

THE QUALITY OF FREEDOMS ACROSS THE AFRICAN SMALL ISLAND DEVELOPING STATES

Victoria GRAHAM and Suzanne GRAHAM¹

Apart from Mauritius, five of the six African small island developing States (ASIDS) are relatively new to democracy with several only transitioning from one-party states to multiparty states in the early 1990s. As signatories to the Banjul Charter and several other international and regional conventions that promote democracy and human rights, the ASIDS are committed to upholding and promoting the fundamental freedoms of their people. This article examines, by way of a comparative analysis, the extent to which citizens within the ASIDS are free (including freedom from personal indignities and intimidation), that is the degree to which their civil and political rights are guaranteed in practice. In pursuit of this, a research sub-questions is: To what degree are de jure civil and political rights guaranteed in practice (de facto)? Findings reveal that both vital legislation and political will do exist to protect islander freedoms. However, real, practical enjoyment is impaired by a lack of capacity and a tendency by some to count immovable traditions as preferable to advancement and recognition of equal freedoms.

Key words: quality democracy; civil liberties; discrimination; political liberties.

1 INTRODUCTION

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms across Africa. Of the 53 African states that have ratified this Charter, six are African small island developing

¹ **Victoria GRAHAM** is an Associate Professor in the Department of Politics and International Relations, Faculty of Humanities, at the University of Johannesburg. Her research interests include the quality of democracy, comparative politics and diplomacy. She holds a PhD in Political Studies at the University of Johannesburg. Contact: victoriag@uj.ac.za. **Suzanne GRAHAM** is an Associate Professor in the Department of Politics and International Relations, Faculty of Humanities, at the University of Johannesburg. Her research interests include South Africa's voting behaviour at the United Nations, foreign policy and international relations. She holds a PhD in Political Studies at the University of Johannesburg. Contact: suzyg@uj.ac.za.

states (ASIDS): the Union of the Comoros (hereafter the Comoros), the Republic of Guinea-Bissau (Guinea-Bissau), Republic of Cabo Verde (Cabo Verde), Republic of Mauritius (Mauritius), the Seychelles and the Democratic Republic of São Tomé and Príncipe (São Tomé and Príncipe), also known as the ASIDS grouping. Emerging under the then Organisation of African Unity (Now African Union/AU) the Banjul Charter came into effect on 21 October 1986 and was inspired by various existing international human rights instruments. The ASIDS have long acknowledged, via various international platforms, that observance of human rights is a key tool for promoting sustainable development and therefore place great value in the protection of the universal values of democracy, good governance, and the rule of law, while drawing on their own cultural and ethnic diversities (Human Rights Committee, Mauritius 2017). At the third International Conference on Small Island Developing States in September 2014, the SIDS adopted the Small Island Developing States Accelerated Modalities of Action (S.A.M.O.A Pathway) in which they reaffirmed, *inter alia*:

the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law. We emphasize the responsibilities of all States, in conformity with the Charter, to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status (Sustainable Development Knowledge Platform 2015).

The purpose of this article, therefore, is to compare the quality of civil and political liberties (freedoms) in the ASIDS grouping. It will examine, by way of a comparative analysis, the extent to which citizens within the ASIDS are free (including freedom from personal indignities and intimidation), that is the degree to which their civil and political rights are guaranteed in practice. In pursuit of this, it asks: To what degree are *de jure* civil and political rights guaranteed in practice (*de facto*)?

As fundamental concepts in quality of democracy literature, freedom and equality encompass the entire possible set of basic rights including civil, political, and socio-economic rights (Diamond and Morlino 2005: xxv; Morlino 2011, 205). Formal equality is widely accepted and surmises both equality before the law, and the prevention of discrimination on the basis of, *inter alia*, sex, race, language, religion, and social conditions. The second, which is more complex, pertains to the pursuit of substantive equality. It concerns the necessity of removing obstacles that limit social and economic equality, and therefore also, “the full development of the human person and the effective participation of all workers in the political, economic, and social organization of a country” (Morlino 2011, 20). While substantive (socio-economic) equality is equally as important as formal equality (civil and political freedoms) in the ASIDS, the focus of this article is on the latter only.

Fundamental civil rights include, *inter alia*, the right to personal dignity, personal liberty, security, and a whole manner of freedoms including freedom of expression, and information; freedom of religion; freedom of assembly; association, and organisation, including the right to form and join trade unions and political parties; freedom of movement and residence (Diamond and Morlino 2005, xxv). Political rights comprise the right to vote, stand for office, to campaign and to organise political parties. The important point here is the ability of each individual citizen to be free to make their own decisions and to have a choice between potential parties and candidates. Unfortunately, a common feature of many states is that rights that appear completely secure in legal or constitutional

terms are not always upheld in practice. In other words, there is a significant gap between the *de jure* protection and *de facto* realisation of these rights (see, for example, Graham and Graham 2016). In addition to civil and political, the assurance of overall equality in society is equally as important. As such, it is also important to note the existence of gender, cultural and ethnic discrimination, among others. It is important to note at the outset that this article cannot investigate all of the civil and political liberties deemed important in ascertaining the quality of these freedoms in the ASIDS, for example, privacy and property rights are excluded from this discussion. Therefore, only a certain number have been selected for review across the ASIDS.

2 THE QUALITY OF FREEDOMS ACROSS THE ASIDS

In examining the quality of freedoms in the ASIDS, this article examines the extent to which civil and political liberties are upheld in these small states. The criteria for assessment are derived from the International Institute for Democracy and Electoral Assistance's State of Democracy Framework² and Leonardo Morlino's Tool for Empirical Research on Democratic Qualities.³ In pursuit of the above, the following indicators are examined: International commitments to rights protection; Freedom from intimidation and physical violation of the person (torture) and the right to liberty and security of the person; Freedom of expression and in information and degree of interference by government; Freedom of assembly and association; Women's rights, gender equality and freedom from discrimination; and The right to participate in public life/public affairs. Two aspects are assessed in each indicator of democracy: procedure and democratic outcome. Procedural aspects refer to, for example, constitutional directives in place and legislation; whereas outcomes refer to the degree to which such constitutional directives and legislation have been upheld in practice.

2.1 International commitments to rights protection

The Constitutive Act of the African Union (2000), of which all ASIDS are members, provides for a plethora of civil and political rights. Objective (h) promotes and protect human and peoples' rights in accordance with the Banjul Charter and other relevant human rights instruments; and Principle (l) promotes gender equality and (m) respect for democratic principles, human rights, the rule of law and good governance; n) promotion of social justice to ensure balanced economic development. At a regional level, the ASIDS are subject to the aforementioned objectives and principles as laid out in the AU constitutive Act. Internationally, as UN members, the ASIDS are subject to the oversight of various UN human rights bodies, including the Human Rights Council.

² See International IDEA (2010).

³ See Morlino (2011).

TABLE 1: ASIDS’ REGIONAL AND GLOBAL HUMAN RIGHTS CHARTERS AND INSTRUMENTS

	CVer	Como	G-Biss	Maur	ST&P	Seych
African Charter on Human and Peoples’ Rights (Banjul Charter)	✓	✓	✓	✓	✓	✓
African Charter on the Rights and Welfare of the Child	✓	✓	✓	✓		✓
2004 Solemn Declaration on Gender Equality in Africa	✓	✓	✓	✓	✓	✓
AU Convention Governing Specific Aspects of Refugee Problems in Africa	✓	✓	✓	✓		✓
Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol)	✓	✓	✓	✓	✓	✓
Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court on Human and Peoples’ Rights		✓	Signed not ratified	✓	Signed not ratified	Signed not ratified
Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa		Signed not ratified				
Universal Declaration of Human Rights	✓	✓	✓	✓	✓	✓
International Covenant on Civil and Political Rights (ICCPR)	✓	Signed not ratified	✓	✓	✓	✓
International Covenant on Economic, Social and Cultural Rights (ICESCR)	✓	Signed not ratified	✓	✓	✓	✓
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	✓	✓	✓	✓	✓	✓
Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)	✓		Signed not ratified	✓		
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	✓	✓	✓	✓	✓	✓
Convention on the Rights of Persons with Disabilities (CRPD)	✓	✓	✓	✓	✓	✓
Convention on the Rights of the Child (CRC);	✓	✓	✓	✓	✓	✓
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	✓	✓	✓	✓	✓	✓
International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)	✓				✓	✓
International Convention for the Protection of All Persons from Enforced Disappearance	Signed not ratified	Signed not ratified	Signed not ratified			✓

Source: Compiled by the authors.

Articles 1-14 within the Banjul Charter refer to civil and political rights. These are the rights and freedoms that protect people from any other member of society, including governments or social organizations or private individuals, from infringing on their rights as well as being able to participate in political society, within the law, and without being discriminated against or repressed. From Table 1, it is apparent that the ASIDS are signatories to most, if not all, of the international instruments and conventions on rights protection. Ratification, however, is still required across a number of these charters.

2.2 Freedom from intimidation and physical violation of the person (torture) and the right to liberty and security of the person

Citizens are entitled to feel secure and protected in their daily lives. A country may embrace *de jure* constitutional rights but to what extent are these rights upheld and protected in practice? Are there transgressions by the state in the form of torture or other cruel, inhumane, or degrading treatments or punishments? As noted in Table 1, all six of the ASIDS have signed and ratified arguably the most significant international and regional treaties and covenants that prohibit torture and ill treatment, including the United Nations Convention against Torture and other Cruel, Inhuman, and Degrading Treatment or Punishment (UNCAT) and the Banjul Charter. Articles 5 and 6 of this African Charter pertain specifically to human dignity and the prohibition of threats, such

as torture, to liberty and security of the individual.⁴ However, only Cabo Verde and Mauritius have ratified the 2006 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OPCAT establishes a monitoring mechanism in order to prevent torture and other cruel, inhuman, and degrading treatment or punishment at places where a person is denied his or her liberty. Ratification, and subsequent legislation of OPCAT, would be a critical indication and commitment of the government to the eradication of torture.

Prohibition of torture is entrenched in Section 7 of the Mauritian constitution, which provides that “no person shall be subjected to torture or to inhuman or degrading punishment or other such treatment”. Article 78 of the country’s Criminal Code makes torture a crime with those liable being subject to a fine not exceeding 150,000 rupees and to imprisonment for a term not exceeding 10 years. Furthermore, Mauritius has fulfilled its OPCAT obligation to establish National Preventive Mechanisms, which are independent national bodies for the prevention of torture and ill-treatment at domestic level. Established under the country’s National Human Rights Commission, Mauritius’ National Preventive Mechanism Division investigates any complaints made by a detainee (Ninth to Tenth Combined Periodic Report of the Republic of Mauritius on the Implementation of the African Charter on Human and People’s Rights 2019, 59). In Cabo Verde, both the constitution and law prohibit torture and cruel, inhuman, or degrading treatment or punishment.⁵

Although São Tomé and Príncipe has not yet ratified OPCAT, Article 23 of its constitution prohibits torture or mistreatment or cruel, inhuman, or degrading treatment or punishment and paragraphs 3 and 4 of Article 215 of the country’s Criminal Code includes provisions on torture and other cruel, degrading and inhuman treatment (Human Rights Council 2015, 4). In Article 16 of the Seychellois constitution, every person has a right to be “treated with dignity worthy of a human being and not to be subjected to torture, cruel, inhuman or degrading treatment or punishment”. This constitutional guarantee has not yet, however, translated into legal provisions. Seychelles has yet to adopt legislation that expressly criminalises torture and it has not yet established a National Preventive Mechanism in compliance with international standards (Report of the Human Rights Promotion Mission to the Republic of Seychelles 2015, 67). As with the other ASIDS, Guinea-Bissau also prohibits torture in its constitution; Article 37 states that “No one shall be submitted to torture or to cruel, inhuman or degrading treatment”. Similarly, the Comorian constitution and law also prohibits torture and the like.

While torture may not be prevalent in practice, other aspects of individual insecurity and intimidation are evident in some of the ASIDS. For example, within

⁴ Article 5 of the Banjul Charter states that “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”. Article 6 of the Banjul Charter states that “Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”

⁵ Article 29 of the Cabo Verdean constitution states that: 1. Human life and the physical and moral integrity of the human person shall be inviolable. 2. No one may be subjected to torture, punishments or treatments that are cruel, degrading, or inhumane, and under no circumstance whatsoever shall there be a death penalty.; Torture was criminalized and was classified as a crime against human dignity. It carried sentences ranging from two to six years in prison, or from five to 12 years in case of aggravated crime.

Guinea-Bissau prisons, the lack of punishment for abuses by detention officers' results in often extremely poor conditions for detainees. In Seychelles, and Cabo Verde too, prisons are overcrowded and impunity for excessive force by security officers is problematic. Despite some progress, security remains a problem along the porous borders of Guinea-Bissau and actors within the illicit global economy exploit weak institutions and corruption within the armed forces (Freedom House 2020a). Police corruption is also evident within Seychelles, especially in terms of soliciting bribes (Freedom House 2020b). In the Comoros, the constitution and law prohibit cruel, inhuman, or degrading treatment, but there have been reports that law enforcement officials have employed these methods. Fishermen in Ouani on the island of Anjouan were suspected of being involved in smuggling and were arrested by police who allegedly tortured them. Rather telling is the fact that the UN Special Rapporteur on Torture, Nils Melzer, was denied access in June 2019, to three areas under the administration of the Gendarmerie and the judiciary in Moroni and the island of Anjouan (United Nations Human Rights Office of the High Commissioner 2019). This example of obstruction to external review of its internal procedures in relation to torture, speaks more to the failure of the Comoros to align its domestic actions with its declared commitment to universal norms and values, then it does to an example of the Comoros exercising its sovereign rights.

Cabo Verde authorities might be seen to be taking their commitment to fundamental freedoms more seriously as allegations of abuse are investigated and action is taken against human rights abusers by the National Police Council and the National Commission for Human Rights and Citizenship (CNDHC) if abuses are allegedly at the hands of police officers. In 2019, 21 cases were registered with National Police Council including allegations of rape and cruelty by a woman detained in October 2019 of three police officers in Santa Catarina de Santiago (US Department of State, Cabo Verde 2019).

2.3 Freedom of expression and access to information

The ASIDS are signatory to several international declarations where freedom of expression is supported and actively promoted, for example, the AU's 2002 Declaration of Principles on Freedom of Expression in Africa which expounds the importance of media freedom: "freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print ... is a fundamental and inalienable human right and an indispensable component of democracy". It is a challenge trying to affect a balance between freedom of expression on the one hand, and the protection of people from injury and hurt as a result of these freedoms on the other.

Cabo Verde has the constitutionally protected, procedural policies and institutions in place that ensure that freedom of expression is promoted, namely: an independent press, a democratic political system that is operational, and a working judiciary. Evidence of censorship within the press is generally self-imposed and linked to career goals in the public sector media or social connections which makes exposés difficult. In a recent development the Media Regulatory Authority (ARC) and the Cabo Verdean Association of Journalists (AJOC) responded in protest to a newly published Code of Ethics and Conduct, attributed to the Cabo Verde Television and Radio (RTC) board of directors, considering it an abuse of freedoms of the press and expression. The code undermines journalist freedoms and violates the constitution, according to the ARC and the Community of Portuguese-Speaking Countries (CPLP) Federation of

Journalists. AJOC characterized the code as censorship and called for its suspension. The rule of law was threatened in Cabo Verde as the RTC board refused to acknowledge the opinion of the ARC about its processes, when it is the duty of the ARC to regulate government policy (US Department of State, Cabo Verde 2019).

In the Comoros, nobody is allowed to criticize the government or share unrestricted public opinion contrary to the goals of the state and libel is punishable. Independent media are active but restricted and self-censorship is evident. Journalists have been arrested for allegedly insulting government officials and inciting hatred and public disorder through defamation. Daily newspapers have been blocked from printing stories concerning the harassment of journalists (US Department of State, Comoros 2019).

Chapter II of the Mauritian constitution protects the freedom of expression of individuals, for example the right to hold opinions and receive information without interference. However, this freedom has been threatened by an amendment of the Information and Communication Technologies (ICT) Act, in late 2018, which allows for the Mauritian government “to systematically silence ... Internet users” (Sowkhee 2018). Debate in parliament swung from accusations of the government becoming a censorship machine to the need for the legislation as a protection against online child abuse. Critics of this amendment argue that this is a clear violation of freedom of expression and that the increased penalties of up to 10 years imprisonment for wrongdoing is disproportionate. Similarly, in the Comoros, there is also concern that the penalty for defamation is disproportionate - 18 months’ imprisonment - and yet there is also a recognition of the need to balance freedom of expression with the protection of other rights (US Department of State, Comoros 2019). The same is evident in Cabo Verde, where freedom of speech is generally upheld, but the government does not permit hate speech (US Department of State, Cabo Verde 2019).

Balancing freedoms across different areas of society can be challenging. For example, Seychelles now has a Speaker’s Corner, in Freedom Square in the capital city Victoria, where citizens can exercise their fundamental right to freedom of expression, but citizens are expected to use and not abuse this platform. This initiative was approved by Cabinet under the Public Assembly Regulations 2019 Act. President Danny Faure announced this undertaking in part in response to an increase in public demonstrations in Seychelles since 2016 and declared that the Seychellois: “live in a free country, in a democratic country. Protesting is a right under ... [their] Constitution, but it needs to be done with responsibility, upholding order and peace. This is essential in the maintenance of stability, which is what allows the country to progress” (Laurence 2019).

Guinea-Bissau’s constitution protects a free press and allows for media diversity. Although in the past journalists have been intimidated and harassed for any negative reporting on politicians, this and other forms of censorship have decreased in recent years (Freedom House 2019b). São Tomé and Príncipe has similar constitutional protections in place. Media outreach is limited but not restricted. This is especially true of online media, although this is not due to censorship but simply lack of adequate infrastructure. A small percentage of the population has access to the internet (Freedom in the World 2018).

The right of access to information is protected in Article 9 of the African Charter but states without access to information laws, make it difficult for citizens to

request public information in practice. According to the 2020 Global Integrity Report, Mauritius has a patchy record regarding public access to information. While a request for information can be made in writing or via email to the appropriate public authority, the process lacks transparency, can take several weeks to fulfil, and requests have, on occasion, been lost. Positive progress has been made, however. Traditionally lacking any law on access to information, the Mauritian government finally considered a Freedom of Information Bill in 2019, although progress on the Bill has been slow. The Seychellois constitution makes provision for the right to information although it was only in 2018 that an Access to Information Act was enacted and it took further prompting by the Association for Rights, Information and Democracy to begin implementing the policy. Like Mauritius, public requests for information can take weeks to fulfil but the first ever commemoration of Universal Access to Information Day in September 2019 by the Seychellois government, would seem to indicate an increasing appreciation for this right. In Cabo Verde, a lack of consistency of information delivery standards across institutions is reflective of an ineffectual public information process. In Guinea-Bissau, São Tomé and Príncipe, and the Comoros, access to public information is difficult, made worse by a lack of online presence in São Tomé and Príncipe and, in Guinea-Bissau and the Comoros, a general culture of non-transparency. A lack of capacity also persists in these ASIDS, since the majority of public entities and state institutions do not have websites and those that do, do not update their information regularly.

2.4 Freedom of assembly and association

Article 45 (1)(b) of the Banjul Charter, declares that the African Commission on Human and Peoples' Rights is mandated with the task of identifying principles and rules involved in the legal protection of fundamental rights and freedoms on the continent. In Niger, in May 2017, the Guidelines on Freedom of Association and Assembly of the African Commission were adopted. Freedom of assembly and association refers to: civil society groups, both formal and informal, who are engaged in aspects of public policy in political, social, or cultural life in advance of a common purpose, who gather in public or private to advance this purpose. The right to assembly could be through "demonstrations, protests, meetings, processions, rallies, sit-ins, and funerals, through the use of online platforms, or in any other way people choose" (Guidelines on Freedom of Association and Assembly in Africa 2017, 9).

In Cabo Verde, the constitution allows for assembly and association as long as they are peaceful, however, in the Comoros there is evidence of the government preventing the right of groups to gather. After the 24 March 2019 presidential elections, for example, protestors outside the election commission office were disbursed by police using tear gas, gunfire, and barricades. Throughout the year, the Interior Ministry banned all union and social demonstrations and when public school teachers planned a peaceful protest for 7 March 2019, the area was blocked by security forces (US Department of State, Comoros 2019). Similarly, in Guinea-Bissau the right of groups to gather freely has often been restricted in the past. For example, a student march in protest of striking teachers and school closures in February 2019 was violently suppressed by police. Moreover, similar planned marches for May 2019 were prevented from taking place. However, despite these incidents, political rallies linked with the elections were carried out peacefully suggesting some improvements in the right of people to assemble freely (Freedom House 2020c). Section 13(1) of the Mauritian constitution states that "no person shall be hindered in the enjoyment of his freedom of assembly

and association.” In the Seychelles, the constitution protects freedom of assembly and association. However, state authorities have banned public gatherings before, and the police commissioner may deny the right of assembly to groups on various grounds. Civil servants have also reported feeling intimidated and victimised for attending opposition party activities (United Nations High Commissioner for Refugees 2016).

2.5 Women’s rights, gender equality and freedom from discrimination

As AU members, the ASIDS have all reaffirmed their commitment to gender equality as enshrined in Article 4 of the Constitutive Act of the AU through adopting the 2004 Solemn Declaration on Gender Equality in Africa and other African Charters, as well as ratifying both the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the International Convention Against all Forms of Racial Discrimination (CERD). As with other international conventions, the CEDAW and the CERD take precedence over domestic law in the signatory country so each country is obliged to harmonize its national legal framework with these Conventions. Several of the ASIDS have made significant progress in both gender equality and the protection of peoples from discrimination. Women’s rights and gender equality will be discussed first.

Procedurally, progress has been made in improving *de jure* gender equality across the ASIDS. Women are protected from discrimination through provisions in their constitutions and through various gender-relevant pieces of legislation.⁶ The Cabo Verdean constitution goes beyond a general acknowledgement of equality to prohibit, specifically, discrimination based on sex, and actively mandates the government to remove the obstacles to equal opportunity – “whether economic, social, cultural and political, especially those that discriminate against women in the family or in society. Article 47 prohibits words or behaviour that advocate discrimination against women; and Article 54 endorses equal participation of women and men in political life” (African Development Bank 2018, 8–9). Women’s rights are also solemnly enshrined in the revised Comorian constitution. Article 30 guarantees women the right to protection by the public authorities against neglect, exploitation, and violence in all their forms. Article 34 recognizes women’s right to stand for election to local and national political bodies, and Article 36 provides for the fair and equitable representation of men and women in the government. In the São Tomé and Príncipe constitution, Article 15, paragraph 2 espouses that “women are equal to men in rights and obligations. Women are entitled to fully participate in political, economic, social and cultural life”.

In 2008, Mauritius adopted a National Gender Policy Framework intended to bring together all relevant stakeholders under one unifying framework and set of principles (African Gender and Development Index (AGDI), Mauritius Report 2018, 53). National gender machinery exists to oversee the implementation of gender policies, most prominently, the Ministry of Gender Equality, Child Development and Family Welfare (MGECDFW).⁷ Cabo Verde has established the Cape Verdean Institute for Gender Equality, and in Guinea-Bissau, the Instituto

⁶ See Article 1.2 of Cabo Verde’s constitution; Articles 24 and 25 of Guinea-Bissau’s constitution; Article 16 in the Mauritian constitution; preamble of the Seychellois constitution; Article 15 in the ST and P constitution.

⁷ Other institutions are the National Steering Committee on Gender Mainstreaming, National Women’s Council, National Women Entrepreneur Council, Social Action Committees, Women’s Associations and the Gender Unit.

da Mulher e Criança (Institute for Women and Children) is the government institution responsible for advancing gender equality and women's empowerment with oversight and guidance from the Ministry of Women, Family and Social Cohesion (African Development Bank 2015, 16–17).⁸

In 2011, Cabo Verde adopted a law that criminalized gender-based violence, the *Lei VBG*, and has since conducted training and awareness-raising activities (Human Rights Committee, Cabo Verde 2019; Committee on the Elimination of Discrimination against Women, Cabo Verde 2019). Like Cabo Verde, São Tomé and Príncipe passed a law strengthening the legal protection mechanisms for victims of crimes and domestic and family violence (Act No. 12/2008). Guinea-Bissau has also passed a landmark law against domestic violence (2013), and another banning the practice of Female Genital Mutilation (2011). A key provision of the 2013 law lies in its definition of domestic violence as a public crime, meaning that even if a woman does not or cannot file a complaint, other household members or neighbours can do it on her behalf. The Comoros too has adopted a national strategy to combat violence against women and minors as well as a national gender equality and equity policy, which was revised and approved in 2018. Notably though, a lack of funding has impeded the plan of action for this policy (Human Rights Council 2019, 13). The Seychelles has also responded to the domestic violence situation in its country. Following a study conducted in 2016 that revealed the overwhelming number of Seychellois women that experienced some form of gender-based violence, the government committed itself to “strengthening legislative protection, gender justice, service response and awareness raising on this matter”. It developed a Domestic Violence Bill, which criminalizes domestic violence as well as provides protection to male victims of domestic violence (Committee on the Elimination of Discrimination against Women, Seychelles 2019). In 2019, this Bill had yet to be enacted.

Substantive progress in *de facto* gender equality across the ASIDS is more varied and much work still needs to be done to improve gender equality. Cabo Verde has succeeded in adopting a gender mainstreaming approach and prioritized issues such as the fight against gender-based violence, the promotion of economic empowerment, including employment and decent work for women, and positive discrimination of women in rural areas (Committee on the Elimination of Discrimination against Women, Cabo Verde 2019; Human Rights Committee 2019). Both the Seychelles and Guinea-Bissau have also created national policy and action plans to promote gender equality and equity. In São Tomé and Príncipe, the education policy has been changed, in part thanks to the lobbying of the Global Partnership for Education, removing the Disciplinary Act prohibiting pregnant girls from attending classes or school activities. “This is an important step in the right direction, showing that São Tomé and Príncipe is investing in girls and gender equality” (Ramos 2020).

Despite some limited success, various concerns remain. It seems a slow task to eradicate the cultural norms and traditions that impose gender roles and contribute to *de facto* gender based discrimination. In Guinea-Bissau, for example, women's basic rights are still violated across many aspects of Bissau-Guinean society including access to education, health, justice services, and inheritance (African Development Bank, Guinea-Bissau 2015, 17). Women's access to land

⁸ In Guinea-Bissau, the National Policy of Equality and Gender Equity which provides national authorities with a policy framework to ensure women's access to political, social, and economic structures.

and economic resources is also limited. Women farmers make up the primary cashew labour force and also farm rice and horticulture for family consumption and market sales. Despite being the main users of the land as farmers and producers, and despite domestic law confirming the equality of the sexes, in practice women do not have secure land tenure (Human Rights Council, Guinea-Bissau 2019, 6).

In Cabo Verde, the UN Committee on the Rights of the Child (2019) noted concern about the prevalence of discrimination against girls rooted in “patriarchal attitudes and stereotypes concerning the roles of women and men”. Moreover, São Tomé and Príncipe has a history of child marriage to confront and eliminate by 2030 in line with target 5.3 of the SDGs. In 2018, more than a third of girls were married before the age of 18 and 8% were married before their 15th birthday, driven largely by gender inequality and the belief that women and girls are somehow inferior to men and boys (Girls Not Brides 2018). In Mauritius too, patriarchy remains embedded in society so that “prevailing norms, values and culture constitute barriers to the promotion of and realisation of gender equity in the country. Moreover, the lack of expertise at the level of institutions, especially with regard to gender issues, has resulted in a slower implementation of gender sensitive policies, projects, and activities” (AGDI 2018, 7). Moreover, conservative values govern notions of ‘respectable femininity’. Women are discouraged from adopting what is considered to be ‘masculine behaviour’ which is one of the reasons why, for example, women do not often enter into politics as a career in Mauritius (Ramtohl 2019).

The World Bank reports that in Comorian society too, gender inequalities remain entrenched. As a Muslim country, Comorian culture is firmly anchored in religious traditions and customs which tend to emphasize male interests and male power. As a result, a women’s position is largely seen as that of the ‘homemaker’, focusing on the family, with little power and lower status as compared to men. Despite strong patrilineal traditions, the Comoros is also matrilineal which gives women a certain presence in society in terms of asset ownership, since all inheritable property is in the legal possession of women (Green Climate Fund 2019). However, while women generally inherit land and houses according to custom, they do not always have usufruct rights, which tend to go to their husbands, maternal uncles, or brothers. Moreover, women are under-represented in the civil service (where a gender-biased patronage system works against them), in local politics, in administration, and in the legal and judiciary profession (The World Bank 2019, 28).

A common theme also emerging across the ASIDS manifests in women’s economic inequality, lack of agency and limited access to wealth-generating opportunities. In Guinea-Bissau, for example, the widespread gender inequality in the country continues to be a major obstacle to sustainable economic and social development and the gender inequality gap continues to be very wide (Human Rights Council, Guinea-Bissau 2019, 2). In Cabo Verde too, women still have lower economic status and, in some sectors, still receive lower salaries than men for equal work (US Department of State, Cabo Verde 2019, 22).

Whatever the stage of progress of gender equality improvement across the ASIDS, women must be recognized as the driving force of each country’s sustainable development and the ASIDS must continue to adopt *and implement* relevant policies and strategies to that effect.

2.6 Anti-discrimination

Among the ASIDS, Mauritius appears to be leading the way in promoting inclusive equality and protecting vulnerable groups from discrimination. Article 19 of the Banjul Charter states that “All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another”. In compliance with the Charter, the Mauritian constitution firmly establishes the right of every citizen to be treated equally and to live a life free from discrimination. It prohibits discrimination on, *inter alia*, the ground of caste, colour, creed, sex, and race. It also provides that no law shall be discriminatory either in itself or in its effect (Section 16). In addition, citizens who believe their rights to be contravened because of discrimination may apply to the Supreme Court for redress (Section 17). This is supported by the Mauritian Criminal Code which also makes provisions for offences, and related penalties, in relation to discrimination in general. Mauritians found guilty of “stirring up racial hatred” are subject to a fine not exceeding 100,000 rupees and penal servitude for a term not exceeding 20 years.

In an effort to enhance social justice, promote national unity, and bring economically vulnerable communities into mainstream society, Mauritius passed the Social Integration and Empowerment Act in 2016 to promote social integration and empowerment of persons living in absolute poverty. Through the Act, programmes have been established that provide both financial assistance and emotional support to impoverished families.

When it comes to discrimination against the lesbian, gay, bisexual, transgender, questioning/queer and intersex (LGBTQI) community, the ASIDS face a dilemma manifesting in a clash of values: international norms promoting non-discrimination on the basis of sexual orientation, on the one hand, and arguments promulgated by Africans that homosexuality goes against African values and traditions, on the other (Viljoen 2019). Polling by Afrobarometer between 2016 and 2018 found that 78 percent of Africans across 34 countries were still intolerant of homosexuality (Council on Foreign Relations 2020). Regardless of feelings amongst some African governments and citizens on the ground, the African Commission on Human and People’s Rights, to which the ASIDS are a party, espouses the protection of sexual minority rights (Resolution 275). This *de jure* regional mandate has, *inter alia*, encouraged the majority of the ASIDS grouping to align their legislation. Over the last 10 years, all of the ASIDS, apart from the Comoros, have sponsored declarations in support of LGBTQ+ rights either in the UN General Assembly or in the UN Human Rights Commission, or both.

The Mauritian government has demonstrated much support for LGBTQI community at large. In November 2018, the Ministry of Justice, Human Rights and Institutional Reforms sought technical assistance from the Human Dignity Trust, a UK-based member of the Equality & Justice Alliance, to assist in advancing the rights of LGBTQ people. The assistance provided includes “the undertaking of sensitization activities, engaging with international networks of experts and champions, and receiving support to develop resources, knowledge and capacity to draft and amend legislation with a view to enhancing protection of the LGBTQ people in Mauritius.” While medical sex change is not possible in Mauritius, government hospitals provides hormone treatment for trans people, free of charge.

Mauritian efforts to ensure non-discrimination seem to have borne fruit in several ways. Apart from reports by some women and members of the AfroMauritian and Muslim communities, the overwhelming majority of Mauritians do not experience ethnic, religious, or gender discrimination and harassment. Most Mauritians show tolerance for people of a different ethnicity, religion, or nationality and increasing public tolerance of the LGBTQ community finds expression in public respect for the rights of the LGBTQ community to conduct legally authorized marches annually (Afrobarometer 2018).

Cabo Verde's constitution prohibits discrimination on certain grounds. However, comprehensive anti-discrimination legislation that covers all the grounds prohibited under the ICCPR, including the protection, and safeguarding of human rights of lesbian, gay, bisexual and transgender persons, is lacking. In 2019, the United Nations Human Rights Committee expressed concern that individuals belonging to certain groups "continue to face forms of discrimination, in particular, persons living with HIV/AIDS, persons with disabilities, and lesbian, gay, bisexual and transgender persons" (Human Rights Committee, Cabo Verde 2019, 3). Persistent social discrimination generally takes the form of public mockery and appearance-based discrimination (US Department of State, Cabo Verde 2019).

In response to a 2015 United Nations recommendation that Seychelles expedite the decriminalisation of homosexuality; consensual same-sex sexual activity between men was decriminalized in 2016.⁹ Despite very few reports of actual discrimination against LGBTI persons, activists argue that discrimination and stigma are common especially in interpersonal interactions and on social media with some still refusing to accept changing social and sex roles and diverse sexual minorities (US Department of State, Seychelles 2019). Some progress has been made by the Seychellois government to allow LGBTQI organisations to join the government's civil society platform and greater efforts have been made to emphasise the human rights of sexual minorities on mass media, through documentaries, live discussion programmes and forums (Committee on Elimination of Discrimination against Women, Seychelles 2019). The creation of the Non-Governmental Organisation, LGBTI-Sey in 2016, has also helped to focus the discussion and raise awareness.

In both Guinea-Bissau and São Tomé and Príncipe, laws no longer criminalize consensual same-sex sexual activity, but antidiscrimination laws do not explicitly extend protections to the LGBTQI community based on their sexual orientation, gender identity, or sex characteristics. Occasionally, social discrimination takes place in São Tomé and Príncipe, with most rejection coming from family and friends (US Department of State, São Tomé and Príncipe; Guinea-Bissau 2019). There are no LGBTQI organizations in São Tomé and Príncipe, but in Guinea-Bissau, activist groups such as 'Big Mamas' fight for the rights of LGBTQI people. Homosexuality in this ASID is slowly becoming more accepted in the community (with reservations). Big Mamas member and activist, Edimilson Silva, stated in 2019 that: "In the past, it used to be dangerous, but now you can walk out and almost nobody does anything to you" (Peyton 2019).

The Comoros remains the only ASID where the LGBTQI community is discriminated against in law. Consensual same-sex sexual activity is criminalised through Article 318 of the 1981 Penal Code. Anyone found guilty of committing 'improper or unnatural' acts faces a penalty of up to five years imprisonment and

⁹ Same-sex sexual activity between women was never criminalized.

a fine of 50,000 to one million Comorian francs. In practice, this law is not generally enforced, and no arrests or prosecutions have taken place in the Comoros in years. However, heavy societal pressure and government's preference for regarding sexual orientation as a "private matter and thus not a priority" has meant that many in the community choose not to publicly reveal their sexual orientation and there are no local LGBTQI organizations (Human Rights Council 2019; US Department of State, Comoros 2019).

2.7 The right to participate in public life/public affairs

The Banjul Charter does not explicitly acknowledge the right to vote as a means of political participation, but Article 13 states that "(1) Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law". Article 25 of the ICCPR does explicitly recognise the right of citizens to vote as well as to take part in the conduct of public affairs, directly or through freely chosen representatives. All of the ASIDS are procedurally compliant as all constitutions give citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage. Interestingly, any residents from a member country of the CPLP which includes, *inter alia*, Guinea-Bissau, may vote in municipal elections regardless of how long they have resided in Cabo Verde.

Whereas the opportunities for women to participate in political life is fairly limited in Comoros, this is not due to legal restrictions and more to do with cultural and traditional factors that prevent women from involving themselves (Human Rights Council, Comoros 2019, 7). Nevertheless, a model for other women in society exists in the person of Sitti Farouata Mhoudine, who won the March 2019 gubernatorial election and is the first female governor representing Grande Comore). Women and minorities do participate in political life in Cabo Verde. Indeed, parliament adopted a Gender Equality Law (Lei de paridade) on 28 October 2019 which intends to strengthen gender equality in electoral participation and management positions in public service (EU Annual Report on Human Rights and Democracy in the World, 2019, 80).

No laws limit participation of women in Guinea-Bissau or São Tomé and Príncipe either, although some election observers have suggested that, like the Comoros, traditional and cultural factors do limit the political participation of women as compared with men. A gender parity law (2018) exists in Guinea-Bissau that requires that 36 percent of candidates be female, but no political party complied with this requirement in the last legislative elections. On a positive note, the cabinet of the newest government reflects equal gender representation, with eight of the 16 ministries led by women (US Department of State, Guinea-Bissau 2019). Mauritius adheres to its ratification of the Southern African Development committee decision that women's participation in politics be increased by 30% although this is a slow process in reality. Although the law promotes the participation of women at local level by requiring that at least one of three candidates contesting elections in each ward or village be of a gender different from the others; this gender balance does not extend to national legislative elections. A progressive step came in 2015 when Ameenah Gurib-Fakim became the first female president of the country, however, this positive step was undermined when she resigned in 2018 due to allegations of corruption (US Department of State, Mauritius 2019).

3 CONCLUSION

The aim of this article was to examine the extent to which citizens within the ASIDS are free (including freedom from personal indignities and intimidation), that is the degree to which their civil and political rights are guaranteed in practice. In pursuit of this, research sub-questions are: To what degree are *de jure* civil and political rights guaranteed in practice (*de facto*)? Do certain rights outweigh others and what are the potential trade-offs if this is the case? The following indicators were examined: Freedom from intimidation and physical violation of the person (torture) and the right to liberty and security of the person; Freedom of expression and in information and degree of interference by government; Freedom of assembly and association; Women's rights, gender equality and freedom from discrimination; and The right to participate in public life/public affairs.

Common problems are a lack of state funding, a consequence of which is inefficiency, and in the case of São Tomé and Príncipe, a lack of independence from government interference. All ASIDS have ratified international treaties that prohibit torture and the majority of the ASIDS have harmonised their domestic legislation with these international commitments. In cases where no domestic policy exists to actively criminalise torture, there are other measures in place that prohibit its occurrence. However, there continue to be allegations of police abuse as well as overcrowding in prisons across the ASIDS. All ASIDS guarantee freedom of expression and access to information but the Comoros remains more rigid in its interpretation of freedom of expression in particular. The public cannot easily access state information, largely as a result of infrastructural and logistical challenges, not because of a lack of legislative guarantees. The ASIDS have ratified all of the international conventions that promote gender equality. However, substantive implementation remains slow where cultural and traditional norms and values persist, especially in relation to patriarchy and economic suppression of women. Lack of agency among women and girls further compounds the problem. As regards the LGBTQI community, all of the ASIDS have legislation in place that promote equality, even though there are still deeply held negative beliefs about same-sex relationships (across African culture generally) that continue to be difficult to dispel. There are positive signs though that ASIDS publics are growing more tolerant of differences. All ASIDS have legislation and constitutional guarantees in place that allow for participation in public life. However, in practice, many women still do not participate as much as they could, mostly again as a result of prevailing societal and cultural beliefs and traditions about perceived roles of women.

Procedurally, all ASIDS are aligned with African and other international conventions on civil and political liberties. However, persistent cultural traditions continue to play a role in preventing full realisation of rights in practice. Local realities mean that substantive adherence to these liberties is often slow or, in some cases, ineffectual, and wider international support is required in the form of, *inter alia*, financing, capacity building, expertise, peer review, and monitoring. Movement towards increased *de jure* freedoms is evident but *de facto* implementation is lacking in areas and this needs attention if the actual experiences of *all* of the island people are to improve.

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KAKOVOST SVOBOŠČIN V OTOŠKIH AFRIŠKIH DRŽAVAH V RAZVOJU

Z izjemo Mavricija je pet od šestih afriških malih otoških držav v razvoju (ASIDS) demokratičnih novincev; večina je v zgodnjih devetdesetih letih prejšnjega stoletja zgolj prešla iz enopartijskih v večstrankarske države. Kot podpisniki Banjulske listine in številnih drugih mednarodnih in regionalnih konvencij, ki spodbujajo demokracijo in človekove pravice, so države ASIDS zavezane spoštovanju in spodbujanju temeljnih pravic in svoboščin svojega prebivalstva. Članek s primerjalno analizo preučuje, v kolikšni meri so državljani znotraj ASIDS-a svobodni (vključno s svobodo pred osebnimi stiskami in ustrahovanjem) in kako so v praksi zagotovljene njihove državljanske in politične pravice. V iskanju odgovorov na ta vprašanja si avtorici zastavljata raziskovalno podvprašanje, in sicer v kolikšni meri so de jure državljanske in politične pravice zagotovljene v praksi (de facto)? Ugotovitve kažejo, da za zaščito svoboščin obstajajo tako pomembna zakonodaja kot tudi politična volja. Vendar praktično uživanje svoboščin ovira pomanjkanje zmogljivosti in nagnjenost nekaterih, da nepremične tradicije cenijo bolj od napredka in priznavanj za vsem državljanom enakih svoboščin.

Ključne besede: kvalitetna demokracija; svoboščine; diskriminacija; politične in državljanske pravice.