African Commission (CIAC) have documented the erosion of the Commission's autonomy through a combination of politically motivated defunding, direct oversight by AU policy organs, appointment of underqualified or politically compromised commissioners, and operational capture by institutions hostile to independent human rights adjudication. More recently, the ACHPR has convened hearings infrequently. Decisions are made based on the pleadings submitted to the ACHPR, which is another step to cement a commitment to move away from the right to a fair and public hearing. The willingness to

protect such institutional norms, despite their adverse impact on accountability, raises doubts about the appropriateness of assigning new mandates without prior reform.

A false choice

The decision to assign implementation responsibilities to the ACHPR is often justified as a strategic compromise, described as the “lesser of two evils,” based on the concern that creating a new mechanism would likely face severe underfunding. However, this logic is deeply flawed. It assumes that the Commission’s well-documented dysfunctions are more acceptable than the uncertainties associated with building a new and potentially more effective institution.

This rationale does not withstand serious scrutiny. The central issue is not merely financial feasibility but institutional legitimacy and operational capacity. Delegating enforcement to a body that has repeatedly failed to uphold its mandate effectively locks the Convention into a cycle of procedural inertia and normative paralysis. The real choice is not between a weak institution and an unfunded one. It is between taking the risk to create a fit-for-purpose mechanism or settling for an institution that has demonstrated an inability or unwillingness to deliver justice. Choosing the latter reflects a lack of ambition and a disregard for the transformative potential this Convention could have offered. If funding is the primary concern, then it is a challenge that can be addressed through strategic planning, diplomatic engagement, and international partnerships. Institutional failure, however, especially when embedded in legal processes and routine practices,

cannot be resolved through optimism or institutional loyalty.

Rather than defaulting to the ACHPR as an implementing agency, feminist and rights-based actors must confront difficult but necessary questions:

- How can a mechanism that refuses to publish its own decisions be expected to protect women and girls?
- What does it mean to enforce a treaty through a body that prioritises state politics over human rights obligations?
- What legitimacy remains when a regional mechanism actively undermines transparency and procedural fairness?

A sober assessment points to the need for radical reimagining. Until the ACHPR can demonstrate a renewed commitment to legal integrity, institutional transparency, and human rights protection, efforts to ratify and implement a Convention dependent on its enforcement must be approached with profound caution. The willingness to protect such institutional norms, despite their adverse impact on accountability, raises doubts about the appropriateness of assigning new mandates without prior reform. It also highlights why a dedicated, standalone mechanism may have been more suitable for the implementation of the CEVAWG.

Step Three

Learn from
Practice



3. Learning from Practice: Lessons for Future Engagement

This section draws directly from ISLA's engagement with African regional and sub-regional human rights mechanisms, particularly in relation to the implementation of the Maputo Protocol and litigation before the ECOWAS Community Court of Justice. These reflections are not theoretical. They are rooted in real, documented efforts to clarify state obligations, shape progressive jurisprudence, and secure meaningful protections for women's rights.

Across these experiences, several structural challenges have consistently emerged. These include ambiguous treaty language, limited access to advisory procedures, procedural obstacles, and regressive interpretations by judicial bodies. Together, these challenges have systematically hindered the effective implementation of treaties and have undermined accountability. Even instruments with strong normative content have failed to deliver substantive justice for victims when the systems interpreting them are weak or hostile.

ISLA's experience shows that treaties must be treated as legal texts. They are not self-executing; they require interpretation by adjudicatory bodies to produce remedies. The precise language of a provision often determines whether it can be interpreted in a way that vindicates rights. In many

cases, ISLA has had to engage in sustained legal advocacy to clarify vague provisions and push for interpretations that uphold women's rights.

The challenges faced during its development, including limited consultation and lack of transparency, have made it nearly impossible to produce a credible *travaux préparatoire*. This deprives the Convention of an important interpretive tool recognised under Article 32 of the Vienna Convention on the Law of Treaties, which helps clarify the intentions behind treaty language. The absence of a credible record of drafting history makes it difficult to establish the drafters' intent. This undermines the ability to rely on Article 32 of the Vienna Convention on the Law of Treaties, which allows for the use of supplementary materials to aid interpretation. Without this, the Convention is left vulnerable to narrow and limiting readings.

The concerns highlight the need for feminist and women's rights movements to engage in deep strategic reflection. Decisions about whether and how to support the ratification and implementation of CEVAWG must take into account not only the content of the treaty but also the context in which it will be used. This includes the willingness and capacity of institutions to interpret and apply it in ways that protect and promote the rights of women and girls.

Given the analysis above, the examples below show the kind of work that has been necessary to clarify the meaning of treaty provisions.

3.1.Registration and recognition of marriages

The precise meaning of Article 6(d) of the Maputo Protocol remains unclear. While the provision requires states to enact legislation ensuring that marriages are recorded in writing and registered to be legally recognised, its vague language fails to reflect the complex realities African women face in accessing marriage registration. Unregistered marriages remain widespread due to legal gaps, high registration costs, inaccessible registration centres, and entrenched gender inequality. In many contexts, men control decisions about registration, and often benefit from non-registration, leaving women more vulnerable in unregistered unions.

To clarify the scope of state obligations under Article 6(d), ISLA and partner organisations submitted a request for an Advisory Opinion to the African Court in 2015. The Court declined to hear the matter, citing lack of standing because the organisations were not recognised by the African Union under Article 4 of the Court's Protocol. The Court did not address the substance of the request.

Currently, the Pan-African Lawyers Union (PALU) is the only civil society organisation with locus standi to request advisory opinions before the Court. This narrow interpretation of Article 4, coupled with the absence of a clear procedure for AU recognition, restricts access for most women's rights organisations and limits the use of advisory opinions as a tool to clarify treaty obligations. We are currently working with PALU to resubmit the request.

To strengthen treaty implementation, especially under instruments like CEVAG, the advisory opinion mechanism must be opened up to human rights NGOs. Broadening access would help clarify ambiguous provisions, ensure consistency in interpretation, and enhance accountability across the continent.

3.2.Equitable sharing of matrimonial property upon the dissolution of marriage

Another provision of the Maputo Protocol that has proven difficult to implement is Article 7(d), which provides that in the event of separation, divorce, or annulment of marriage, both spouses shall have the right to an equitable sharing of joint property. However, the term "equitable share" is not defined, leading to inconsistent interpretations and uneven implementation across African countries.

Despite the existence of legal frameworks allowing for joint ownership of property, deeply rooted customs, gendered social norms, and discriminatory practices continue to limit women's access to property upon the dissolution of marriage. Courts across the continent often undervalue women's non-financial contributions during marriage, with many property regimes requiring proof of direct contribution to property acquisition. As a result, women are frequently denied a fair share of marital assets. This inequality has long-term economic implications, as women are generally more vulnerable to poverty following divorce or separation.

To address these challenges, the African Commission on Human and Peoples' Rights adopted General Comment No. 6 on Article 7(d) of the Maputo Protocol. This instrument was developed to provide clarity on the meaning of equitable property sharing and to guide States on their obligations to promote substantive equality in property division. It was the outcome of sustained advocacy by African and global women's rights organisations who recognised the urgent need for interpretive guidance to reverse discriminatory legal and social practices.

General Comment No. 6 affirms the right of women to an equitable share of marital property, promotes a human rights-based approach to interpreting Article 7(d), and urges States to domesticate and implement the provision in line with principles of substantive equality. It specifically challenges laws and practices that disadvantage women, especially in access to land and productive resources.

The Comment was developed under the mandate of the Special Rapporteur on the Rights of Women in Africa, in line with Article 45 of the African Charter. Through Resolution 401, the Commission mandated the Special Rapporteur to work with relevant stakeholders to elaborate on the Comment and set a clear standard across the continent. However, the impact of the General Comment remains unclear. Many States have yet to take the necessary legislative and institutional steps to give effect to their guidance. The ongoing gap between the formal commitment to equitable property rights and their realisation in practice points to a broader failure to dismantle

the patriarchal and structural barriers that continue to disadvantage women. As long as these systemic challenges persist, the promise of Article 7(d) will remain unfulfilled, and women's economic security will continue to be undermined.

3.3. Widow's rights to inheritance

The final provision under consideration is Article 21 of the Maputo Protocol, which addresses a widow's right to inheritance. Article 21(1) grants a widow the right to remain in the matrimonial home, but qualifies this right by linking it to her marital status. If the widow remarries, she retains the right to reside in the home only if the property legally belongs to her or she has inherited it. In effect, this provision creates a limited usufruct right, allowing widows to stay in the matrimonial home only for as long as they remain unmarried. It does not guarantee full ownership or permanent security.

This restriction significantly undermines the widow's autonomy and economic stability. Even where a widow has contributed to acquiring or developing the property, her continued access is made conditional on her remaining single. In practice, this means she holds only a temporary right, without full control or authority to dispose of the property. This limited and conditional access can amount to arbitrary deprivation of property and leaves widows in a legally and economically vulnerable position.

The provision fails to take account of historical and structural inequalities that have long excluded women from owning or inheriting property across many African

societies. By tying property rights to marital status, the Protocol reinforces discriminatory norms and penalises widows who choose to remarry. This is especially damaging for rural women, who are less likely to have independent sources of income and are therefore more reliant on property for their economic survival.

Conditioning inheritance on a woman's choice to remain unmarried effectively forces widows to choose between exercising their right to remarry and securing their right to housing and economic security. This creates a de facto restriction on the right to remarry and undermines the widow's autonomy over her personal and familial decisions.

Importantly, this limitation also contradicts Article 20(c) of the same Protocol, which affirms the widow's right to remarry a person of her choice. To the extent that Article 21(1) takes away the benefit of continued residence upon remarriage, it acts as a clawback clause, diluting the protection offered elsewhere in the Protocol. This contradiction underscores the critical importance of treaty language. Rights that are weakly framed or qualified by restrictive clauses often fail in practice, particularly in the absence of robust jurisprudence and binding obligations on states.

This example reinforces a broader lesson: legal texts must be clear, consistent, and grounded in the lived realities of the people they seek to protect. Without precise language and strong enforcement mechanisms, the rights promised in regional instruments like the Maputo Protocol risk remaining aspirational rather than actionable.

3.4. Violence against Women as a form of Discrimination

The litigation of violence against women at the ACHPR has witnessed a regression from alignment with international and regional framework to the unfortunate understanding of discrimination lens through a "comparator perspective" which is a departure from established normative framework and undoing the progress and precedent set by the ACHPR's own jurisprudence. In the case of *Egyptian Initiative for Personal Rights and Interights v Egypt*, the Commission, conducts a cogent analysis, determining that the victims were exclusively women, the victims were not protected from the violence meted on them, and finally that the violations were perpetrated on the victims because of their gender. The Commission further juxtaposes the definition of discrimination in the Maputo Protocol and the CEDAW as well as the text of General Recommendation 19 on the nexus between violence against women and discrimination. The analysis of the Commission leads to the conclusion that indeed there was a violation of the right to equality and non-discrimination and the State therefore had attendant obligations to respond and end the violence faced by the Complainants.

In stark contrast, in the *EWLA and Equality Now v Ethiopia* decision, the Commission conducts an analysis of the right to equality and non-discrimination faced by the victim. It concludes that for a claim of discrimination to succeed, it must be sufficiently demonstrated that the victim had less favourable treatment than that accorded to others in analogous

situations. The Commission directed that the complainant must identify a comparator and demonstrate how the comparator's treatment is comparable to that of the victim. This sets a critical precedent and demonstrates the failure of the Commission to provide feminist, victim-centred jurisprudence that is aligned with international and regional frameworks. The Commission fails to see the violence committed against women as gendered, and the State's duty to prevent violence is therefore diminished. A worrying trend is the use of comparators in assessing equality and non-discrimination claims. This approach distorts the lived realities of women and ignores the structural and intersectional nature of gendered harms. If such flawed interpretations are applied to the AU CEVAWG, they risk placing women's rights on an uncertain and regressive path.

Lastly, in *Community Law Centre and Others v Nigeria*, the Commission again rendered a regressive decision that suggests that, without a specialised mechanism, issues relating to women's rights will continue to suffer injustice from the mechanisms that were meant to protect them. While the instant case was not on discrimination as we understand it, maternal health violations encompass violations that are gendered.

The need to establish a functional and competent mechanism before legislating cannot be overstated. Any regional body charged with upholding women's rights must be impartial, effective, and grounded in established international and regional human rights standards. Yet, current jurisprudence reveals a persistent failure by regional courts to recognise gender-based violence as a form of discrimination. This conceptual gap undermines efforts to ensure justice for victims.

Feminists and women's rights organisations must confront this reality head-on. We must ask what meaningful litigation on violence against women would look like in regional spaces that continue to fall short. And we must question whether justice is truly possible without a specialised, well-resourced, and survivor-centred mechanism designed to address gender-based violence as a violation of the right to equality and non-discrimination.



Step Four

Call to
action

4. Strategic Way Forward: A Two-Pronged Proposal

For those who seek immediate ratification, it is important to recognise that we now have a shared understanding of the need for consensus. Engaging with the majority of women's rights organisations, which are asking for time to learn and understand CEVAWG, has emerged as a critical step to ensure we move forward collectively and with clarity of purpose. The convention was published in early June.

We, thus, propose this two-pronged parallel engagement with the Convention as follows:

Step One: Pause and Reflect

Temporarily pause any ratification processes and instead initiate a structured review of the Convention. This involves:

- Assessing the gains and gaps within the Convention.
- Determining whether the identified gaps can be corrected through advocacy and interpretation, or if they are too fundamental and undermine the goals of eliminating violence against women and girls.
- Consulting widely with stakeholders to inform this analysis.

A. Conditional Progress

If, through Step One, we collectively agree that the Convention's shortcomings are manageable:

- Proceed with ratification efforts, but ensure that this is done with **clear strategic framing**.
- Develop an **open, critical, and informed engagement strategy** that addresses:
 - Normative, procedural, and institutional gaps in the treaty.
 - Systemic barriers to gender-responsive jurisprudence.
 - Institutional reforms needed at the African Commission on Human and Peoples' Rights (ACHPR) and the AU treaty section.
 - Lessons from past challenges (e.g. rejection of amici at the ECOWAS Court).
 - Integration into wider AU reform efforts and feminist accountability mechanisms.

B. Review and Restart

However, if the **review process reveals that the gaps are too significant** and may hinder the objectives of the Convention:

- Initiate a call for **re-opening the Convention** to allow for **deeper stakeholder engagement** and necessary revisions.
- Ensure that the revised treaty reflects the realities, challenges, and aspirations of women and girls across the continent.

