

# Article 1

## Definitions

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For the purpose of the present Protocol:

- (a) 'African Charter' means the African Charter on Human and Peoples' Rights;
- (b) 'African Commission' means the African Commission on Human and Peoples' Rights;
- (c) 'Assembly' means the Assembly of Heads of State and Government of the African Union;
- (d) 'AU' means the African Union;
- (e) 'Constitutive Act' means the Constitutive Act of the African Union;
- (f) 'Discrimination against women' means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life;
- (g) 'Harmful Practices' means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity;
- (h) 'NEPAD' means the New Partnership for Africa's Development established by the Assembly;
- (i) 'States Parties' means the States Parties to this Protocol;
- (j) 'Violence against women' means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war;
- (k) 'Women' means persons of female gender, including girls.

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## 1 Introduction

The evolution of women's rights in Africa is discernible through a number of developments. Undeniably, the most significant is the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) in 2003. Hailed as a new dawn, the Maputo Protocol presents the key qualities of a human rights treaty while adding innovative scope to the human rights protection of women and girls. Article 1, the definitions clause of the Protocol,

introduces the key institutions and norms central to promoting and protecting women's rights in Africa. These definitions are the focus of this chapter.

A definition assigns meaning, gives clarity, and elucidates the scope of a term. A review of various drafts of the Maputo Protocol reveals that the definitions in article 1 underwent revision similar to other substantive provisions of the Protocol. This detail demonstrates that the final meanings arrived at are the subject of careful consideration and intentionality on the part of the drafters.

Article 1 of the Maputo Protocol provides a list of terms that ranges from those expounding on acronyms and short titles, such as 'AU' and 'NEPAD', to those whose definitions are linked to substantive rights in the Protocol, such as 'discrimination against women' (article 2), 'harmful practices' (article 5) and 'violence against women' (article 4).

Definition articles are a common feature of international human rights treaties with varying approaches. Some treaties, like the Maputo Protocol, include a broad definitions section; others define one or a few terms, while others, such as the African Charter on Human and Peoples' Rights (African Charter), exclude a definitions section altogether. The comparable United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) only defines the term 'discrimination against women'.<sup>1</sup> The United Nations Convention on the Rights of the Child (CRC),<sup>2</sup> as well as its counterpart, the African Charter on the Rights and Welfare of the Child (African Children's Charter),<sup>3</sup> define the term 'child' only. These brief definition sections are perhaps a marker from older treaties as all the foregoing were drafted at least a decade, or two in the case of CEDAW, before the Maputo Protocol.

By and large, relatively newer treaties feature longer definitions sections.<sup>4</sup> For example, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (Protocol on the Rights of Persons with Disabilities) defines 20 terms with at least five being substantive.<sup>5</sup> In Africa, the three latest additions to the African human rights treaty framework mirror the comprehensive substantive nature of the definitions section found in the Maputo Protocol. The most recent of these instruments is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security (Protocol on Social Security) which includes 18 terms in its definitions article.<sup>6</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (Protocol on the Rights of Older Persons) contains 15 terms in its definitions article,<sup>7</sup> some of which mirror the terms in the Maputo Protocol, such as those referring to AU organs. The Protocol on the Rights of Persons with Disabilities contains the longest definitions section yet with 20 terms, many of them substantive in nature.<sup>8</sup> These three latter Protocols

1 Article 1.

2 Article 1.

3 Article 2.

4 A notable exception is the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, which featured an extensive definition of the term 'refugee'.

5 Article 2.

6 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security, art 1. These terms include African Charter, African Commission, African Court, Assembly, AU, Citizen, Commission, Constitutive Act, Family, Informal Economy, Kafala system, member states, minimum package, social assistance, social insurance, social protection, social security and state parties.

7 Article 1. These terms include: African Charter, African Commission, ageing, Assembly, AU, Commission, Constitutive Act, harmful traditional practices, ICT, member states, older persons, residential care, states parties, the Advisory Council on Ageing and the words aged, seniors, senior citizens and the elderly which have the same meaning as older persons.

8 Article 1. These terms include African Charter, African Commission, African Court, Assembly, AU, Commission, deaf culture, discrimination on the basis of disability, habitation, harmful practices, legal capacity, persons with disabilities, Protocol, reasonable accommodation, rehabilitation, ritual killings, situations of risks, states parties, universal design and

and the Maputo Protocol reveal a contemporary drafting approach, where the definitions sections increasingly feature deeper substantive forays.

This chapter aims to unpack article 1 of the Maputo Protocol comprehensively and is organised into 7 sections. Section 2 explores the drafting history of article 1. Section 3 discusses the terms related to normative instruments and select organs of the African Union (AU). The terms ‘AU’, ‘Constitutive Act’ and ‘Assembly’ are discussed jointly because of their interrelatedness, particularly in practice. This discussion proceeds predominantly through an analysis of the direct and indirect implications of these organs’ mandate and practice for the Maputo Protocol in particular and women’s rights protection generally. Section 4 defines the term ‘states parties’, while section 5 discusses the definition of ‘women’ with specific reference to the use of ‘gender’ instead of ‘sex’ in this provision. Section 6 explores the definition of terms related to other substantive rights in the Protocol, that is, ‘discrimination against women’, ‘harmful practices’ and ‘violence against women’. Section 7 concludes the chapter.

## 2 Drafting history

A definitions section can be traced to the very first draft of the Maputo Protocol, the Nouakchott Draft.<sup>9</sup> The section was brief, defining only the term ‘discrimination against women’ as being in conformity with the African Charter and as

any distinction, exclusion or restriction based on sex whose effects compromise or destroy the recognition, enjoyment or the exercise by women – regardless of their matrimonial status – on an equal basis with men, of human rights and fundamental freedoms.<sup>10</sup>

In the following draft, the Kigali Draft<sup>11</sup> retained the definition of only the term ‘discrimination against women’ while modifying parts of the text. In this draft, the definition included the phrase, ‘For the purposes of this present Additional Protocol, and in conformity with articles 2 and 18 of the African Charter on Human and Peoples’ Rights.’<sup>12</sup> Articles 2 and 18 are the Charter’s non-discrimination clauses, and this point reiterates the drafters’ intention to complement and expand the Charter’s normative landscape. In addition, this draft expanded the idea of discrimination to include difference wherein the definition of ‘discrimination against women’ then read as ‘any distinction, exclusion or restriction based on sex or any *differential treatment*’.<sup>13</sup>

In the intervening period before the next draft was developed, a parallel process emerged,<sup>14</sup> the development of an Organisation of African Unity (OAU) Convention on the Elimination of All Forms of Harmful Practices Affecting the Fundamental Human Rights of Women and Girls.<sup>15</sup> The Draft Convention on Harmful Practices defined ‘harmful practices’ in article 1 as follows: ‘harmful practices’

youth.

9 Expert Meeting on the Preparation of a Draft Protocol to the African Charter on Human and Peoples’ Rights Concerning the Rights of Women, Nouakchott, Islamic Republic of Mauritania, 12-14 April 1997 (Nouakchott Draft).

10 Nouakchott Draft (n 9) art 1.

11 Draft Protocol to the African Charter on Women’s Rights, 26th ordinary session of the African Commission on Human and Peoples’ Rights 1-15 November 1999 Kigali, Rwanda (Kigali Draft).

12 Kigali Draft (n 11) art 1.

13 Kigali Draft (n 11) art 1. My emphasis.

14 Organisation of African Unity Interoffice Memorandum, Meeting on Draft Protocol on the Rights of Women in Africa, 20 July 2000, CAB/LEG/117.141/62/Vol.I.

15 Draft OAU Convention on the Elimination of All Forms of Harmful Practices (HPs) Affecting the Fundamental Human Rights of Women and Girls as transmitted to the OAU by the Inter-African Committee (IAC) on Traditional Practices on 9 May 2000 (Draft Convention on Harmful Practices). The draft OAU Convention in art 1 defined harmful practices as follows: ‘harmful practices’ shall mean all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health and bodily integrity.

shall mean all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health and bodily integrity. As discussed in chapter 1, the Draft Convention on Harmful Practices was relinquished in favour of a merger with the Kigali Draft.<sup>16</sup> However, it clearly influenced the current formulation of the definition of ‘harmful practices’. The rights to education and dignity in the current formulation were added following an expert meeting on drafting the Maputo Protocol.<sup>17</sup>

The following draft of the Maputo Protocol, the Final Draft,<sup>18</sup> featured an expanded definitions section that included nine terms, including the African Charter, African Commission, assembly, discrimination against women, harmful practices, OAU, states parties, violence against women, and women.<sup>19</sup> In the Final Draft, in defining women, the phrase ‘means persons of female gender, including ...’ had been earmarked for deletion,<sup>20</sup> but this amendment did not succeed since subsequent drafts contain the current phrasing.

The Final Draft was reviewed at the Meeting of Experts in 2001,<sup>21</sup> where the definitions section was adopted without amendment of sub-clauses (a) to (d) with some minor editorial amendments to some terms. The most significant changes were the agreement that the term women would include girls; and the amendment of harmful practices to include the ‘right to education’ and the ‘right to dignity’ as part of the rights that are negatively affected by harmful practices.<sup>22</sup> A second Meeting of Experts in 2003 informed the text of the Addis Ababa Draft.<sup>23</sup> This version was the final one and matched the current text of article 1.

### 3 Concepts and definitions

This section considers the definition of terms related to normative instruments and selects organs of the AU, and where terms are closely related, their discussion is fused. These terms have a broad scope in meaning and they are explored here only in light of their implications for or relationship with the Maputo Protocol.

16 As illustrated in correspondence between the African Union's Office of the Legal Counsel to the Secretary of the African Commission on Human and Peoples' Rights on 17 May 2000 and the Inter-African Committee (IAC) on Traditional Practices to the Organisation of African Unity on 9 May 2000.

17 Report of the Meeting of Experts on the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Expt/Prot.Women/Rpt(I), Addis Ababa, Ethiopia, November 2001 (Report of the Meeting of Experts).

18 Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, CAB/LEG/66.6; final version of 13 September 2000 (Final Draft). Reprinted in MS Nsibirwa ‘A brief analysis of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women’ (2001) 1 *African Human Rights Law Journal* 53-63.

19 Final Draft (n 18) art 1(a)-(i).

20 Final Draft (n 18) art 1(i).

21 Report of the Meeting of Experts (n 17).

22 Report of the Meeting of Experts (n 17).

23 Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, MIN/WOM. RTS/DRAFT.PROT(II)Rev.5, as adopted by the Meeting of Ministers, Addis Ababa, Ethiopia, 28 March 2003 (Addis Ababa Draft).

### 3.1 African Charter

Article 1(a) of the Maputo Protocol provides that the ‘African Charter’ means the African Charter on Human and Peoples’ Rights. The African Charter is the continent’s main human rights treaty and, as discussed in chapter 1, the Protocol’s parent treaty. From a women’s rights perspective, the African Charter lacks strong women’s rights protections and has been criticised for perpetuating a narrative of male dominance and female subordination in its exclusive use of male pronouns and terms like chairman.<sup>24</sup> In fact, apart from its non-discrimination and equality before the law clauses,<sup>25</sup> the Charter only has one women’s right-centric provision in article 18(3), which provides:<sup>26</sup>

The [s]tate shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

This provision is important since it supplements the African Charter’s realm of women’s rights protection with protection in other treaties such as CEDAW and the Maputo Protocol. Article 18(3), singularly or as read together with articles 60 and 61 of the African Charter, codifies and provides a strong basis for normative complementarity between the African Charter and other international human rights treaties such as the Maputo Protocol. Articles 60 and 61 of the African Charter, as discussed in chapter 2 of this commentary, require the Commission to draw inspiration from international human rights law instruments and principles.

In interpreting article 18(3), the Commission can rely on the Maputo Protocol to extend the normative scope and content of women’s rights or utilise the Protocol as an interpretive guide. Accordingly, the African Commission has adopted the view that the Charter permits it to draw inspiration from other sources of international human rights law in the execution of its mandate and functions as is illustrative through its jurisprudence.<sup>27</sup> This inspirational scope includes the ability of the Commission to reach a violation of a provision of the African Charter on the basis of the disregard of a provision in another treaty ratified by the state in question.<sup>28</sup> In regard to the Maputo Protocol, in particular, the African Commission has affirmed its competence to interpret article 18(3) of the Charter, as read together with the Maputo Protocol.<sup>29</sup> This complementarity extends the normative scope of the African Charter and expands the realm of women’s rights protection.

Nevertheless, the African Charter as a whole proved too vague to protect the rights of African women, leading to the clamour for the development of the Protocol. Women’s rights advocates were discontented that the Charter had a single woman-specific clause, which had been located under the umbrella of family rights.<sup>30</sup> As discussed in chapter 1, the Preamble to the Maputo Protocol reflects this sentiment as it recalls various instruments and agreements designed to eliminate discrimination but expresses concern that despite these commitments, women in Africa were still victims of discrimination

24 F Viljoen *International human rights law in Africa* (2012) 251-252.

25 African Charter arts 2 & 3.

26 African Charter art 18(3).

27 See eg *Luke Munyandu Tembani & Benjamin John Freeth v Angola*, Communication 409/12, African Commission on Human and Peoples’ Rights para 131; *Institute for Human Rights and Development in Africa v Angola*, Communication 292/04, ACHPR para 46; *Spilg and Mack & Ditshwanelo v Botswana*, Communication 277/03, ACHPR paras 166 & 203; *Tsatsu Tsikata v Ghana*, Communication 322/06, ACHPR para 32.

28 See eg *Democratic Republic of Congo v Burundi, Rwanda and Uganda* (2004) AHRLR 19 (ACHPR 2003) para 87 where the Commission found the violation of art 22 of the African Charter on the basis of the disregard of art 34 of the First Protocol to the Geneva Conventions of 1949.

29 See *Organisation Mondiale Contre la Torture et Ligue de la Zone Afrique pour la Défense des Droits des Enfants et Elèves (pour le compte de Céline) c. République du Congo*, Communication 325/06, ACHPR para 83.

30 R Mayanja ‘The Protocol on the Rights of Women in Africa’ in AA Yusuf & F Ougergouz (eds) *The African Union: legal and institutional framework: a manual on the Pan-African organization* (2012) 458.

and harmful practices.<sup>31</sup> The Maputo Protocol, therefore, sets out to expand the African Charter's protection of women's rights.

The African Charter extends its implementation and monitoring environment to the Maputo Protocol. It establishes the African Commission on Human and Peoples' Rights, which monitors the implementation of both the African Charter and the Maputo Protocol. Article 26 of the Maputo Protocol illustrates this point by requiring states parties to submit periodic reports following article 62 of the African Charter.

### 3.2 African Commission

Article 1(b) of the Maputo Protocol identifies the 'African Commission on Human and Peoples' Rights' as the 'African Commission'. The African Commission is a quasi-judicial body with a dual protective and promotional human rights mandate.<sup>32</sup> It enjoys a unique historical affiliation with the Maputo Protocol. As discussed in chapter 1, the *travaux préparatoires* reveal that the African Commission, together with women's rights organisations, played a dominant role in facilitating the drafting and adoption of the Maputo Protocol.<sup>33</sup>

In reiteration, since the Maputo Protocol supplements the African Charter, it shares the Charter's implementation mechanism, the oversight of which falls primarily (but not exclusively) to the African Commission.<sup>34</sup> In practice, the African Commission's protective mandate is exercised predominantly through its individual communications procedure.<sup>35</sup> This procedure has been underutilised with regard to women's rights, as 35 years into its existence, it has only adjudicated to completion three women's rights cases, and the reasons for this dearth are varied.<sup>36</sup> One is the African Charter's admissibility requirement to exhaust local remedies, a requirement which poses a challenge for women who carry a disproportionate burden in accessing justice.<sup>37</sup> The Commission's general ineffectiveness in managing its individual communications procedure is a second reason. This has correspondingly had a bearing on the dearth of women's rights cases. These first two reasons are responsible for the growing trend and preference to approach other forums such as the Economic Community of West African States (ECOWAS) Community Court of Justice (ECOWAS Court), which does not require exhaustion of

31 Preamble paras 5-12.

32 African Charter (n 25) art 45.

33 'Background: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' 1. It provides: 'The African Commission set up a Working Group and in collaboration with the Secretariat and with inputs from other women NGOs and groups, set about preparing the Protocol'.

34 The oversight is not exclusive since the African human rights system consists of a network of complementary bodies and institutions that also oversee the interpretation of the African Charter such as the African Court on Human and Peoples' Rights. More recently, interpretation of the African Charter has also been undertaken successfully by sub-regional organs such as the ECOWAS Community Court of Justice.

35 African Charter (n 25) arts 55-58.

36 *Egyptian Initiative for Personal Rights & Interights v Egypt (Interights)* Communication 323/06, African Commission on Human and Peoples' Rights, Combined 32nd and 33rd Annual Activity Report (2013); *Equality Now and Ethiopian Women Lawyers Association (EWLA) v Federal Republic of Ethiopia (Equality Now)*, Communication 341/07 African Commission on Human and Peoples' Rights 57th Annual Activity Report (2016) and *Organisation Mondiale Contre la Torture et Ligue de la Zone Afrique pour la Défense des Droits des Enfants et Elèves (pour le compte de Céline) c. République du Congo* Communication 325/06, ACHPR. For further discussion see M Kamunyu 'The gender responsiveness of the African Commission on Human and Peoples' Rights' PhD thesis, University of Pretoria, 2018 ch 5.4.1.2. On file with the author.

37 See eg M Mukhopadhyay & S Quintero 'Gender and access to justice in sub-Saharan Africa' in *KIT-CALS Conference, Johannesburg, South Africa* 2008 and R Omamo 'Women and access to justice' in YP Ghai (ed) *Gender and constitution-making in Kenya* (2002) 25.

local remedies and is also deemed more efficient.<sup>38</sup> A third reason relates to the attribution of cases. In addition, the mistaken apprehension that the Commission lacks jurisdiction to adjudicate on the Maputo Protocol is another reason that might contribute to the dearth of women's rights cases.<sup>39</sup>

Under its promotional mandate, the Commission has furthermore created special mechanisms such as the Special Rapporteur on Women in Africa. Through this mandate, the Commission exercises part of its interpretive mandate through the development of soft law. In this regard, the Commission, mainly through the mechanism of the Special Rapporteur on Women in Africa, has formulated various General Comments and Guidelines providing clear interpretive guidance on varying provisions of the Maputo Protocol.<sup>40</sup> These soft law standards clarify state obligations as well as offer guidance in the implementation of women's rights and redress of violations. Significantly, the African Commission has also developed guidelines to facilitate state reporting under the Maputo Protocol in a manner that complements reporting under the African Charter since states are called upon to submit a joint report.<sup>41</sup>

As is further discussed in chapter 28, with reference to article 26, state reporting serves a monitoring function and provides an opportunity to strengthen constructive dialogue between the Commission, states, national human rights institutions and women's rights stakeholders involved in parallel processes

38 See the growing jurisprudence in this regard: *Hadijatou Mani Koraou v The Republic of Niger* Judgment No ECW/CCJ/JUD/06/08 (27 October 2008); *Dorothy Njemanze, Edu Oroko, Justina Etim and Amarachi Jessyford v the Federal Government of Nigeria* Judgment No ECW/CCJ/JUD/08/17 (12 October 2017); *Mary Sunday v Federal Republic of Nigeria* Judgment No ECW/CCJ/JUD/11/18 (17 May 2018); *Aminata Diantou Diane v Mali* Judgment No ECW/CCJ/JUD/14/18 (21 May 2018); *Aircraftwoman Beauty Igbobie Uzezi v Federal Republic of Nigeria* Judgment No ECW/CCJ/JUD/11/21 (30 April 2021); *Women Against Violence & Exploitation in Society (WAVES) & Child Welfare Society Sierra Leone (CWS-SL) (On behalf of pregnant adolescent schoolgirls in Sierra Leone) v Sierra Leone* Judgment No ECW/CCJ/JUD/37/19 (12 December 2019); *Adama Vandi v Sierra Leone* Judgment No ECW/CCJ/JUD/32/22 (18 July 2022); and *EI v Nigeria* Judgment No ECW/CCJ/JUD/09/22 (25 April 2022).

39 See eg P Masore 'An evaluation of the role of the African Court on Human and Peoples' Rights in the protection of women's rights under the Maputo Protocol' LLM dissertation, University of Nairobi, 2021 31-32: 'It is critical to note that the Maputo Protocol categorically placed the mandate to interpret its application and implementation not on the already-existing African Commission but on the yet to be established on the African Court'; C Ocran 'The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2007) 15 *African Journal of International and Comparative Law* at 151: 'The African Court on Human and Peoples' Rights will eventually be charged with the responsibility of overseeing the Protocol, and will have jurisdiction to consider both individual and group complaints of women's rights abuses. Until it is established however, the African Commission of Human and Peoples' Rights will deal with issues of interpretation'. My emphasis. See F Viljoen & M Kamunyu 'Articles 27 and 32' in this volume.

40 These include: (1) African Commission General Comment 1 on art 14(1)(d) & (e) of the Protocol to African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted during the 52nd ordinary session of the African Commission held in Yamoussoukro, Ivory Coast 9-22 October 2012.; (2) African Commission General Comment 2 on art 14(1)(a), (b), (c) & (f) and art 14(2)(a) & (c) of the Protocol to African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted during the 54th ordinary session of the African Commission held in Banjul, The Gambia from 22 October to 5 November 2013; (3) Joint General Comment of the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child on Ending Child Marriage; (4) African Commission General Comment 6 on the Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa (Maputo Protocol): the Right to Property During Separation, Divorce or Annulment of Marriage (art 7(D)), adopted during the 27th extra ordinary session of the African Commission held in Banjul, The Gambia 19 February-4 March 2020; (5) Guidelines on Combatting Sexual Violence and its Consequences in Africa, African Commission on Human and Peoples' Rights; [https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/05/report-guidelines-on-combating-sexual-violence-and-its-consequences-in-africa/achpr\\_eng\\_guidelines\\_on\\_combating\\_sexual\\_violence\\_and\\_its\\_consequences.pdf](https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/05/report-guidelines-on-combating-sexual-violence-and-its-consequences-in-africa/achpr_eng_guidelines_on_combating_sexual_violence_and_its_consequences.pdf) (accessed 23 June 2023) and (6) Guidelines on Shadow Reporting to the African Commission on Human and Peoples' Rights <https://www.chr.up.ac.za/news-archive/2022/3157-guidelines-on-shadow-reports-of-the-african-commission-on-human-and-peoples-rights#:~:text=Shadow%20reports%20should%20consider%20any,for%20example%20from%20the%20UN> (accessed 23 June 2023).

41 The Guidelines for State Reporting under the Protocol to the African Charter on the Rights of Women in Africa Reporting Guidelines [https://www.maputoprotocol.up.ac.za/images/files/instruments/state\\_reporting\\_guidelines\\_pages.pdf](https://www.maputoprotocol.up.ac.za/images/files/instruments/state_reporting_guidelines_pages.pdf) (accessed 23 June 2023).

such as shadow reporting.<sup>42</sup> Reporting under the Maputo Protocol initially suffered an extensive dearth, with the first-ever report coming in almost a decade after the Protocol entered into force in 2005.<sup>43</sup>

### 3.3 AU, Constitutive Act, Assembly and NEPAD

Article 1(c) of the Maputo Protocol identifies the Assembly of Heads of State and Government of the African Union as the ‘Assembly’; article 1(d) refers to the African Union as the ‘AU’; article 1(e) short titles the Constitutive Act of the African Union the ‘Constitutive Act’; and article 1(h) abbreviates the New Partnership for Africa’s Development established by the Assembly as ‘NEPAD’.

#### 3.3.1 NEPAD

The *travaux préparatoires* do not provide insights informing the inclusion of NEPAD. Through a decision of the Assembly, NEPAD has since transitioned into the African Union Development Agency-NEPAD (AUDA-NEPAD),<sup>44</sup> with a mandate to accelerate the realisation of Agenda 2063 and to strengthen the capacity of states and regional bodies, including by facilitating stakeholder partnerships.<sup>45</sup> AUDA-NEPAD’s involvement so far in furtherance of the Maputo Protocol seems primarily to have been through funding women’s rights organisations to pursue ratification of the Maputo Protocol.<sup>46</sup>

#### 3.3.2 AU and Constitutive Act

The AU, through its governing treaty, the Constitutive Act, lists the promotion of gender equality<sup>47</sup> and respect for human rights<sup>48</sup> as part of its principles. From a historical perspective, the need to develop the Maputo Protocol ‘was identified after the Assembly acknowledged the importance of the place of the rights of women in the socio-political priorities of Africa’.<sup>49</sup> Further, the AU’s supreme organ, the Assembly of Heads of State and Government (Assembly), in reaffirming its commitment to gender equality, adopted the Solemn Declaration on Gender Equality in Africa (Solemn Declaration) in 2004. In the Solemn Declaration, the AU averred its ‘commitment to continue, expand and accelerate efforts to promote gender equality at all levels’.<sup>50</sup> Article 9 of the Solemn Declaration includes the member states’ undertaking to sign and ratify the Maputo Protocol and supported campaigns to ensure its entry into force by 2005. Compared to its predecessor, the OAU, the AU, through its Constitutive Act,

42 For an assessment on the African Commission’s state reporting practice see: M Kamunyu ‘The gender responsiveness of the African Commission on Human and Peoples’ Rights’ PhD thesis, University of Pretoria, 2018 ch 4.4.2.2. For a recent discussion on barriers to state reporting see: A Johnson ‘Barriers to fulfilling reporting obligations in Africa under the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa’ (2021) 21 *African Human Rights Law Journal* 176-203.

43 Malawi was the first country to submit its report in 2015. See: African Commission on Human and Peoples’ Rights, States, ‘Malawi: Initial and combined reports, 1995-2013’ <https://achpr.au.int/index.php/en/state-reports/malawi-initial-and-combined-reports-1995-2013> (accessed 23 June 2023).

44 Assembly of the Union 31st ordinary session, 1-2 July 2018, Nouakchott Mauritania, Decision on the Transformation of the NEPAD Planning and Coordinating Agency (NPCA) into the African Union Development Agency (AUDA) – Doc. Assembly/AU/2 (XXXI), Assembly/AU/Dec.691(XXXI).

45 AUDA-NEPAD available at [https://www.nepad.org/who-we-are#the\\_au\\_nda\\_nepad\\_journey](https://www.nepad.org/who-we-are#the_au_nda_nepad_journey) (accessed 21 October 2022).

46 See eg AUDA-NEPAD ‘Promotion of women’s rights’ <https://www.nepad.org/nepadspanishfund/good-practice/promotion-of-women-rights> (accessed 21 October 2022); AUDA-NEPAD ‘Implementation of regional and international policies and frameworks for gender equality and women’s empowerment’ <https://www.nepad.org/nepadspanishfund/sub-topic/229> (accessed 21 October 2022); and AUDA-NEPAD ‘African women’s rights protection and advancement’ <https://www.nepad.org/nepadspanishfund/project/equality-now-0> (accessed 23 June 2023).

47 Constitutive Act of the African Union art 4(l).

48 Constitutive Act of the African Union art 4(m).

49 ‘Background: Draft Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa’.

50 Solemn Declaration on Gender Equality in Africa: Preamble.

recognises gender equality as a continental priority. In comparison, for instance, the OAU Charter made no provision for gender in any express or implied terms.

### 3.3.3 *Assembly*

Within the African Charter, the Assembly is assigned a number of functions in relation to the administrative functioning of the Commission.<sup>51</sup> Article 59 of the African Charter further mandates the Commission not to publish its recommendations related to the consideration of communications until the activity report containing such findings has been ‘considered by the Assembly’.<sup>52</sup> In practice, the Assembly has delegated the consideration of activity reports to the Executive Council, which has, on a number of occasions, used its political power to impede the work of the Commission by blocking the publication of, expunging content in or deferring consideration of the Commission’s activity reports.<sup>53</sup> A restrictive interpretation of article 59 as a strict confidentiality requirement could arguably portend a number of challenges in litigating the Maputo Protocol. For instance, strict confidentiality acts as an information barrier for potential amicus curiae briefs and contributes to the invisibility of the communications procedure.<sup>54</sup> Overall, the AU and its policy organs have received much criticism for their undermining of human rights discourse and compliance in the continent.<sup>55</sup>

## 4 **States parties**

Article 1(i) of the Maputo Protocol defines ‘states parties’ as the state parties to the Protocol. The meaning of this term is clear in that treaties are international agreements concluded between states in written form and governed by international law.<sup>56</sup> Its provisions legally bind state parties that have ratified the Maputo Protocol. The act of ratification results in various state obligations. The Maputo Protocol in articles 2 to 25 frames women’s rights protection in the language of state obligations, and state parties are accordingly duty-bound to ensure the implementation of the Protocol at the national level.<sup>57</sup> In ratifying the Protocol, state parties undertake to adopt all necessary measures to fully and effectively implement women’s rights.<sup>58</sup> These measures, as discussed throughout this Commentary, include specific legislative, budgetary, administrative, social, economic, institutional and even cultural action, as elucidated in the substantive provisions of the Protocol. In addition, state parties have a duty to submit periodic reports to demonstrate the measures taken towards fully realising the rights in the Protocol.<sup>59</sup>

51 African Charter arts 33 & 37 (election of Commission members), art 44 (provision for emoluments and allowances for Commission members), art 54 (receipt of the Commission’s activity reports).

52 African Charter art 59.

53 See eg J Biegon ‘Diffusing tension, building trust: proposals on guiding principles applicable during consideration of the activity reports of the African Commission on Human and Peoples’ Rights’ (2018) *Global Campus Policy Briefs* 7.

54 For a detailed discussion see R Nekura & S Ndashe ‘Confidentiality or secrecy? Interpretation of article 59, and implications for advocacy on pending communications before the African Commission’ in KK Mwikya, C Osero-Ageng’o & E Waweru (eds) *Litigating the Maputo Protocol: a compendium of strategies and approaches for defending the rights of women and girls in Africa* (2020) 47.

55 See further: TA Zewudie ‘Human rights in the African Union decision-making processes: an empirical analysis of states’ reaction to the Activity Reports of the African Commission on Human and Peoples’ Rights’ (2018) 2 *African Human Rights Yearbook* 295-320; TA Zewudie ‘Toward an effective African human rights system: the nature and implications of the relationship between the African Union policy organs and human rights bodies’ in M Addaney, M Gyan Nyarko & E Boshoff (eds) *Governance, human rights and political transformation in Africa* (2020) 17-40; J Sarkin ‘The need to reform the political role of the African Union in promoting democracy and human rights in domestic states: making states more accountable and less able to avoid scrutiny at the United Nations and at the African Union, using Swaziland to spotlight the issues’ (2018) 26 *African Journal of International and Comparative Law* 84-107.

56 Vienna Convention on the Law of Treaties art 2(1)(a).

57 Maputo Protocol art 26(1).

58 Maputo Protocol art 26(2).

59 Maputo Protocol art 26(1).

## 5 Definition of women

As articulated in the Maputo Protocol, the definition of women extends the conceptualisation of women beyond a homogenous entity or a demographic with shared biological features. The definition defines women as a social group formed by social and power relations. This conceptualisation allows intersectional gender inequalities to surface. In article 1(k), ‘women’, as rights holders, are defined as persons of the female gender, including girls. This definition utilises the concept of ‘gender’ to define women as opposed to ‘sex’, which is binary in nature. Sex refers to the biological and physiological attributes and claims to difference in humans. Through the various strains of feminism, there has been a disentanglement and distinction of the concept of gender from the dichotomous variable of biological sex.<sup>60</sup>

Gender refers to a social relation that is specific to the context and historical time frame, and which is dynamic. A person is socially constituted to become a certain gender through societal norms, practices and power relationships. These norms, practices and power relations further shape the division of labour and distribution of resources. They are produced and reproduced at every institutional level ranging from the household, the community, the market, the state and even in international institutions. Because gender is given meaning by society in specific contexts and at specific times, the meaning of what it is to be a woman or other genders differs widely between contexts, places and times. The meaning assigned to the gender ‘woman’ therefore changes with societal, economic, political, environmental, and other changes.<sup>61</sup>

Gender identity refers to a person’s self-conceptualisation of their gender, whereas the performance and enactment of gender is one’s gender expression.<sup>62</sup> Therefore, using the term gender in defining women expands the application of the Protocol to transgender persons.<sup>63</sup> Based on the terminology used, the Maputo Protocol offers protection to transwomen on account of their gender and transmen who may require its protection if their new identity is discredited by law. Transgender persons are therefore offered the rich protection of the Maputo Protocol, which has broad and progressive provisions, particularly on protection against violence to which transgender persons are disproportionately exposed, such as ‘corrective rape’.<sup>64</sup> A holistic reading of the Maputo Protocol also supports the understanding of ‘persons of female gender’ to include transgender women. The supportive provisions include the protection from discrimination in article 2, which calls for an end to all forms of discrimination and the state’s obligation to modify the stereotyped roles for women and men. Further, the right to dignity includes ‘the right to respect as a person and to the free development of her personality’.<sup>65</sup> Overall, the

60 See MG Dietz ‘Current controversies in feminist theory’ (2003) 6 *Annual Review of Political Science* 1-2.

61 See generally, E Meyer ‘Designing women: the definition of ‘woman’ in the Convention on the Elimination of All Forms of Discrimination Against Women’ (2016) 16 *Chicago Journal of International Law* 553-590, O Oyeronke *The invention of women: making an African sense of western gender discourses* (1997); M Mukhopadhyay ‘Gender relations, development practice and “culture”’ (1995) 3 *Gender and Development* 13-18 and N Kaber *Triple roles, gender roles, social relations: the political subtext of gender training* (1992).

62 TJ Jourian ‘Evolving nature of sexual orientation and gender identity’ (2015) 152 *New Directions for Student Services* 14.

63 For an elaborate discussion, see T Snyman & A Rudman ‘Protecting transgender women within the African human rights system through an inclusive reading of the Maputo Protocol and the proposed Southern African Development Community Gender-Based Violence Model Law’ (2022) 33 *Stellenbosch Law Review* 57-77.

64 See further Human Rights Watch ‘We’ll show you you’re a woman’: violence and discrimination against black lesbians and transgender men in South Africa (2011) <https://www.hrw.org/sites/default/files/reports/southafrica1211.pdf> (accessed 25 November 2017); Coalition of African Lesbians & African Men for Sexual Health and Rights *Violence based on perceived or real sexual orientation and gender identity in Africa* (2013) 18-24 <https://www.pulp.up.ac.za/other-publications/violence-based-on-perceived-or-real-sexual-orientation-and-gender-identity-in-africa> (accessed 15 May 2023); L Mwambene & M Wheel ‘Realisation or oversight of a constitutional mandate? Corrective rape of black African lesbians in South Africa’ (2015) 15 *African Human Rights Law Journal* 58-88.

65 Maputo Protocol art 2(3).

right to non-discrimination protects the concept of sexual orientation, gender identity and expression and therefore, the protection of sexual minorities, including lesbian, bisexual and queer women, is envisaged.

The definition of the term women in the Maputo Protocol also includes girls. This formulation recognises how unique interlocking axes of social power disproportionately dispossess girls of autonomy and bodily integrity. Therefore, girls are afforded protection due to their varying vulnerabilities as children and as females. A further reading of the Maputo Protocol reveals a recognition of girls' need for special protection. Article 11 calls for measures to ensure that girls do not take part in direct hostilities; article 12 on the right to education calls for the protection of girls from abuse, including sexual harassment in schools, this article further calls for the promotion and enrolment of girls in schools; article 13 requires states to prohibit, combat and punish all forms of exploitation against the girls. While not all provisions of the Maputo Protocol may be relevant for girls,<sup>66</sup> the Protocol clearly bolsters their protection in line with the vulnerabilities resulting from their gender relations. In addition to the Maputo Protocol, girls, on the regional level, also have normative protection under the African Charter on the Rights and Welfare of the Child (African Children's Charter). Moreover, the intersection of these two instruments has resulted in the development and adoption of the Joint General Comment of the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child on Ending Child Marriage. The African Children's Committee has buttressed this intersectionality by mutually relying on the provisions of the African Children's Charter and the Maputo Protocol to develop girls' rights in its jurisprudence.<sup>67</sup>

## 6 Definitions related to substantive rights in the Protocol

### 6.1 Discrimination against women

Article 1(f) of the Maputo Protocol defines 'Discrimination against women' to mean 'any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres in life.'

The definition of discrimination in international human rights law generally takes on two approaches. The first approach typically comprises a generic non-discrimination clause that prohibits discrimination and then lists a non-exhaustive list of potential grounds of discrimination, such as race, colour, sex, language, religion, political and such other status. This approach is found in instruments such as the African Charter,<sup>68</sup> the Universal Declaration of Human Rights,<sup>69</sup> the International Covenant on Civil and Political Rights,<sup>70</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>71</sup>

The second approach to defining discrimination can be discerned from equality-based treaties such as the Maputo Protocol, CEDAW,<sup>72</sup> the Convention on the Rights of Persons with Disabilities,<sup>73</sup>

66 Such as marriage rights in arts 6 & 7 eg. The Maputo Protocol art 6(b) provides the minimum age of marriage as 18 thereby excluding girls from these rights while at the same time securing their legal protection from child marriage.

67 African Committee of Experts in *Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v Tanzania* (2022) paras 40, 55, 86 & 78.

68 Article 2.

69 Article 2.

70 Article 2(1).

71 Article 2(2).

72 Article 1.

73 Article 2.

and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.<sup>74</sup> These instruments define discrimination using similar terms, that is, as deriving on the basis of *any distinction, exclusion or restriction which has the purpose or effect* of negating the enjoyment of human rights of the instrument's targeted rights holders. The Maputo Protocol's definition of discrimination against women is clearly influenced by CEDAW, which preceded it and carries almost identical language.<sup>75</sup>

As stated in the drafting history, the Nouakchott Draft, in defining discrimination, contained the phrasing 'on an equal basis with men':<sup>76</sup>

discrimination against women means any distinction, exclusion or restriction based on sex whose effects compromise or destroy the recognition, enjoyment or the exercise by women – regardless of their matrimonial status – *on an equal basis with men*, of human rights and fundamental freedoms.

Article 2 of the same Nouakchott Draft also provided that '[w]omen shall enjoy *on the basis of equality with men* the same rights and respect for their dignity'.<sup>77</sup> The highlighted phrasing amounts to an expression of formal equality, which is not desirable. Formal equality has received resounding criticism from feminists and other commentators for varying reasons, the most pertinent being that it fails 'to address deeply entrenched and complex patterns of group disadvantage'.<sup>78</sup> In fact, equal treatment in the context of past or structural discrimination actually perpetuates disadvantage and discrimination.<sup>79</sup> The removal of the impugned phrasing is therefore significant, and the current definition of discrimination against women embraces the notion of substantive transformative equality, which contextualises discrimination in light of its resultant inequalities and aims to improve women's lives. Authoritative interpretations of the Maputo Protocol similarly illustrate the recognition of the substantive equality approach. General Comment 6 on article 7(d) of the Protocol<sup>80</sup> defines substantive equality and uses it as the normative basis to elaborate on women's right to property on dissolution of marriage.

## 6.2 Harmful practices

Article 1(g) of the Maputo Protocol defines 'Harmful practices' to mean 'all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity'.<sup>81</sup>

Under article 5, states are required to take legislative and other measures towards eliminating all harmful practices.<sup>82</sup> In article 2, the Protocol also expressly categorises harmful practices as a form of discrimination that endangers women's health and general well-being.<sup>83</sup> With these three provisions, the Maputo Protocol sets a strong normative foundation for protective and promotional measures towards eliminating harmful practices. In addition, the Protocol specifically prohibits female genital

74 Article 2.

75 Article 1.

76 Nouakchott Draft (n 9) art 1. My emphasis.

77 Nouakchott Draft (n 9) art 2. My emphasis.

78 C Albertyn, S Fredman & J Fudge 'Introduction. Substantive equality, social rights and women: a comparative perspective' (2007) 23 *South African Journal on Human Rights* 209.

79 S Fredman 'Substantive equality revisited' (2016) 14 *International Journal of Constitutional Law* 723.

80 African Commission General Comment 6 (n 40) art 7(d).

81 Maputo Protocol art 1(g).

82 Maputo Protocol art 5.

83 Maputo Protocol art 2(1)(b).

mutilation<sup>84</sup> and is the first international human rights law treaty to do so. It also prohibits child marriages by providing for the non-negotiable minimum age of marriage as 18 years.<sup>85</sup> In this way, the Protocol responds to lived realities by providing specific guidance on two harmful practices that disproportionately impact women and girls in Africa.

### 6.3 Violence against women

Article 1(j) defines 'Violence against women' to mean 'all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peacetime and during situations of armed conflicts or of war'.<sup>86</sup> The terms 'perpetrated', 'economic', 'to undertake' and 'or of war' were added following the expert meeting in 2001.<sup>87</sup>

This definition of violence against women (VAW) is considered revolutionary for its novelty and breadth. On novelty, for instance, CEDAW does not include any reference to VAW in its treaty text. In terms of breadth, the definition 'covers all the spheres in which women experience violence: the family, community and at the hands of the state'.<sup>88</sup> In addition to this expansive definition, the Protocol commendably situates VAW in the dignity discourse where, in article 3 on the right to dignity, it calls upon states to protect 'every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence'.<sup>89</sup> Verbal violence, on its part, represents an innovation and it 'may well be the first time that verbal violence against women has been recognised in an international human rights instrument'.<sup>90</sup> This is significant because the use of verbal abuse by way of insults, hurtful propaganda and smear campaigns are some of the most significant challenges that discourage women's candidature for elective offices, for instance.<sup>91</sup>

The other substantive provisions on VAW are situated within the right to life, integrity and security of the person where the Protocol expansively articulates explicit state obligations towards addressing violence against women, including enactment of laws as well as other administrative, social and economic measures; an obligation to identify and address the causes and consequences of VAW; and punishment of perpetrators and rehabilitation of victims among many other unambiguously expressed obligations.<sup>92</sup> Noteworthy is that state obligation for VAW is required 'whether the violence takes place in private or public'<sup>93</sup> and, in doing so, addresses the problematic public/private divide in international human rights law that impedes state accountability for the actions of non-state actors.<sup>94</sup> The Protocol also provides protection of women from sexual violence during armed conflict.<sup>95</sup> The definition of VAW

84 Maputo Protocol art 5(b).

85 Maputo Protocol art 6(b).

86 Maputo Protocol art 1(j).

87 Report of the Meeting of Experts (n 17) 5.

88 F Banda 'Blazing a trail: the African Protocol on Women's Rights comes into force' (2006) 50 *Journal of African Law* 79.

89 Maputo Protocol art 3(4).

90 Banda (n 88) 79.

91 Federation of Women Lawyers (FIDA) Kenya *Key gains and challenges: a gender audit of Kenya's 2013 election process* (2013) 61-64.

92 Maputo Protocol art 4(2).

93 Maputo Protocol art 4(2)(a).

94 See a discussion on the public/private divide from a feminist perspective in: R Murray 'A feminist perspective on reform of the African human rights system' (2001) 1 *African Human Rights Law Journal* 211-212. See also a more general discussion of the public/private dichotomy with regards to the African Commission in: R Murray *The African Commission on Human and Peoples' Rights and international law* (2000) 36-45.

95 For a comprehensive discussion see N Dyani 'Protocol on the Rights of Women in Africa: protection of women from

considers acts perpetrated against women ‘in peace time and during situations of armed conflict’.<sup>96</sup> Further, in articulating protection of women in armed conflicts, the Protocol specifies states’ obligation to ‘protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of exploitation’.<sup>97</sup> The Protocol also notes the vulnerability of certain categories of women to VAW owing to the concept of intersectionality, which is the system of interacting axes of social power that produce specific identities. In this regard, the Maputo Protocol highlights elderly women, women with disabilities and women in situations of armed conflict.

## 7 Conclusion

The Maputo Protocol leads the way in charting out a new approach to definition sections in international human rights law. Article 1 sets out varying terms and concepts that set a strong normative foundation for elucidating substantive rights in the Protocol. The Protocol is pioneering in its utilisation of its definition section in the comprehensive and substantive manner illustrated in this chapter. This substantial approach to definitions clearly influences treaty development, particularly those within the African human rights system, as evidenced by the definitional approach taken by the Protocol on the Rights of Older Persons, the Protocol on the Rights of Persons with Disabilities and the Protocol on Social Security.

This chapter laid out article 1’s drafting history and it is clear the final meanings arrived at were the product of deliberation by state and non-state actors. This chapter considered the normative and institutional landscape that was envisaged when the Protocol was developed, in the discussion on the Protocol’s parent treaty, the African Charter and one of its primary supervision organs, the African Commission. Organs of the AU with a direct and indirect impact on the implementation of the Protocol were also mentioned. Beyond the terms mentioned in article 1, it must be noted that the normative and institutional landscape that interacts with the Protocol is much wider. In addition to the African Commission, the African human rights system consists of a network of complementary bodies and institutions that oversee the interpretation of the Maputo Protocol, such as the African Court on Human and Peoples’ Rights. More recently, sub-regional organs such as the ECOWAS Court have also successfully interpreted the Maputo Protocol.

This chapter also considered the definitions of the Protocol’s rights holders as well as its primary duty bearers. In defining the former, that is, women, it has been illustrated that the Protocol does not view women as a homogenous entity and is cognisant of the multiple social relations that reflect women’s lived realities. The Maputo Protocol’s duty bearers being state parties, have also been mentioned in the discussion highlighting the legal import of various statuses. The definition of terms related to substantive rights in the Protocol has also been highlighted briefly, with the more substantive discussions to follow in subsequent chapters.<sup>98</sup> Overall, it is intended that the unfolding of these terms through this chapter contributes toward an extensive interpretation of the Maputo Protocol, affording its robust protection to all women in Africa.

sexual violence during armed conflict’ (2006) 6 *African Human Rights Law Journal* 166-187.

96 Maputo Protocol art 1(j).

97 Maputo Protocol art 11(3).

98 See in particular E Lubaale ‘Article 2’; R Nukura ‘Article 4’; S Nabaneh ‘Article 5’, R Murray ‘Article 26’ and F Viljoen & M Kamunyu ‘Articles 27 & 32’ in this volume, on the interpretation of arts 27 & 32.