

Article 10

Right to peace

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1. Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace.
2. States Parties shall take all appropriate measures to ensure the increased participation of women:
 - (a) In programmes of education for peace and a culture of peace;
 - (b) In the structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels;
 - (c) In the local, national, regional, continental and international decision making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women;
 - (d) In all levels of the structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular, women;
 - (e) In all aspects of planning, formulation and implementation of post-conflict reconstruction and rehabilitation.
3. States Parties shall take the necessary measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular.

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1 Introduction

Article 10 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), guaranteeing women's right to peace, is a reminder of the many conflicts in Africa that have deprived women of peace.¹ In 2019, there were 25 state-based conflicts on

1 F Banda 'Blazing a trail: the African Protocol on Women's Rights comes into force' (2006) 50 *Journal of African Law* 81.

the African continent;² while in 2021, Africa saw the highest number of armed conflicts compared to the other continents.³ These statistics demonstrate that article 10 is still an aspiration for many African women.

While conflicts have an impact on everyone, they disproportionately affect women.⁴ Women in conflicts are often subjected to sexual assault, abuse and exploitation.⁵ They are often victimised which leads ‘to isolation, alienation, prolonged emotional trauma, and unwanted pregnancies’.⁶ Furthermore, as women traditionally are the primary caregivers, they ‘struggle to support their families’ during conflict while their husbands and sons participate in the conflict.⁷ Conflicts also lead to interruptions in social services on which many women depend.⁸ Some women are also directly involved in the conflict, thereby compromising their own safety and security. Thus, the right to peace is essential to promote and protect women’s rights.

On the international level, the right to peace does not form part of any legally binding treaty. As an example, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) only recognises women’s participation as essential for peacebuilding in its Preamble. Only soft law provides for the right to peace for everyone, including women.⁹ This is despite the fact that establishing peace is one of the main objectives of the United Nations (UN).

The inclusion of article 10 in the Maputo Protocol was inspired by article 23 of the African Charter on Human and Peoples’ Rights (African Charter), which provides for the right to ‘promote and maintain peace and to live in peace’.¹⁰ Article 23 of the African Charter is, in turn, a ‘reaffirmation of certain principles of international law’.¹¹ As indicated above, the UN Charter stipulates that one of the purposes of the UN is the maintenance of peace.¹² Thus, it contains several provisions concerning the steps that the organs of the UN must take to promote peace. Moreover, the Preamble to the Universal Declaration of Human Rights (Universal Declaration) provides for the realisation of the rights of everyone as the foundation of peace; while article 26 provides for education that is directed to the ‘maintenance of peace’.

2 Reliefweb ‘Conflict trends in Africa, 1989-2019’ (14 October 2020) <https://reliefweb.int/report/world/conflict-trends-africa-1989-2019> (accessed 23 June 2023).

3 Reliefweb ‘Alert 2022! Report on conflicts, human rights and peacebuilding’ <https://reliefweb.int/report/world/alert-2022-report-conflicts-human-rights-and-peacebuilding> (accessed 29 July 2022). In 2021 there were 15 armed conflicts on the African continent.

4 USAID ‘Women and conflict’ (2007) 1 [toolkit_women_and_conflict_an_introduutory_guide_for_programming.pdf](https://www.usaid.gov/sites/default/files/asset_document/2007/01/toolkit_women_and_conflict_an_introduutory_guide_for_programming.pdf) (usaid.gov) (accessed 23 June 2023).

5 See generally L Mushoriwa et al ‘Accountability for sexual exploitation and abuse by United Nations peacekeepers: case studies of the Democratic Republic of Congo and Central African Republic’ in A Budoo-Scholtz & EC Lubaale (eds) *Violence against women and criminal justice in Africa: sexual violence and vulnerability* (2022) 139; I Ogunniran ‘Conflict-related sexual violence in the North-East Nigeria: strengthening legal response’ in A Budoo-Scholtz & EC Lubaale (eds) *Violence against women and criminal justice in Africa: sexual violence and vulnerability* (2022) 171; and J Ndagire ‘Prospects for reparations for victims of conflict-related sexual violence in Uganda’ in A Budoo-Scholtz & EC Lubaale (eds) *Violence against women and criminal justice in Africa: sexual violence and vulnerability* (2022) 201.

6 USAID (n 4) 1.

7 USAID (n 4) 1.

8 USAID (n 4) 1.

9 UN Declaration on the Right to Peace in 1984, updated in 2017.

10 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) 5.

11 F Ouguerouz *The African Charter on Human and Peoples’ Rights: a comprehensive agenda for human dignity and sustainable democracy in Africa* (2003) 338.

12 UN Charter art 1.

This chapter elaborates on article 10 of the Maputo Protocol, and is divided into six sections. Section 2 focuses on the drafting history of Article 10. Section 3 elaborates on the different concepts under article 10 while section 4 examines the article's relationship with other relevant international law provisions. Section 5 analyses the extent to which states have implemented article 10 and section 6 provides for conclusions and recommendations.

2 Drafting history

The right to peace was included in article 11 of the Nouakchott Draft¹³ by way of reference to article 23 of the African Charter. This demonstrates that the right to peace was central to the realisation of women's rights in Africa from the very beginning. The inclusion of the right to peace was arguably related to the many ongoing conflicts on the continent. Between the 1960s and the 1990s there were several coup d'états.¹⁴ At the time the Maputo Protocol was being drafted there were armed rebellions in 18 countries and 11 'severe political crises' in the continent.¹⁵ Hence, it is unsurprising that women's right to peace was a concern at the time.

Article 11 of the Nouakchott Draft spells out that states parties commit themselves to 'reduce military expenditure significantly in favour of spending on social development, while guaranteeing the effective participation of women in the distribution of these resources'. The provision on the reduction of military expenditure for social development might seem out of place given that, at face value, it is not related to the right to peace, but rather to economic and social welfare rights in general. However, this reference was arguably placed under the right to peace as it was presumed that a reduction in military expenditure would lead to a culture of less conflict and hence promote the right to peace for all, including women. Article 11 of the Nouakchott Draft also envisaged women's participation in the re-distribution of these resources. This is in line with the right to equal participation in women's decision-making processes.¹⁶

Article 12 of the Kigali Draft¹⁷ included the right to peace. While most of the provisions remained similar to the Nouakchott Draft, there were some changes. The phrase 'on an equal basis' was removed concerning the state's obligations 'to take all appropriate measures to involve women' in the different steps. Reference to 'sub-regional levels' was included, whereas the Nouakchott Draft only mentioned the Organisation of African Unity (OAU) and international level. The reference to the 'distribution of food' was replaced with 'humanitarian aid and assistance'. The sub-section on protecting women against rape and sexual assault was removed. The latter was related to the fact that article 13 of the Kigali Draft already protected women from all forms of violence 'in peace time and during situations of conflict'. Removing 'on an equal basis' might be considered as being retrogressive since it removed the burden from states to ensure that women are involved 'on an equal basis' as men in issues concerning peace. As for the addition of sub-regional levels and humanitarian aid and assistance, these were welcome amendments as they broadened the scope of the article.

In 2000, the Final Draft of the Maputo Protocol was presented, with the right to peace being under article 11.¹⁸ Sub-section 4 of this article provided for conflict under emergency and conflict

13 Nouakchott Draft (n 10).

14 Reliefweb 'Conflict trends in Africa, 1989-2017' <https://reliefweb.int/report/world/conflict-trends-africa-1989-2017> (accessed 29 July 2022).

15 A Bujra 'African conflicts: A discussion of their causes and their political and social environment' (2000) 1 <https://repository.uneca.org/ds2/stream/?#/documents/4bbf1616-0c5d-5e50-9a96-79baf1e0db39/page/1> (accessed 9 May 2023).

16 Maputo Protocol art 9.

17 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).

18 Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, CAB/LEG/66.6;

situations. In 2001, a meeting of experts was convened that proposed amendments to the Final Draft.¹⁹ The Report of the Meeting of Experts included the following in article 11(1), '[w]omen shall have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace'. The second paragraph was amended to provide that '[s]tates parties shall take all appropriate measures to ensure the increased participation of women'. It also amended section 11(2)(c) to remove humanitarian aid and assistance and formulated the provision as: 'structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees, displaced persons, in particular women'. Including this category of women implies that the Maputo Protocol recognises that women in these situations require additional support to reintegrate into society. It also imposes specific obligations on states in terms of providing protection to these women. Concerning the aspect of military expenditure, the Report on Final Draft with proposals for amendments removed 'effective participation of women in the distribution of these resources' and provided for 'spending on social development in general, and the promotion of women in particular'. Removing effective participation of women is a lost opportunity since in many instances women do not have a say in how resources affecting them are distributed.

Moreover, there was a fourth paragraph that required states to take measures for the 'effective protection of women and children in emergency and conflict situations' and 'of asylum seekers, refugees, returnees and displaced persons, particularly women and girls'. It further required states to ensure the 'full and equal participation' of women in all aspects of 'post conflict reconstruction and rehabilitation'. This article was included in the Final Draft in an amended version.

At the end of the meeting, the Report on Final Draft with proposals for amendments had the right to peace under its article 10. The Office of the Legal Counsel also provided input on the Final Draft and recommended, amongst others, the removal of the word 'significantly' and 'girls'.²⁰

From 4 to 5 January 2003, there was an NGO Forum convened by the Africa Regional Office and the Law Project of Equality Now, with different stakeholders and experts. This meeting presented a mark-up draft of the Maputo Protocol.²¹ The mark-up draft had the right to peace in its article 10 and had four sub-sections, following the Report on the Final Drafts with proposals for amendments. There was a second meeting of experts on the draft Maputo Protocol from 24 to 26 March 2003 and that meeting further amended article 10 (Addis Ababa draft).²² After implementing these amendments, the Maputo Protocol was adopted.

Comparing article 10 of the Maputo Protocol with the origins of this article, it is noted that while the right to peace was always an integral part of the Maputo Protocol, the wording and provisions changed quite drastically throughout the drafting process.

Similar to the other articles of the Maputo Protocol, article 10 no longer references the African Charter. Including the latter in the initial drafts was just to lay the foundation for a provision on women's right to peace. There was also the addition of article 10(1) to emphasise that women 'have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace'. This paragraph is important since it presents the right to peace as integral to women's rights.

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 Revised Final Draft CAB/LEG/66.6/Rev.1, 22 November 2001.

20 Comments by African Union Office of the Legal Counsel (AUOLC), CAB/LEG/66.6/Rev.1, 2002 6.

21 Comments by the NGO Forum, CAB/LEG/66.6/Rev.1. January 2003.

22 Summary of the proceedings of the 2nd Meeting of Experts on the Draft Protocol to the African Charter on Human and Peoples' Rights relating to the rights of Women in Africa, Expt/Prot.Women/Rpt(II), Addis Ababa, Ethiopia, March 2003, para 13.

Moreover, while the initial draft aimed for the involvement of women ‘on an equal basis’, article 10(2) of the Maputo Protocol provides for the ‘increased participation of women’. This is arguably a retrogression from the initial wordings since it imposes a lesser obligation on states as compared to if it were on an equal basis and the discretion of states in determining means through which women may participate is wider than the initial draft. For instance, women could be participating very scarcely in the different steps but as long as the number is increasing states could be seen as implementing this article. In its original wording, states could have been held accountable for not ensuring that women’s participation is at par with that of men. This would have been in line with the Solemn Declaration on Gender Equality in Africa which provides for the ‘full and effective participation and representation of women’, which is also reflected in article 9 of Maputo Protocol.²³

Article 10(2)(c) further requires states to ensure ‘physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women’. This article initially provided for only refugees and displaced persons and the provision of food. Therefore, article 10(2)(c) ensures better protection since it includes more groups of women and a holistic approach to their protection instead of just the provision of food. Article 10(2)(d) also includes women in ‘the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons’. This is a step further than the original text as the latter did not consider management of camps and settlements.

Concerning article 10(3) on military expenditure, the current article excludes ‘the effective participation of women in the distribution of these resources’ and leaves the state to take the necessary measures. Moreover, the last part of the initial article (then article 10(4)), which recognised rape and sexual assault during conflict as war crimes, was excluded from article 10 of the Maputo Protocol. This is because article 11 of the Maputo Protocol focuses on the protection of women in armed conflict, where it protects women from ‘all forms of violence rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity’.²⁴ Hence, the provisions under the then article 10(4) were moved to article 11 of the Maputo Protocol. Article 11 also englobes paragraph 4 of the Report on Final Draft with proposals for amendments, which is to protect women, including ‘asylum seeking women, refugees, returnees, and internally displaced persons’ during armed conflict. This division shows that article 10 is unique in that it protects women’s right to peace, and this is exclusive of conflicts.

3 Linkages to other treaty provisions

3.1 International instruments

At the UN level, the Preamble of CEDAW recognises that the ‘cause of peace require the maximum participation of women on equal terms with men in all fields’. The Preamble further acknowledges that ‘that the strengthening of international peace and security ... will contribute to the attainment of full equality between men and women’. While this is relevant to article 10(2) of the Maputo Protocol, it is not worded as a right. Hence, the Maputo Protocol exceeded CEDAW’s standards and formalised women’s right to peace.

Article 10(3) can be linked to many human rights instruments. One of them is Resolution 1325 adopted by the UN Security Council in 2000 (Resolution 1325)²⁵ the Preamble of which stresses the

23 Solemn Declaration on Gender Equality in Africa 2004, para 2.

24 See TM Makunya & JM Abelungu ‘Article 11’ in this volume.

25 UN Security Council ‘Resolution 1325’ adopted during its 4213th meeting on 31 October 2000 S/RES/1325 (2000).

importance of women's equal participation in peace programmes.²⁶ Resolution 1325 and article 10(2) of the Maputo Protocol are reflective of each other since they both provide for the 'increased participation' of women in peacekeeping activities.

Furthermore, the UN Declaration on the Right to Peace in 1984, which was updated in 2017,²⁷ recognises that for peace to prosper, there is a need for 'maximum participation of women, on equal terms with men in all fields'. Goal 16 of the UN Sustainable Development Goal furthermore promotes 'just, peaceful and inclusive societies'.²⁸

3.2 Article 10 and other Maputo Protocol provisions

Article 10 of the Maputo Protocol should be read together with article 9, which provides for women's right to participate in the political and decision-making processes of a country. Article 9 covers all aspects of a country's policy, therefore, it includes women's participation in the promotion and maintenance of peace, thereby leading to implementation of article 10. Article 2 on the elimination of discrimination against women is a pillar provision to ensure the equal participation of women in all spheres, including in the promotion and maintenance of peace. Article 4 that protects the right to life, integrity and security of the person, is linked to article 10 since articles 4(d) and 4(k) provide for 'peace education through curricula' and the rights of refugee women respectively. Article 11 is closely related to article 10 since it requires the protection of women in armed conflict, and this can be a starting point in pushing for peace negotiations.

3.3 Article 10 and provisions in other regional instruments

While peace is not articulated as a right in any of the UN treaties, the African Charter, as mentioned above, included the same as a right. Following the African Charter, there were several developments at the international level concerning the right to peace.

At the regional level, article 23 of the African Charter and article 10 of the Maputo Protocol reflect several objectives of the OAU and later the African Union (AU). For instance, the Preamble to the Charter of the OAU of 1963 provided that for human progress, 'conditions for peace and security must be established and maintained'. It also required states to settle disputes peacefully.²⁹ The Constitutive Act of the AU (AU Constitutive Act), which replaced the OAU Charter in 2002, provides that one of the objectives of the AU is to 'promote peace, security and stability on the continent'.³⁰ It also establishes gender equality as one of its principles,³¹ along with several other principles relating to peace and security.

While article 23 of the African Charter mentions peace and security, article 10 of the Maputo Protocol focuses only on peace. From the preparatory work of the Maputo Protocol, as discussed above, it is not clear why the security aspect was left out. Moreover, article 10 of the Maputo Protocol

26 Preamble of Resolution 1325: '1. Urges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict ... 6. Requests the Secretary-General to provide to Member States training guidelines and materials on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peace-building measures'.

27 United Nations Security Council Resolution 1325 on Women, Peace and Security, S/RES/1325 (2000) Adopted by the Security Council at its 4213th meeting, on 31 October 2000.

28 United Nations <https://www.un.org/sustainabledevelopment/peace-justice/> (accessed 23 June 2023).

29 Articles 3(4) and 19 of the Charter of the Organisation of African Unity.

30 Article 3(f) of the AU Constitutive Act.

31 Article 4(l) of the AU Constitutive Act.

added a reduction of military expenditure, while the African Charter does not mention this as part of the right to peace. The only time the ‘military’ is mentioned in the African Charter is in its Preamble concerning the dismantling of ‘aggressive foreign military bases’. Hence article 10 of the Maputo Protocol goes a step further by addressing military expenditure as a key concern in ensuring the right to peace.

This provision is similar to article 22 of the African Charter on the Rights and Welfare of the Child³² (African Children’s Charter). It is aimed at responding to the African context, which may not be the same in other regions. Under article 22 of the African Children’s Charter, state parties have the obligation to ensure that children do not take part in hostilities. They further have to ensure that children who are affected by conflicts are protected and cared for. This is similar to articles 10(2)(c) and 10(2)(d) of the Maputo Protocol, which requires states to protect refugees, asylum seekers and returnees and displaced persons.

3.4 Policy frameworks

To ensure that there is ‘peace, security and stability in Africa’, the Peace and Security Council was operationalised in 2004 following the Protocol Relating to the Establishment of the Peace and Security Council adopted on 9 July 2002.³³ Additionally, there have been many policy developments concerning the right to peace, either in general terms or while focusing on women since the adoption of the Maputo Protocol. The main one is Agenda 2063, which is considered the ‘blue print for Africa’s development’.³⁴ Aspiration 4 of Agenda 2063 provides for a ‘peaceful and secure Africa’. While this aspiration does not mention women, aspiration 6 envisages an Africa that is ‘people-driven’, relying among others, on women. Aspiration 4, read together with aspiration 6 reflect the provisions of article 10 of the Maputo Protocol. Moreover, the 2020 campaign of the African Union focused on ‘Silencing the guns: Creative conducive conditions for Africa’s development’.³⁵ This campaign followed the African Union Master Roadmap of Practical Steps to Silence the Guns in Africa by Year 2020 (Lusaka Roadmap). While the Lusaka Roadmap provides several steps related to articles 10 of the Maputo Protocol and 23 of the African Charter, it does not expressly mention these documents. For instance, it provides for ‘training of mediators (including women) for immediate deployment in preventive diplomacy’.³⁶ This provision is directly related to article 10(2) of the Maputo Protocol, while the other provisions concern the right to peace generally. However, the drafters failed to refer to these binding obligations, which could have ensured better accountability.

32 Article 22 of the African Children’s Charter: 1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child. 2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child. 3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

33 African Union ‘Peace and Security Council’ <https://au.int/en/psc> (accessed 23 June 2023).

34 African Union Commission *Agenda 2063: the Africa we want* (2015) 14.

35 African Union <https://au.int/en/flagships/silencing-guns-2020> (accessed 23 June 2023).

36 African Union *Master roadmap of practical steps to silence the guns in Africa by year 2020* (2016) 9.

4 Concepts and definitions

4.1 Right to peace

No treaty monitoring body at the African Union level has provided a definition of the right to peace; these bodies have rather focused on peace as an absence of conflict.³⁷ For instance, in *XYZ v Benin*,³⁸ the African Court on Human and Peoples' Rights (African Court) provided the following in relation to article 23(1) of the African Charter:

[P]eace symbolizes the absence of worry, turmoil, conflict or violence. Its symbiosis with security contributes to social well-being. Indeed, the assurance of living without danger, without the risk of being affected in its physical integrity and its heritage gives citizens the confidence of national stability.

Moreover, in *Democratic Republic of Congo v Burundi, Rwanda and Uganda*,³⁹ the African Commission on Human and Peoples' Rights (African Commission) held that 'armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements' violate the right to peace.

These two cases demonstrate that peace is linked to the absence of interference or even the threats of it. It is characterised as a situation where there is national stability and where citizens do not live in danger.

The 2017 UN Declaration on the Right to Peace (2017 Declaration) recognises 'the promotion of peace as a vital requirement for the full enjoyment of all human rights by all'. Its article 1 provides that '[e]veryone has the right to enjoy peace such that all human rights are promoted'. Article 2 of the 2017 Declaration requires states to ensure 'equality and non-discrimination' as 'a means to build peace within and between societies'. Thus, it can be deduced that peace is a prerequisite for the enjoyment of all other human rights. The right to peace is also defined as a collective right because it is to be enjoyed by all globally.⁴⁰ It is one of the supreme values 'cherished by international law', if not its most supreme value.⁴¹ This, as mentioned in the introduction, is because the UN Charter points to the maintenance of peace as one of its foundational values.

4.2 Right of women to participate in peace programmes

Article 10(2) requires states to take 'all appropriate measures' for the 'increased participation of women' in peace-related programmes. Appropriate measures, in this case, include affirmative action and positive discrimination that ensure that more women are included in peace-related programmes. Moreover, if read within the overall spirit of the Maputo Protocol, it also includes a holistic approach to measures, including steps such as legislation, policies, programmes and budgetary allocations. It has also been suggested that states work with the media to ensure that women participate fully in

37 There are now discussions on a draft general comment on art 23 of the African Charter that can have a bearing on the interpretation of art 10 of the Maputo Protocol if adopted. See <https://ishr.ch/latest-updates/achpr68-right-to-peace-general-comment-on-article-23-of-the-african-charter/> (accessed 22 May 2022).

38 *XYZ v Benin* (judgment) (27 November 2020) 4 AfCLR 83 para 133.

39 *Democratic Republic of Congo v Burundi, Rwanda and Uganda* Communication 227/99, ACHPR para 68.

40 RK Singh 'Right to peace as a human right' <https://ujala.uk.gov.in/files/Ch5.pdf> (22 May 2022).

41 K Tomasevski 'The right to peace' (1982) 1 *Current Research on Peace and Violence* 44.

peace initiatives.⁴² As mentioned above, the phrase ‘increased participation of women’ is arguably a regression from ‘participation on equal basis’, the phrase that was used in the initial draft. However, if interpreted within the spirit of the Maputo Protocol, and in line with its article 9, the goal of equality is met.

4.3 Programmes of education for peace and a culture of peace

A culture of peace is a ‘very wide scope phenomenon that encompasses many different elements’.⁴³ Article 1 of the UN Declaration and Programme of Action on a Culture of Peace⁴⁴ provides that ‘[a] culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life based on’ several factors such as the ‘respect for life, ending of violence and promotion and practice of non-violence through education, dialogue and cooperation’. Hence, states need to adopt a way of life that reflects a peaceful existence.

Article 10 of the Maputo Protocol requires states to ensure the increased participation of women in programmes of education for peace and a culture of peace. This implies that states adopt programmes of education for peace and a culture of peace with the participation of women. There is a need to change mindsets through education and sensitisation programmes to ensure that there is a culture of peace. Such initiatives must be long-term, community oriented, incorporated into programmes and the curriculum, and must begin at an early stage.⁴⁵

4.4 Structures and processes for conflict prevention, management and resolution

Conflict prevention involves ‘diplomatic measures to keep intra-state or inter-state tensions and disputes from escalating into violent conflict’.⁴⁶ Conflict prevention and conflict management are ‘different sides of the same coin’ since ‘[p]reventative measures are designed to resolve, contain and manage, so conflicts do not crystallise’.⁴⁷ Conflict management, therefore, requires conflict prevention measures. Conflict prevention and management structures include mechanisms for ‘early warning, information gathering and a careful analysis of the factors driving the conflict’.⁴⁸

Under article 10 of the Maputo Protocol, states have the obligation to ensure that women increasingly participate in mechanisms set up to prevent and manage conflict. To ensure that more women are included in these structures and processes, the African Commission has identified engagement in the form of consultations with women and other relevant groups during promotion and fact-finding missions.⁴⁹ It has further suggested that the Peace and Security Council must ensure

42 A Joof-Colé ‘The role of women in the regulation of information during conflict situations’ in Solidarity for African Women’s Network ‘The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa: from ratification to realisation of African women’s rights’ (2005) 222 *Pambazuka News* 15.

43 D Bar-Tal ‘Challenges for constructing peace culture and peace education’ in E Matthews et al (eds) *The Israeli-Palestinian conflict: parallel discourses* (2011) 216.

44 UN Declaration and Programme of Action on a Culture of Peace 1999.

45 Bar-Tal (n 43) 220.

46 UN Peacekeeping ‘Terminology’ <https://peacekeeping.un.org/en/terminology> (accessed 23 June 2023).

47 N Swanström & M Weissmann ‘Conflict, conflict prevention and conflict management and beyond: a conceptual exploration’ (2005) <https://gsdrc.org/document-library/conflict-conflict-prevention-and-conflict-management-and-beyond-a-conceptual-exploration/> (accessed 23 June 2023).

48 UN Peacekeeping (n 46).

49 African Commission *Addressing human rights issues in conflict situations: towards a more systematic and effective role for the African Commission on Human and Peoples’ Rights* (2019) 78.

'greater representation of women in such processes, as mediators and experts'.⁵⁰ Transitional justice processes should also include more gender experts.⁵¹

4.5 Physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women

The inclusion of 'physical, psychological, social and legal protection' demonstrates that the Maputo Protocol adopts a holistic approach to realising rights. It recognises that there is a need for comprehensive interventions for rights to be realised. Moreover, women need to have increased participation in providing such protection measures to realise women's right to peace.

Article 10(2)(c) is an interesting provision since it applies to all asylum seekers, refugees, returnees and displaced persons. This sub-section also mentions 'in particular women'. Being a document that focuses on women's rights, this inclusion raises the question of whether the Maputo Protocol imposes an obligation to realise the rights of everyone and then to focus on women. This defeats the purpose of the Maputo Protocol as a document that recognises women's vulnerabilities.

4.6 Management of camps and settlements

Article 10(2)(d) is applicable during or post-conflict situations that create asylum seekers, refugees, returnees and displaced persons. In most instances, women and girls constitute the majority of the displaced population,⁵² with 50 per cent of refugees, internally displaced, or stateless populations being women and girls.⁵³ Refugee women are at risk of sexual violence, with one in five women refugees experiencing sexual violence.⁵⁴ Therefore camps and settlements need to be cognisant of the vulnerabilities that women face and set up measures to protect them. There is a need for an increased participation of women in the management of these camps and settlements since the survivors might not feel comfortable talking to men.⁵⁵ Moreover, in some instances, men might not be sensitive to the challenges that women face in these camps and settlements.

4.7 Military expenditure and budgetary allocation

Article 10(3) is indisputably innovative since it marks the first time that an international human rights instrument provided for 'a hierarchy of budgetary priorities'.⁵⁶ In no prior binding human rights instrument have states been directed to 'reduce expenditure on one budgetary item for the purposes of allocating it to human rights items'.⁵⁷ This article requires states to 'reorient their budget priorities towards socio-economic development and promotion of women'.⁵⁸ This is due to the fact that 'social

50 African Commission (n 49) 89.

51 African Commission *Study on transitional justice and human and peoples' rights in Africa* (2019) 19.

52 UN Refugee <https://www.unhcr.org/en-us/women.html> (accessed 23 June 2023).

53 Women for Women International '5 facts about what refugee women face' (9 June 2022) <https://www.womenforwomen.org/blogs/5-facts-about-what-refugee-women-face> (accessed 23 June 2023).

54 As above.

55 Website of Emergency Live <https://www.emergency-live.com/civil-protection/role-women-emergency-situations-refugee-camps-relief-environments/#:~:text=In%20addition%2C%20they%20transmit%20safety%20and%20confidence.%20to,in%20emergency%20situations%3A%20the%20Disaster%20Management%20Training%20Programme> (accessed 30 June 2022).

56 F Viljoen 'An introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 11 *Washington and Lee Journal of Civil Rights and Social Justice* 31.

57 A Budoo-Scholtz 'Silencing the guns to end gender-based violence in Africa: an analysis of art 10(3) of the Maputo Protocol' (2020) 4 *African Human Rights Yearbook* 332.

58 A Birhanu 'Reflections on Ethiopia's reservations and interpretative declarations to the Maputo Protocol' (2019) 31 *Journal of Ethiopian Law* 143.

development and the promotion of the human rights of women affect all articles provided by the Maputo Protocol'.⁵⁹ Article 10(3), if implemented, can assist in realising socio-economic rights on the continent.⁶⁰

While article 10(3) is in a document providing for women's rights, it first provides for a re-allocation to social development first, and then particularly to women. This is similar to article 10(2)(c) which provides for the protection of everyone, and then to women in particular. This could be because social development leads to gender equality.⁶¹ However, being a document that focuses on women, this article should have provided for the social development of women specifically, instead of being general.

Article 10(3) requires states to take 'necessary measures'. It has been proposed that the term 'necessary measures' has a 'two-fold interpretation'.⁶² On the one hand, states have to reduce their budgetary allocation to the military, and on the other hand, they have to engage in strategies that will end conflicts, which will lead to a reduction of military expenditure.

Article 10(3) of the Maputo Protocol may be viewed as overly prescriptive and as impinging upon national sovereignty by directing states on how to allocate their resources, a function that is seen as vesting exclusively in the executive arm of government.⁶³ However, by ratifying the treaty without reservations to article 10(3), states have given consent to the African Commission or the African Court to monitor and review their budgetary allocations and trends to ascertain whether they are in line with the Maputo Protocol.⁶⁴

5 Implementation

Generally, article 23 of the African Charter has been considered as an 'unusual provision' with the human rights bodies of the AU rarely relying on it.⁶⁵ The only communication in which the African Commission found a violation of article 23 of the African Charter is *Democratic Republic of Congo v Burundi, Rwanda and Uganda*.⁶⁶ Thus, article 10 of the Maputo Protocol, which is an extension of article 23 of the African Charter, has also received little attention. To begin with, many African countries were reluctant to ratify the Maputo Protocol because of article 10. For instance, Kenya's Minister in charge of gender affairs noted that 'the government was uncomfortable with this provision and especially the exact meaning and impact of the term "significant" as used in the Protocol'.⁶⁷ However, in 2010, the country ratified the Maputo Protocol following pressure from lobby groups,⁶⁸ and made a reservation to article 10(3) of the Maputo Protocol, amongst others.⁶⁹ Ethiopia also made a reservation to article 10(3), citing national interests.⁷⁰ Moreover, Mauritius made a reservation to article 10(2)(d) concerning

59 A Budoo 'Gender budgeting as a means to implement the Maputo Protocol's obligation to provide budgetary resources to realise women's rights in Africa' (2016) 9 *African Journal of Legal Studies* 206.

60 G Giacca *Economic, social and cultural rights in armed conflict* (2014) 50.

61 African Union *Social policy framework for Africa* (2008).

62 Budoo (n 59) 333.

63 SA Yeshanew *The justiciability of economic, social and cultural rights in the African regional human rights systems* (2013) 262-263.

64 Viljoen (n 56) 31.

65 R Murray *The African Charter on Human and Peoples' Rights: a commentary* (2019) 538.

66 *DRC v Burundi* (n 39).

67 ST Griffith & P Ogendi 'The impact of the African Charter and the Maputo Protocol in Kenya' in VO Ayeni (ed) *The impact of the African Charter and the Maputo Protocol in selected African countries* (2016) 116-117.

68 As above.

69 Equality Now 'The Maputo Protocol turns 18 today. But what does this mean for women and girls in Africa?' 11 July 2021 https://www.equalitynow.org/news_and_insights/maputo_protocol_turns_18/ (accessed 23 June 2023).

70 Birhanu (n 58) 122.

refugee and asylum-seeking women because it considers these provisions to be irrelevant in Mauritius.⁷¹ Apart from these reservations, the rest of the countries that have ratified the Maputo Protocol⁷² have an obligation to implement all of the provisions in article 10. Overall, however, implementation of the Maputo Protocol in itself is ‘slow and patchy’, and this has an effect on the implementation of article 10.⁷³

One avenue for the African Commission to review the implementation of an article is through the state reporting procedure under articles 62 of the African Charter and 26(1) of the Maputo Protocol.⁷⁴ States, upon presenting their reports to the African Commission, indicate the ways in which they have implemented the provisions of the African Charter and the Maputo Protocol. Concerning article 10 of the Maputo Protocol, many state reports mention that the country has adopted a National Plan of Action and its corresponding committee for the implementation of the UN Resolution 1325,⁷⁵ with Namibia still in the stages of drafting its National Plan of Action on Women, Peace and Security.⁷⁶ Countries such as the Democratic Republic of Congo (DRC), Eswatini, Mali, Mozambique, Nigeria and Sierra Leone have included the right to peace in their domestic laws, including in their constitutions.⁷⁷

71 Equality Now (n 69).

72 African Union: Saharawi Republic becomes the 43rd African Union member state to ratify the Protocol on Women's Rights <https://au.int/en/pressreleases/20220504/saharawi-arab-democratic-republic-becomes-43rd-african-union-member-state> (accessed 23 May 2022): 43 out of 55 African countries have ratified the Maputo Protocol, with Saharawi Arab Democratic Republic being the last country to ratify the document in May 2022.

73 R Sigsworth & L Kumalo ‘Women, peace and security: implementing the Maputo Protocol in Africa’ (2016) 295 *Institute for Security Studies Papers* (unpaged).

74 Article 26(1) of the Maputo Protocol: ‘States Parties shall ensure the implementation of this Protocol at national level, and in their Periodic Reports submitted in accordance with art 62 of the African Charter, indicate the legislative and other measures undertaken for the full realisation of the rights herein recognised’.

75 Republic of Angola 6th and 7th report on the implementation of the African Charter on Human and Peoples' Rights and initial report on the Protocol on the Rights of Women in Africa 2011-2016 (2017) para 58; Burkina Faso Periodic Report of Burkina Faso within the framework of the implementation of art 62 of the African Charter on Human and Peoples' Rights' (2015) para 361; Republic of Cameroon Single report comprising the 4th, 5th and 6th Periodic Reports of Cameroon relating to the African Charter on Human and Peoples' Rights and 1st reports relating to the Maputo Protocol and the Kampala Convention (2020) para 905; Republic of Côte d'Ivoire Periodic report of the Republic of Côte d'Ivoire 2016-2019 (2021) para 187; Democratic Republic of Congo Report to the African Commission on Human and Peoples' Rights on the implementation of the African Charter on Human and Peoples' Rights from 2008 to 2015 (11th, 12th, and 13th Periodic Reports) and of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa from 2005 to 2015 (Initial Report and 1st, 2nd and 3rd Periodic Reports) (2017) para 312; The Gambia Combined report of the African Charter on Human and Peoples' Rights for the period 1994 and 2018 and initial report under the Protocol to the African Charter on the Rights of Women in Africa (2018) 163; Republic of Kenya Combined report of the 12th and 13th Periodic Reports on the African Charter on Human and Peoples' Rights and the initial report on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2020) para 287; Nigeria 6th periodic country report 2015-2016 on the implementation of the African Charter on Human and Peoples' Rights (2017) 128; Republic of Rwanda The 11th, 12th and 13th Periodic Reports of the Republic of Rwanda on the implementation status of the African Charter on Human and Peoples' Rights and the initial report on the implementation status of the Protocol to the African Charter on Human and Peoples' Rights and the rights of women in Africa (2017) para 61.

76 Republic of Namibia 7th Periodic Report on the African Charter on Human and Peoples' Rights and the 2nd Report under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2020) 96.

77 DRC Combined Periodic Report (n 75) para 310; Republic of Mali Periodic report to the African Commission on Human and Peoples' Rights relating to the implementation of the African Charter on Human and Peoples' Rights (2011) para 79; Republic of Mozambique Report from the government of the Republic of Mozambique submitted in terms of art 62 of the African Charter on Human and Peoples' Rights (2012) para 350; Nigeria Periodic Report (n 75) 128; Sierra Leone African Charter on Human and Peoples' Rights: Initial to date following article of the Charter report (2015) 24; Kingdom of Eswatini Combined 1st to 9th Periodic Report on the African Charter on Human and Peoples' Rights and initial report to the Protocol to the African Charter on the Rights of Women in Africa' (2021) para 276.

The reports further indicate that some states have capacitated women to take part in peace-keeping initiatives,⁷⁸ and have adopted or participated in peace education programmes.⁷⁹ Some reports also mention that they have undertaken awareness raising and sensitisation campaigns on the importance of including women in conflict prevention and management⁸⁰ and the extent to which they have included women in such processes.⁸¹ For instance, in Cameroon, more than 500 women participated in public lamentations concerning the crisis in the North-West and South-West regions⁸² and in Kenya, the Ministry of Defence has a 2017 Gender Policy that considers the gender perspective and Resolution 275 in military operations.⁸³ Nigeria deploys women in peacekeeping missions both in the country and abroad,⁸⁴ and Rwandan women have ‘played a significant role in UN peacekeeping missions, as keepers and as police and military observers’.⁸⁵ South Africa has also increased the number of women it deploys ‘at operational levels in the UN and AU-sponsored peacekeeping missions’.⁸⁶

The reporting under article 10 of the Maputo Protocol shows that most countries link article 10 with UN Resolution 1325. Countries such as Angola, Burkina Faso, Cameroon, Ivory Coast, DRC, The Gambia, Kenya, Nigeria and Rwanda have adopted a national plan of action to implement UN Resolution 1325 and as a result, are implementing article 10 of the Maputo Protocol. This was the most reported aspect of article 10 of the Maputo Protocol, with the other sub-sections receiving little to no attention.

The African Commission, after reviewing the report, issues concluding observations to the different states. The concluding observations have mostly mentioned article 10(3) in relation to health.⁸⁷ The

78 Angola Combined Report (n 75) para 61; Burkina Faso Periodic Report (n 75) para 275.

79 Burkina Faso Periodic Report (n 75) para 362; The Gambia Combined Report (n 76) 164; Republic of Seychelles Country report: Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2019) 24-26.

80 DRC Combined Periodic Report (n 77) para 313; Kenya Combined Report (n 75) para 290; Republic of Togo 6th, 7th and 8th Periodic Reports of the state of Togo on the implementation of the African Charter on Human and Peoples’ Rights (2017) 178.

81 Cameroon Single Report (n 75) 906; DRC Combined Periodic Report (n 75) paras 314 to 317; The Kingdom of Lesotho Combined 2nd to 8th Periodic Report under the African Charter on Human and Peoples’ Rights and initial report under the Protocol to the African Charter on the Rights of Women in Africa’ (2018) paras 408-409; Togo Combined Periodic Reports (n 80) 146.

82 Cameroon Single Report (n 75) 907.

83 Kenya Combined Report (n 75) para 291.

84 Nigeria Periodic Report (n 75) 70.

85 Rwanda Combined Periodic Reports (n 75) 60.

86 Republic of South Africa Combined 2nd Periodic Report under the African Charter on Human and Peoples’ Rights and initial report under the Protocol to the African Charter on the Rights of Women in Africa (2015) para 281.

87 African Commission Concluding Observations on the Cumulative Periodic Reports (2nd, 3rd, 4th and 5th) of the Republic of Angola adopted during its 12th extraordinary session 30 July to 4 August 2012 para 41(XIV); African Commission Concluding Observations and Recommendations on the Combined Periodic Report of Burkina Faso on the Implementation of the African Charter on Human and Peoples’ Rights adopted during its 21st extraordinary session 23 February to 4 March 2017 para 11(iii); African Commission ‘Concluding Observations and Recommendations on the Initial and Combined Periodic Report of the State of Eritrea on the Implementation of the African Charter on Human and Peoples’ Rights’ adopted during its 63rd ordinary session 24 November to 13 December 2018 para 120(xlvi); African Commission ‘Concluding observations and recommendations on the combined Periodic Report of the Republic of the Gambia on the implementation of the African Charter on Human and Peoples’ Rights (1994-2018) and the initial report on the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2005-2014) adopted during its 31st extraordinary session 19 to 25 February 2021 paras 56(ii) and 56(vi); African Commission ‘Concluding Observations and Recommendations on the Periodic and Combined Report of the Islamic Republic of Mauritania on the Implementation of the African Charter on Human and Peoples’ Rights (2006-2014) and the Initial Report on the Maputo Protocol’ adopted during its 23rd ordinary session 12 to 22 February 2018 para 54; African Commission ‘Concluding Observations and Recommendations on the Second and Combined Periodic Report of the Republic of Mozambique on the Implementation of the African Charter on Human and Peoples’ Rights (1999-2010)’ adopted during its 17th extraordinary session 19 to 28 February 2015 para 79(xxix); African Commission ‘Concluding Observations and Recommendations on the 5th Periodic Report of the Federal Republic of Nigeria on the Implementation of the African Charter on Human and Peoples’

African Commission has also mentioned budgetary allocation in relation to education,⁸⁸ creation and maintenance of gender units within ministries or departments on women,⁸⁹ combatting violence against women,⁹⁰ justice,⁹¹ gender budgeting⁹² and programmes for women.⁹³ While the Concluding Observations for Côte d'Ivoire mentioned the allocation of budgetary resources to implement Resolution 1325,⁹⁴ it does not make reference to article 10 of the Maputo Protocol. Therefore, the African Commission has not seized every opportunity to interpret article 10 of the Maputo Protocol.

6 Conclusion

Article 10 of the Maputo Protocol contains innovative provisions, which if implemented can lead to women's right to peace and reduced military expenditure which can be channelled towards development. Article 10 of the Maputo Protocol codifies several international principles concerning the right to peace. However, most of the focus at the AU level is on women who are living in context of conflict. Therefore, article 10, which seeks to prevent conflict, does not receive enough focus from relevant stakeholders. To ensure better implementation of article 10 the different human rights monitoring bodies at the AU need to 'find innovative ways of working with national governments, civil society and grassroots organisations to realise the full potential of this crucial instrument'.⁹⁵

To ensure a better implementation of article 10 of the Maputo Protocol, the African Commission must furthermore adopt a general comment on article 10 to expound on the scope of the article. This

Rights' adopted during its 57th ordinary session 4 to 18 November 2015 para 117; African Commission 'Concluding Observations and Recommendations on the Initial and Combined Periodic Report of the Republic of Sierra Leone on the Implementation of the African Charter on Human and Peoples' Rights adopted during its 19th extraordinary session 16 to 25 February 2016 para 87(xx); African Commission 'Concluding Observations and Recommendations on the 5th Periodic State Report of the Republic of Uganda' adopted during its 57th ordinary session 4 to 18 November 2015 para 114; and African Commission 'Concluding Observations and Recommendations on the Combined Periodic Report of the Republic of Zimbabwe on the Implementation of the African Charter on Human and Peoples' Rights (2007-2019) and the Initial Report on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' adopted during its 69th ordinary session 15 November to 5 December 2021 para 60(iii).

- 88 African Commission 'Concluding Observations and Recommendations on the 2nd and 3rd Combined Periodic Report of the Republic of Botswana on the Implementation of the African Charter on Human and Peoples' Rights' adopted during its 63rd ordinary session 24 October to 13 November 2018 para 20(ii); 2018 Concluding Observations of Eritrea (n 87) para 120(xlvi).
- 89 2017 Concluding observations of Burkina Faso (n above) para 39(xi); African Commission 'Concluding Observations and Recommendations on the Kingdom of Eswatini's Combined 1st to 9th Periodic Report on the implementation of the African Charter on Human and Peoples' Rights, and Initial Report on the Protocol to the African Charter on the Rights of Women in Africa' adopted during its 70th ordinary session 23 February to 9 March 2022 para 80(ii).
- 90 2021 Concluding observations of The Gambia (n 87) para 62(iii).
- 91 African Commission 'Concluding Observations and Recommendations on the Kingdom of Lesotho's Combined Second to Eighth Periodic Report under the African Charter on Human and Peoples' Rights and its initial report under the Protocol to the African Charter on the Rights of Women in Africa' adopted during its 68th ordinary session 14 April to 4 May 2021 para 63(viii); African Commission 'Concluding Observations and Recommendations on the Combined Second Periodic Report under the African Charter on Human and Peoples' Rights and the Initial Report under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of the Republic of South Africa' adopted during its 20th extraordinary session 9 to 18 June 2016 para 48(i); and African Commission 'Concluding Observations and Recommendations on the Combined 3rd, 4th and 5th Periodic Report of the Republic of Togo' adopted during its 51st ordinary session 18 April to 2 May 2012 para 73(xx).
- 92 African Commission 'Concluding Observations and Recommendations on Sixth Periodic Reports of the Republic of Namibia on the Implementation of the African Charter on Human and Peoples' Rights (2011-2013)' adopted during its 58th ordinary session 6 to 20 April 2016 para 29(iii).
- 93 African Commission 'Concluding Observations and Recommendations on the Combined Periodic Report of the Republic of Senegal on implementation of the African Charter on Human and Peoples' Rights' adopted during its 18th extraordinary session 29 July to 7 August 2015 para 65.
- 94 African Commission 'Observations finales sur le rapport périodique initial et cummul de la République de Côte d'Ivoire' adopted during its 52nd ordinary session 9 to 22 October 2022 Recommendation XVI.
- 95 Sigsworth et al (n 73).

general comment should clarify the concepts in article 10 so that states are clear about their obligations. The African Commission must also give attention to article 10 of the Maputo Protocol in concluding observations and provide recommendations for its implementation. This also includes requesting states for budgetary information to assess whether they are reducing military expenditure in favour of social development. Furthermore, it must engage in sensitisation campaigns on article 10 of the Maputo Protocol through its Special Rapporteur on Women in Africa.

States parties that have not adopted national action plans for implementing the Maputo Protocol generally, and the right to peace more specifically, should do so. They should include information on the extent to which they are implementing the provisions of the Maputo Protocol, including article 10, in their state reports. States can also adopt affirmative measures to ensure women's participation in peace structures. They must make deliberate efforts, without jeopardising national security, to reduce military expenditure in favour of social development and promoting women's rights.

As for civil society organisations, they should focus on article 10 of the Maputo Protocol in their advocacy initiatives and train women so that they can take part in peace structures and processes. They could importantly also bring cases to the African Commission or the African Court on the implementation of article 10 of the Maputo Protocol.