

Article 3

Right to dignity

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1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.
2. Every woman shall have the right to respect as a person and to the free development of her personality.
3. States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women.
4. States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

1 Introduction.....	74
2 Drafting history	76
3 Interpretation of conceptual issues arising out of article 3.....	77
3.1 The principle of universality and cultural relativism	77
3.2 The meaning of human dignity under the Maputo Protocol.....	78
4 State practice and implementation	87
5 Conclusion.....	89

1 Introduction

Human dignity is a founding principle of international law, recognising that all human beings are equal and that their rights should be respected and protected.¹ Similar to the rights to equality and non-discrimination, the right to human dignity underscores all other human rights and is given content through other rights.² On the African continent, human dignity represents a decisive break from the past. It recognises that 'a human being is an end in itself and not simply a means to an end'.³ Human dignity is, therefore, central to the decolonial process. The African Commission on Human and Peoples' Rights (African Commission) succinctly described the importance of the right to human dignity under the African human rights system in *Open Society Justice Initiative v Côte d'Ivoire*. In this case, the African Commission stated that:

[Human dignity is] the soul of the African human rights system ... and inherent to the human person. In other words, when the individual loses [their] dignity, it is [their] human nature itself which is called into question ... In short, when dignity is violated, it is not worth the while to guarantee most of the other rights.⁴

1 C McCrudden 'Human dignity and judicial interpretation of human rights' (2008) 19 *European Journal of International Law* 656.

2 McCrudden (n 1) 679.

3 H Botha 'Human dignity in comparative perspective' (2009) 2 *Stellenbosch Law Review* 175 & 183.

4 *Open Society Justice Initiative v Côte d'Ivoire* Communication 318/06, African Commission on Human and Peoples' Rights, 17th extraordinary session (2015) para 139.

In general, human rights treaties either recognise and affirm all persons' inherent dignity and worth in preambles⁵ or set out the right to human dignity in broad terms under a substantive provision.⁶ In comparison, article 3 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) contains a defined right to human dignity, connecting it to other rights that are not traditionally included in a provision outlining the right to human dignity, but that has become associated with it through interpretation.

Beyond a broad recognition of women's dignity, article 3 guarantees the right of women to be protected from all forms of violence, prohibits any exploitation and degradation, and promotes the free development of their personalities.⁷ Despite this, women on the African continent, as discussed throughout this *Commentary*, continue to suffer from physical and sexual violence, female genital mutilation (FGM), and child marriage, amongst others, all of which violate their right to human dignity.

High incidences of intimate partner physical or sexual violence have been reported in both Sub-Saharan and North Africa.⁸ Data published in 2022 by the United Nations Children's Fund further indicate that the African continent has the highest prevalence of both child marriage and FGM. Approximately 130 million women were married under the age of 18 and 140 million women and girls have undergone FGM.⁹ Considering the estimated population of 721 million women on the African continent, this means that almost 1 in 5 women and girls were child brides or have undergone FGM.¹⁰ Against this backdrop, the right to human dignity enshrined in article 3 of the Maputo Protocol not only recognises the wide range of violations of women's inherent dignity but also provides the foundation for addressing it.

This chapter, aimed at unpacking the right to dignity as it is featured in the Maputo Protocol, takes as its point of departure the drafting of article 3 of the Protocol. The discussion proceeds by engaging with the debate between cultural relativism, the principle of universality, and the legal concepts that make up this provision. The obligations imposed by article 3 on state parties are then set out and the manner and extent of parties' compliance with these obligations are considered. The chapter concludes by briefly assessing the challenges that arise in the implementation of the right and provides recommendations to state and non-state actors to ensure that the human dignity of all women is protected and fulfilled.

5 See, UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); UN Convention on the Rights of the Child Convention on the Rights of the Child (CRC); International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR). The Preambles to the ICCPR, ICESCR, CEDAW, and the CRC all recognise that human rights derive from the inherent dignity of human beings and that, as a result, these rights are worthy of protection.

6 African Charter on Human and Peoples' Rights (African Charter); Universal Declaration of Human Rights (Universal Declaration). Universal Declaration art 1 states that '[a]ll human beings are born free and equal in dignity and rights'. Similarly, art 5 of the African Charter enshrines the right to human dignity, also prohibiting 'cruel, inhuman or degrading punishment and treatment'.

7 See R Nekura 'Article 4' in this volume.

8 Statista Research Department 'Physical or sexual violence against women in Africa, 2017' 31 March 2022 <https://www.statista.com/statistics/1299878/physical-or-sexual-violence-against-women-in-africa/> (accessed 12 April 2023).

9 UNICEF 'Towards ending harmful practices in Africa: a statistical overview of child marriage and female genital mutilation' June 2022 <https://data.unicef.org/resources/harmful-practices-in-africa/> (accessed 12 April 2023).

10 Country Meters 'Africa population clock (live)' 15 May 2023 <https://countrymeters.info/en/Africa> (accessed 15 May 2023).

2 Drafting history

From the outset, it was clear that the Maputo Protocol would include an explicit right to human dignity. Article 2 of the Nouakchott Draft provided that:

Women shall enjoy on the basis of equality with men the same rights and respect for their dignity and contribute to the preservation of those African cultural values that are positive and based on the principles of equality, justice and democracy.¹¹

Article 2 of the Kigali Draft was similar to the Nouakchott Draft in that it recognised the human dignity of women and their contribution to the preservation of African values. The Kigali Draft, however, accepted that respect for women's rights has its foundation in the 'dignity inherent in human beings' and is not granted 'on the basis of equality with men'. Furthermore, while the Nouakchott Draft referred to the preservation of *positive* African values, the Kigali Draft simply referred to 'African values that are based on the principles of equality, dignity, justice, and democracy'.¹²

In the Final Draft of the Maputo Protocol, considered at the Meeting of Experts in November 2001, respect for dignity was outlined in article 3. Although the core of article 2 of the Kigali and Nouakchott Drafts was retained, article 3 had as its point of departure the preservation of African values instead of recognising that women's rights stem from their inherent dignity as human beings. Article 3, nonetheless, added obligations on state parties to 'ensure that women enjoy rights and dignity inherent in all human beings' and 'adopt appropriate measures to prohibit any exploitation and degradation of women'.¹³

The Report of the Meeting Experts recommended minor amendments to article 3 – changing the order of principles referred to, explicitly including girls as beneficiaries of the right to human dignity, and outlining states' obligation to implement measures prohibiting any exploitation and degradation of women.¹⁴ These recommendations were contained in the Revised Final Draft. The African Union Office of the Legal Counsel (AUOLC)'s commented on the Revised Final Draft in December 2002, proposing that explicit references 'girls' be removed from multiple provisions, including article 3.¹⁵ This is arguably because all women, including girls, would be beneficiaries of the rights and protections enshrined under the Maputo Protocol.

In 2003, the NGO Forum's feedback on the Revised Final Draft proposed more substantial amendments to article 3 to align the language with article 5 of the African Charter.¹⁶ The NGO Forum proposed that article 3 state as follows:

11 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).

12 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).

13 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.

14 Comments by African Union Office of the Legal Counsel (AUOLC) on the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted by the Meeting of Governments Experts on 16 November 2001) CAB/LEG/66.6/Rev.1, 2002.

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

16 Comments by the NGO Forum, CAB/LEG/66.6/Rev.1. January 2003 (Comments by the NGO Forum).

Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights. In this regard, the states parties shall adopt and implement appropriate measures to prohibit any exploitation and degradation of women.¹⁷

The proposed amendment also removed the reference to the preservation of African values. The Addis Ababa Draft, approved at the Meeting of Ministers in March 2003, reflected the NGO Forum's recommendations in article 3(1) and (3).¹⁸ Despite its absence from the drafting process, women's 'right to respect as a person and to the free development of her personality' was included under article 3(2) of the Addis Ababa Draft for the first time. Of interest is also the obligation on states to adopt and implement appropriate measures to ensure women's right to dignity and protection from violence under article 3(4). Although protecting women from violence was always envisioned as part of the Maputo Protocol, previous drafts included it as a stand-alone right.¹⁹ The drafting process, however, does not explain the reason behind incorporating the right to be free from violence under the umbrella of article 3. That said, violence necessarily negates dignity and article 3(4) recognises this.

The development of the right to human dignity throughout the drafting process reflects a recognition that human dignity does not only relate to situations of degrading treatment, as suggested by article 5 of the African Charter. Instead, article 3 of the Maputo Protocol reflects the relationship between human dignity, women's developmental potential, and safety from all forms of harm.

3 Interpretation of conceptual issues arising out of article 3

3.1 The principle of universality and cultural relativism

The principle of universality versus cultural relativism debate is particularly relevant when interpreting the right to human dignity under the Maputo Protocol. At the core of the principle of universality is the notion that all persons have certain inherent rights based on being human. The implication is that because being human is an inalterable fact of nature, human rights must be inalienable and held by all persons in equal measure.²⁰ Commitment to the principle of universality is most often seen in the preambles of human rights treaties, framed as, for example, a recognition that 'fundamental rights stem from the attributes of human beings which justifies their national and international protections ... and respect of peoples' rights should necessarily guarantee human rights'.²¹

Cultural relativism should not be viewed in opposition to the principle of universality. Instead, it refers to how culture can influence the interpretation of human rights.²² Donnelly describes cultural relativism as a 'normative doctrine that demands respect for cultural differences'.²³ However, the issue that arises is that cultural relativism often has as its goal cultural absolutism.²⁴ The consequence is that

17 Comments by the NGO Forum (n 16).

18 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).

19 Nouakchott Draft (n 11) art 12; Kigali Draft (n 12) art 13; Final Draft (n 14) art 5.

20 J Donnelly 'The relative universality of human rights' (2007) 29 *Human Rights Quarterly* 282; S Rădulețu 'Regional human rights systems and the principle of universality' (2013) 38 *Revista de Științe Politice* 284; M Rosenfeld 'Can human rights bridge the gap between universalism and cultural relativism – A pluralist assessment based on the rights of minorities' (1999) 30 *Columbia Human Rights Law Review* 249.

21 African Charter Preamble. See also, Universal Declaration Preamble; ICCPR Preamble; ICESCR Preamble; CEDAW Preamble.

22 BG Ramcharan 'A debate about power rather than rights' (1998) 4 *IPG* 423.

23 Donnelly (n 20) 294.

24 EH Howard 'Cultural absolutism and the nostalgia for community' (1993) 15 *Human Rights Quarterly* 315 quoted in Donnelly (n 20) 294.

the interpretation of human dignity and other rights under international law is deemed to have ‘no normative force in the face of divergent cultural traditions’.²⁵

As discussed in chapter 2, the reason for the adoption of the Maputo Protocol was to ‘ensure that the rights of women are promoted, realised and protected’ because, despite the ratification of the African Charter, ‘women in Africa still continue to be victims of discrimination and harmful practices’.²⁶ Thus, culture and religion have been used to justify discrimination and harmful practices against women in the past, disregarding the right of women to have their inherent dignity respected.

The Maputo Protocol arguably presents a universalist approach to women’s rights by recognising that ‘[e]very woman shall have the right to dignity inherent in a human being’.²⁷ This is supported not only by the recognition that all forms of violence, degrading treatment, and harmful practices infringe on women’s dignity but also that states have an obligation to ensure that conditions exist that promote the free development of women’s personalities. As such, the Maputo Protocol embodies a balance between the principle of universality and cultural relativism, acknowledging that the mere fact that certain practices were accepted or celebrated in the past does not mean that its continuation in the present can be justified.

3.2 The meaning of human dignity under the Maputo Protocol

Despite the wide recognition that respect for human dignity is central to human rights discourse, human dignity is not easily defined as a separate term. Rather, it is often defined with reference to other rights.²⁸ There has been limited engagement with the right to human dignity under the Maputo Protocol by the African Court on Human and Peoples’ Rights (African Court) and the African Commission. As such, it is useful to take guidance from how human dignity has been interpreted elsewhere, particularly under the African Charter.

3.2.1 *The right to human dignity and the free development of the personality*

The African Charter explicitly guarantees the right to human dignity under article 5, also incorporating it as part of the right to life under article 4. Importantly, the African Court and the African Commission have interpreted the right to human dignity in a manner similar to how it has been treated constitutionally, as mentioned in section 5. For example, like in South Africa,²⁹ the African Court and the African Commission have widely interpreted the right to life, recognising not only the ‘inviolable nature and integrity of the human being’³⁰ but also the right to a dignified life.³¹ In this regard, reference has also been made to the relationship between a dignified life and the progressive realisation of economic, social, and cultural rights.³²

25 Donnelly (n 20) 294.

26 See A Rudman ‘Preamble’ secs 3.4 & 4.12 in this volume.

27 Article 3(1).

28 McCrudden (n 1) 678.

29 *S v Makwanyane* 1995 (3) SA 391 (CC).

30 *African Commission on Human and Peoples’ Rights v Kenya* (merits) (2017) 2 AfCLR 9 (*ACHPR v Kenya*).

31 African Commission General Comment 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (art 4), adopted during the 57th ordinary session of the African Commission held in Banjul, The Gambia from 4 to 18 November 2015.

32 *Almas Mohamed Muwinda v Tanzania* (merits) (3 June 2016) 1 AfCLR 599. See also, General Comment 3 (n 32) para 43; African Commission ‘Working Group on Economic, Social and Cultural Rights’ (18 April-2 May 2012) African Commission <https://www.achpr.org/sessions/sessionsp?id=108> (accessed 4 August 2022).

The right to a dignified life is closely related to the free development of the personality which, in turn, is tied to the individual's right to pursue their life project. It is significant that the right to human dignity explicitly includes women's right to the free development of their personality.³³ Until the adoption of the Maputo Protocol, the right to the free development of the personality was associated primarily with the aims of education.³⁴ Although the Maputo Protocol recognises women's right to the free development of their personality, no reference has been made to what it means by the African Commission or the African Court. Interestingly, at the sub-regional level, the East African Community Gender Policy includes women's right to human dignity as one of its guiding principles, specifically referring to the promotion of the dignity and respect of women through the free development of their personality.³⁵

Article 11 of the African Charter on the Rights and Welfare of the Child (African Children's Charter) enshrines a comprehensive right to education. It provides that one of the aims of education is to promote the 'development of the child's personality, talents and mental and physical abilities to their fullest potential'. Therefore, children should be brought up in an environment that enables them to become active members of their communities and empowers them to contribute to its future improvement.³⁶

In this context, article 21 of the African Children's Charter also becomes relevant, requiring states parties to protect children against and 'eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child'. In the General Comment on the Responsibilities of the Child, outlined under article 31, the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) explained that a development-focused environment is one where children are not exposed to harmful social and cultural practices, as these practices infringe on their rights and well-being.³⁷ Similar to the Maputo Protocol, harmful practices are given a broad meaning with specific instances mentioned by the African Children's Committee including FGM, child marriage, and sexual exploitation.³⁸

Like the African Children's Charter, the Universal Declaration,³⁹ the ICESCR,⁴⁰ and the CRC⁴¹ also require education to be aimed at the development of the personality. According to Arajarvi, the full development of the personality refers to creating conditions amenable to developing the intellectual, psychological, and social dimensions of the individual.⁴² Beiter adds hereto that individuals should not only develop a sense of their own dignity but also that of others.⁴³ Ultimately, the free development of

33 Article 3(2).

34 C Chinkin 'Article 3' in MA Freeman, C Chinkin & B Rudolf (eds) *The UN Convention on the Elimination of All Forms of Discrimination Against Women: a commentary* (2012) 109. CEDAW (n 5) art 3 requires states parties to take appropriate measures to ensure the full development and advancement of women. Although not speaking directly to the free development of the personality, the CEDAW Committee has made clear that development denotes progress, and that progress can only be made if women's needs, and concerns are given the same priority as those of men.

35 EAC Secretariat 'East African Community Gender Policy' (2018) 29 <http://repository.eac.int/bitstream/handle/11671/24328/EAC%20GENDER%20POLICY-2.PDF?sequence=1&isAllowed=y> (accessed 30 August 2022).

36 African Committee of Experts on the Rights and Welfare of the Child General Comment on Article 31 of the African Charter on the Rights and Welfare of the Child on 'the responsibilities of the child' (2017) (African Children's Committee General Comment on art 31) para 33.

37 African Children's Committee General Comment on art 31 (n 36) para 22.

38 African Children's Committee General Comment on art 31 (n 36) paras 22 & 76.

39 Universal Declaration art 26(2).

40 ICESCR art 13(1).

41 CRC art 29(1)(a).

42 P Arajarvi 'Article 26' in A Eide, G Alfredsson, G Melander, LA Rehof & A Rosas (eds) *The Universal Declaration of Human Rights: a commentary* (1992) 409.

43 KD Beiter *The protection of the right to education by international law* (2005) 471.

the personality requires that children be provided with ‘life skills, to strengthen the child’s capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values’.⁴⁴

Taking inspiration from human rights treaties that primarily seek to protect the rights of children in no way infantilises women. The fact that discussion on the free development of the personality has occurred primarily concerning the right to education also does not mean that its application is limited to education. Instead, these instruments can provide guidance to contextualise article 3(2).

Considering the interpretation of the development of the personality above in light of women’s right to human dignity, it can be argued that, first, state parties must ensure that women are enabled to develop their intellectual, psychological, and social capacities. Second, harmful social and cultural practices, discussed in more detail below, and under chapter 7, prevent women from enjoying the right to the free development of their personalities with the consequence that they cannot participate meaningfully in their societies.⁴⁵ Finally, that meaningful participation is necessary for the development of the human personality to enable women to contribute equally to the improvement of their communities.

3.2.2 Prohibition of exploitation or degradation and the obligation to protect women from all forms of violence

Article 5 of the African Charter recognises the right of all persons to have their human dignity respected and also recognises their legal status. Simultaneously, this article also prohibits all forms of exploitation, degradation, and inhuman or degrading treatment or punishment. The African Court and African Commission have dealt extensively with the right to human dignity in the context of the right of persons deprived of their liberty, requiring that detention conditions must be humane⁴⁶ and establishing that mandatory death penalties⁴⁷ and unlawful detention violate the right to human dignity.⁴⁸ The African Commission has, moreover, given a broad interpretation to inhuman or degrading treatment or punishment, stating that it includes the ‘widest possible protection against abuses, whether physical or mental’.⁴⁹ As such, addressing individuals in degrading language constitutes an infringement of article 5.⁵⁰

Similar to article 5 of the African Charter, article 3 of the Maputo Protocol recognises the inherent dignity of women, prohibiting any exploitation or degradation of women. In this regard, the African Commission has declared that involuntary sterilisation,⁵¹ child marriage,⁵² and the death sentence⁵³

44 CRC Committee General Comment 1 on art 29(1) (17 April 2001) CRC/GC/2001/1 para 2.

45 See S Nabaneh ‘Article 5’ in this volume.

46 *Purohit and Moore v Gambia* (2003) AHRLR 96 (ACHPR 2003) See also, *Guehi v Tanzania* (merits and reparations) (2018) 2 AfCLR 477; *Institute for Human Rights and Development in Africa v Republic of Angola* (2008) ACHPR 83 (22 May 2008); *Huri-Laws v Nigeria* (2000) ACHPR 23 (6 November 2000).

47 *Ally Rajabu v Tanzania* (merits and reparations) (2019) 3 AfCLR 539. See also *Gozbert Henerico*, Application 056/2016 (10 January 2022); *International Pen and Others (on behalf of Saro-Wiwa) v Nigeria* (2000) AHRLR 212 (ACHPR 1998).

48 *African Commission on Human and Peoples’ Rights v Libya* (merits) (2016) 1 AfCLR 153 paras 78-85. See also: *IHRDA v Angola* (n 46) para 50; *Huri-Laws* (n 46) para 40.

49 *Purohit* (n 46) para 58. See also, *Media Rights Agenda v Nigeria* (2000) ACHPR 24 (6 November 2000) para 71; *Curtis Doebbler v Sudan* (2009) ACHPR 103 (ACHPR 2009) para 37.

50 *Purohit* (n 46) paras 58-59.

51 Resolution on involuntary sterilisation and the protection of human rights in access to HIV services (22 October-5 November 2013) ACHPR/Res.260 (LIV) 2013.

52 Resolution on the need to conduct a study on child marriage in Africa (20-29 July 2014) ACHPR/Res.292 (EXT.OS/XVI) 2014.

53 Resolution on the need for better protection of women sentenced to death in Africa (12-19 July 2021) ACHPR/Res. 483 (EXT.OS/XXXIII) 2021.

constitute degrading treatment and, therefore, violate the right to human dignity under the Maputo Protocol.

3.2.2.1 Physical and sexual violence

The African Commission is vocal in drawing attention to various forms of physical and sexual violence against women in general, requesting states parties to address these violations in its Concluding Observations. In this regard, the African Commission has, for example, expressed concern over national legislation not specifying corrective rape⁵⁴ or marital rape⁵⁵ as a sexual offence, the failure to criminalise FGM,⁵⁶ forced sterilisation of women with HIV/AIDS,⁵⁷ and the inadequate prosecution of sexual harassment in educational institutions and employment.⁵⁸ The African Commission has also confirmed that subjecting women and children to sexual and gender-based violence as a tactic of war during armed conflicts disregards their right to human dignity.⁵⁹

Although not stated in relation to violence against women in particular, the African Commission has expressed concern over violence and other human rights violations committed against persons based on their real or imputed non-heteronormative sexual orientation or gender identity. Drawing from the right to human dignity, amongst other rights, the African Commission has urged states to end all forms of violence against sexual minorities and to adopt legislation protecting sexual minorities.⁶⁰ In this manner, the African Commission recognises that violence and discrimination based on sexual orientation and gender identity violate the right to human dignity.⁶¹

In May 2017, the African Commission adopted the Guidelines on Combating Sexual Violence and its Consequences in Africa (Niamey Guidelines).⁶² The Niamey Guidelines establish the obligation to address sexual violence as flowing from numerous rights protected under the African human rights treaties, specifically referring to article 3(4) of the Maputo Protocol.⁶³ In discussing the investigation of sexual violence, the Niamey Guidelines refer to the importance of guaranteeing the dignity of victims and witnesses. This can be done through, for example, using video conferencing or altering the voice or image of the person speaking when gathering testimonies.⁶⁴ The Niamey Guidelines, moreover, refer to the role of the right to human dignity in considering restitution as a reparation for the victim of sexual violence.⁶⁵

54 Concluding Observations and Recommendations – South Africa: 2nd Periodic Report, 2003-2014 (2016) para 49.

55 Concluding Observations and Recommendations on the 2nd and 3rd Combined Periodic Report of the Republic of Malawi, 2015-2019, African Commission on Human and Peoples' Rights, adopted at the 70th ordinary session (23 February-9 March 2022) para 73.

56 Concluding Observations and Recommendations – Sierra Leone: Initial and Combined Reports, 1983-2013 (2016) para 77.

57 Concluding Observations and Recommendations – Namibia: 6th Periodic Report, 2011-2014 (2016) para 33.

58 Concluding Observations – Namibia (n 58) para 33.

59 Resolution on the situation of women and children in armed conflict (28 April-12 May 2014) ACHPR/Res.283 (LV) 2014.

60 African Commission Resolution on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity (28 April-12 May 2014) ACHPR/Res.275 (LV) 2014.

61 A Rudman 'The protection against discrimination based on sexual orientation under the African human rights system' (2015) 15 *African Human Rights Law Journal* 23-24.

62 African Commission on Human and Peoples' Rights Guidelines on Combating Sexual Violence and its Consequences in Africa adopted during its 60th ordinary session held in Niamey, Niger from 8-22 May 2017 (Niamey Guidelines).

63 Niamey Guidelines (n 63) 12.

64 Niamey Guidelines (n 63) 35.

65 42. See also, art 20(3) of the Southern African Development Community Protocol on Gender and Development, which requires States Parties to 'eliminate gender bias; and ensure justice and fairness are accorded to survivors of gender-based violence in a manner that ensures dignity, protection and respect'.

More recently, the African Commission adopted Resolution 522 on the Protection of Women against Digital Violence in Africa, drawing attention to online violence. This Resolution specifically refers to the right of women not to be exploited or degraded and to be protected from all forms of violence as enshrined under article 3 of the Maputo Protocol. Significantly, it confirms that human rights protections apply online and offline.⁶⁶

Where the African Commission and African Court can be deemed not yet to have gone far enough to protect women from physical and sexual violence, whether under the African Charter or Maputo Protocol, the Economic Community of West African States Community Court of Justice (ECOWAS Court) has made significant strides in three separate decisions.

In the first decision of an international court on a violation of the Maputo Protocol, the ECOWAS Court in *Dorothy Chioma Njemanze v Nigeria* found that Nigeria had failed to protect the applicants from sexual and gender-based violence, gender-based discrimination, as well as inhuman and degrading treatment.⁶⁷ The abduction, unlawful arrest and detention, sexual assault, sexual humiliation, and verbal abuse that the applicants suffered at the hands of police officials who believed that they were sex workers were found to infringe on numerous rights under the African Charter and Maputo Protocol, including the right to human dignity.⁶⁸ Although the Court's decision is welcome, both Rudman⁶⁹ and O'Connell⁷⁰ criticise the ECOWAS Court for protecting women who are not sex workers at the expense of women who are sex workers and for failing to grant the educational and preventative measures that the applicants sought.

In *Mary Sunday v Nigeria*,⁷¹ the ECOWAS Court considered a complaint of inter-partner violence where the applicant was denied access to justice through the failure of the state to investigate her abuse. The ECOWAS Court rejected the state's argument that domestic violence constitutes a private matter, stating that the law 'does not stop at the doors of marital homes'.⁷² Despite recognising that the suffering experienced by the applicant infringed on her right to human dignity, the ECOWAS Court denied that domestic violence constitutes gender-based violence.⁷³ According to Rudman, this illustrates a disregard for the obligation imposed under the Maputo Protocol to 'enforce laws that prohibit all forms of violence against women, regardless of whether the violence takes place in private or public'.⁷⁴

Finally, in *Aircraftwoman Beauty Igbobie Uzezie v the Federal Public of Nigeria*,⁷⁵ the ECOWAS Court found that the applicant's right to human dignity under article 5 of the African Charter was violated as a result of her rape and sexual assault by an employee of the Nigerian Airforce. The Court held the state

66 African Commission Resolution on the Protection of Women Against Digital Violence in Africa (19 July-2 August 2022) ACHPR/Res. 522 (LXXII) 2022 (Resolution 522).

67 *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). For a comprehensive discussion and commentary of the case, see A Rudman 'A feminist reading of the emerging jurisprudence of the African and ECOWAS Courts evaluating their responsiveness to victims of sexual and gender-based violence' (2020) 31 *Stellenbosch Law Review* 443-446.

68 *Dorothy Chioma Njemanze v Nigeria* (n 67).

69 Rudman (n 67).

70 C O'Connell 'Reconceptualising the first African Women's Protocol case to work for all women' (2019) 19 *African Human Rights Law Journal* 510-533.

71 *Mary Sunday v Federal Republic of Nigeria* Judgment No ECW/CCJ/JUD/11/18 (17 May 2018).

72 *Mary Sunday* (n 71) para IV.

73 *Mary Sunday* (n 71) para IV. See also *Hadijatou Mani Koraou v The Republic of Niger* Judgment No ECW/CCJ/JUD/06/08 (27 October 2008). Unofficial English translation available at https://www.refworld.org/cases,ECOWAS_CCJ,496b41fa2.html (accessed 30 July 2022).

74 Rudman (n 67) 448.

75 *Aircraftwoman Beauty Igbobie Uzezi v Federal Republic of Nigeria* Judgment No ECW/CCJ/JUD/11/21 (30 April 2021).

may be liable for the conduct of non-state actors due to its responsibility to prevent sexual violence.⁷⁶ The ECOWAS Court drew attention to the fact that rape constitutes an act of torture because it violates the victim's right to human dignity, also considering the failure of the state to conduct a proper investigation into the applicant's allegation, including the proper collecting and storing of evidence.⁷⁷

At a national level, the Supreme Court of Appeal of South Africa (SCA) has also drawn attention to article 3 of the Maputo Protocol in considering violence against women. In *Naidoo v Minister of Police*,⁷⁸ it was held that a police official was negligent in refusing to provide adequate assistance to the applicant, a victim of domestic abuse. The SCA made specific reference to the Maputo Protocol, referring to States Parties' obligation to enforce legislative measures to protect women's right to human dignity and protect them from all forms of violence.⁷⁹

Considering the above, it can be argued that any act of violence against women would mean that both the prohibition of degrading treatment and women's right to be free from all forms of violence have been violated. This is because an act of violence is necessarily degrading, and a degrading act necessarily causes harm. According to article 1(j), violence against women includes 'all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts'.⁸⁰ Similarly, degrading treatment intends to undermine the dignity of the individual through the same harms. As such, degrading treatment and violence against women as violations of human dignity cannot be separated. However, violence and degrading treatment are not limited to obvious physical violations.

3.2.2.2 Harmful cultural practices

Article 1(g) of the Maputo Protocol defines harmful practices as 'all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to ... *dignity* (emphasis added)' with articles (2)(b), 2(2) and 5 placing an obligation on states parties to prohibit discrimination against women, including harmful practices.⁸¹ Article 4(2) of the Southern African Development Community Protocol on Gender and Development echoes the sentiment of the Maputo Protocol, requiring state parties to implement measures to eliminate practices which negatively affect fundamental rights, such as the right to dignity.⁸²

The African Court dealt with the prohibition of harmful practices in the context of the Maputo Protocol in *Association pour le Progrès et la Défense des Droits des Femmes Maliennes and the Institute for Human Rights and Development in Africa v Mali*.⁸³ However, it did not find a violation of the right to human dignity.⁸⁴ Nonetheless, the African Court adopted a broad understanding of what constitutes harmful practices – unequal inheritance rights, forced marriage and the removal of free consent, and cultural and religious practices that are based on men's superiority over women.⁸⁵

76 *Aircraftwoman* (n 75) para 67.

77 *Aircraftwoman* (n 75) paras 39 a& 71. See also *Adama Vandi v Sierra Leone* Judgment No ECW/CCJ/JUD/32/22 (18 July 2022) paras 117-144.

78 (20431/2014) (2015) ZASCA 152; (2015) 4 All SA 609 (SCA); 2016 (1) SACR 468 (SCA) (2 October 2015).

79 *Naidoo* (n 78) para 27.

80 See M Kamunyu 'Article 1' sec 6.3 in this volume.

81 See M Kamunyu 'Article 1' sec 6.2, E Lubaale 'Article 2' sec 3.7 and S Nabaneh 'Article 5' in this volume. My emphasis.

82 SADC Protocol on Gender and Development <https://www.tralac.org/documents/resources/sadc/1186-sadc-protocol-on-gender-and-development-17-august-2008/file.html> (accessed 30 August 2022).

83 (merits) (2018) 2 AfCLR 380 (APDF).

84 The applicants did not allege a violation of art 3 of the Maputo Protocol.

85 APDF (n 83) para 135.

In the context of article 21 of the African Children's Charter, it has also become clear that the African Children's Committee gives a wide interpretation to harmful social and cultural practices, stating that it includes 'all behaviours, attitudes and/or practices' that undermine fundamental rights regardless of whether it is 'condoned by a society, culture, religion or tradition'.⁸⁶ The obligation to eliminate harmful practices exists precisely because practices that undermine fundamental rights cannot be justified.

At the sub-regional level, the ECOWAS Court in *Hadijatou Mani Koraou v Niger* has also dealt with harmful practices, holding that slavery under the guise of custom constitutes a harmful practice and infringes on the right to human dignity under the African Charter. The applicant was sold to a tribal chief as a minor in accordance with the practice of *Wahiya*, in terms of which a man acquires a slave girl who must then work as a servant and is available to the man for sexual relations.⁸⁷ After being liberated from slavery, the applicant fled the tribal chief's home despite his assertion that she must remain there because she was his wife.⁸⁸ What followed was lengthy domestic litigation on the issues of whether the applicant was married to the tribal chief and whether her enslavement in terms of the custom was unlawful.⁸⁹

As a result of 'passiveness, inaction, and abstention' of the local authorities, the applicant approached the ECOWAS Court, which recognised that the applicant was, in fact, held in slavery in contravention of article 5 of the African Charter and that the respondent had not done enough to protect the applicant from the harmful practice.⁹⁰ Instead, the authorities' conduct illustrated acceptance or at least tolerance of the custom.⁹¹ Like in *Dorothy Chioma Njemanze v Nigeria*, the ECOWAS Court failed to grant educational and preventative measures, thereby limiting the potential of the decision to bring about real change.

The UN Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW Committee) and the UN Committee on the Rights of the Child (CRC Committee) have also echoed the findings on harmful practices as a violation of the right to human dignity.⁹² In a joint general recommendation, it was explained that harmful practices are often rooted in the presumed superiority of men over women and are sustained by sex and gender stereotypes, social inequalities, control over the female body, social inequalities, and male-dominated power structures.⁹³ Based on this, the joint general recommendation identified FGM, child marriage, forced marriage, polygamy, and honour crimes as harmful practices.⁹⁴ Importantly, the joint general recommendation explained that a practice constitutes a harmful practice if it infringes on a fundamental human right and denies the individual's inherent dignity.⁹⁵

86 African Children's Committee General Comment 2 on art 6 of the African Children's Charter: The Right to a Name, Registration at Birth, and to Acquire a Nationality' (16 April 2014) ACERWC/GC/02 (2014) para 30.

87 *Hadijatou Mani Koraou* (n 73) paras 8-9.

88 *Hadijatou Mani Koraou* (n 73) paras 13-14.

89 *Hadijatou Mani Koraou* (n 73) paras 15-28.

90 *Hadijatou Mani Koraou* (n 73) paras 77 & 83.

91 *Hadijatou Mani Koraou* (n 73) para 85.

92 Committee on the Elimination of Discrimination against Women/Committee on the Rights of the Child 'Joint General Recommendation/General Comment 31 of the Committee on the Elimination of Discrimination against Women and 18 of the Committee on the Rights of the Child on Harmful Practices' (4 November 2014) CEDAW/C/CG/31-CRC/C/GC/18.

93 Joint General Recommendation/General Comment on Harmful Practices (n 92) paras 17-18.

94 Joint General Recommendation/General Comment on Harmful Practices (n 92) paras 19-29.

95 Joint General Recommendation/General Comment on Harmful Practices (n 92) paras 15-16.

In light of this discussion, it is clear that cultural and religious freedom, as the grounds on which harmful cultural practices are sought to be justified, cannot outweigh international human rights standards grounded in human dignity, thereby showing an alignment to the principle of universality. Considering these decisions in the context of violence against women and degrading treatment, harmful cultural practices constitute a violation of women's human dignity under the Maputo Protocol.

3.2.2.3 Verbal abuse

Degrading treatment extends beyond harmful practices, including verbal abuse or violence. Interestingly, in the decision of *Josephine Oundo Ongwen v Attorney General*,⁹⁶ the High Court of Kenya found a violation of the applicant's human dignity, referring to article 3(4) of the Maputo Protocol. The finding was based on the inappropriate hospital setting in which the applicant had to give birth to her child, inadequate medical assistance, and verbal abuse from healthcare practitioners.⁹⁷ Similarly, in *Mugwadi v Dube*,⁹⁸ the High Court of Zimbabwe found that a media article driven by gender biases and stereotypes regarding how women should conduct themselves defamed the applicant and that she was, therefore, entitled to compensation. Although not discussing article 3 of the Maputo Protocol, the High Court nonetheless referred to articles 3(1) and (2) in a footnote in its discussion on how gender discrimination undermines women's rights.⁹⁹

When considering the meaning of the right to human dignity and its relationship with the prohibition of degrading treatment in the absence of clear physical violence, the African Commission's decision in *Purohit v The Gambia* offers interpretive guidance. In this case, the African Commission had to consider whether the Lunatics Detention Act of 1917, which prescribed that any 'lunatic' must be automatically and indefinitely institutionalised, violated the right to human dignity of the complainants.¹⁰⁰

In determining whether a violation had occurred, the African Commission outlined that the right to human dignity demands that individuals be protected from inhuman or degrading treatment or punishment.¹⁰¹ Therefore, ensuring respect for human dignity requires that degrading treatment be given a broad definition to include the 'widest possible protection against abuses, whether physical or mental'.¹⁰² The African Commission established that human dignity would be violated where the individual is exposed to 'personal suffering and indignity' and that a violation can occur where undignified language is used.¹⁰³

Although important for expanding the meaning of degrading treatment, the importance of the African Commission's decision in *Purohit* for purposes of women's right to human dignity lies in the proclamation that 'at the heart of the right to human dignity ... (is the) right to enjoy a decent life, as normal and full as possible'.¹⁰⁴ Part of this is the right to have hopes, dreams and goals, and the right to pursue it. Central to this is the individual's right to make decisions about their life and their bodies.

96 Petition Case No 5 of 2014 (2018) eKLR (High Court, Kenya).

97 Joint General Recommendation/General Comment on Harmful Practices (n 92) paras 59-64.

98 (HC 6913 of 2011) (2014) ZWHHC 314 (17 June 2014).

99 *Mugwadi v Dube* (n 96) 22.

100 *Purohit* (n 46) para 44.

101 *Purohit* (n 46) para 55.

102 *Purohit* (n 46) para 58.

103 *Purohit* (n 46) para 58. See also *George Iyanyori Kajikabi v The Arab Republic of Egypt*, Communication 344/07 African Commission on Human and Peoples' Rights, Thirteenth Annual Activity Report (2021) para 161. Here, the African Commission explained that verbal abuse refers to insulting language which includes 'offensive, derogatory, abusive and negative stereotyping remarks'. Importantly, verbal abuse intends to impair the dignity of the victim.

104 *Purohit* (n 46) para 61.

3.2.2.4 Sexual and reproductive health

General Comment 1 on article 14(1)(d) and (e) of the Maputo Protocol sets out the interpretation of the ‘right to self-protection and the right to be protected from HIV and sexually transmitted infections’ and to be ‘informed on one’s health status and on the health status of one’s partner’.¹⁰⁵ In considering the normative content of the right to self-protection and the right to be protected, the African Commission drew attention to the fact that these rights are ‘intrinsically linked to other women’s rights including ... dignity ... and the right to be free from all forms of violence’.¹⁰⁶ As such, states parties must ensure the legal and social environment is such that women are empowered to exercise their right to self-protection and be protected and that these rights are fully realised.¹⁰⁷ In General Comment 1, the African Commission also places a specific obligation on states to train healthcare workers on ‘respect for dignity, autonomy and informed consent’ in providing sexual and reproductive health services to women.¹⁰⁸ Through this, the African Commission recognises the connection between human dignity and women’s right to make informed decisions about their bodies.

General Comment 2 gives broader guidance on states parties’ obligations in respect of women’s right to health, which includes sexual and reproductive health.¹⁰⁹ Speaking to women’s right to exercise control over their fertility, to decide whether to have children and to choose any method of contraception, the African Commission referred to the relationship between human dignity and the independence of women to make their own decisions, stating that:

The right to dignity enshrines the freedom to make personal decisions without interference from the State or non-state actors. The woman’s right to make personal decisions involves taking into account or not the beliefs, traditions, values and cultural or religious practices, and the right to question or to ignore them.¹¹⁰

Here, the African Commission recognises the role of culture and religion in upholding harmful practices and acknowledges that states cannot justify infringing on the right to human dignity based on these grounds. Its statement, moreover, emphasises women’s right over their own bodies in contrast with the state’s desire to interfere in these decisions.

Despite the above, the Maputo Protocol does not recognise the right to abortion out of free will, reserving it for ‘cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus’.¹¹¹ Therefore, women’s right to exercise their human dignity by making personal decisions about their sexual and reproductive health stops short of choosing whether or not to have children.

In General Comment 2, the African Commission also refers to states’ obligation to ‘ensure that women are not treated in an inhumane, cruel or degrading manner when they seek to benefit from reproductive health services’. However, it does not explain what it means.¹¹² Viewed in the context of

105 General Comment 1 on Article 14(d) and (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 (African Commission General Comment 1). See E Durojaye ‘Article 14’ in this volume.

106 General Comment 1 (n 105) para 11.

107 General Comment 1 (n 105) para 10.

108 General Comment 1 (n 105) para 42.

109 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.

110 General Comment 2 (n 109) para 24.

111 Maputo Protocol art 14(2)(c).

112 General Comment 2 (n 109) para 36.

the fact that the right to human dignity entitles women to make personal decisions, the limitation of abortion rights can arguably be deemed to constitute degrading treatment, thereby infringing on article 3(3).

4 State practice and implementation

As a point of departure, it should be noted that many constitutions of countries on the African continent enshrine the right to human dignity in broad terms, recognising that human dignity is an inviolable right that accrues to all persons and must therefore be respected and protected.¹¹³ Equally, many constitutions refer to the right to human dignity in relation to specific rights, including the right to work;¹¹⁴ conditions of detention;¹¹⁵ the rights of older persons;¹¹⁶ the rights of persons with disabilities;¹¹⁷ and the realisation of economic, social, and cultural rights.¹¹⁸ The explicit recognition of the right to human dignity in a national constitution arguably provides impetus to states to comply with the obligations imposed on it by human rights treaties such as the Maputo Protocol.

As discussed under section 3 of this contribution, article 3 places obligations on states parties to guarantee women the right to human dignity. First, state parties must protect women's right to dignity. Second, state parties must protect women from all forms of violence, degrading treatment, and exploitation. To this end, states parties must adopt and implement appropriate measures that prohibit conduct that infringes on women's right to human dignity. The Guidelines for State Reporting under the Protocol to the African Charter on the Rights of Women in Africa require states to report on the legislative, judicial, administrative, and other measures taken to ensure the realisation of rights enshrined under the Maputo Protocol, thereby defining a baseline for appropriate measures.¹¹⁹

The Reporting Guidelines indicate a preference that states report on all the provisions of the Maputo Protocol, grouped according to eight themes. Articles 3 and 4 should be reported on together under the second theme, which concerns protecting women from violence. Harmful practices, female stereotypes, sexual harassment, domestic violence, and support to victims of violence should also be reported on under this theme. Considering this, it is not surprising that states parties have primarily referred to human dignity in reporting on these themes.

Although not necessarily referring directly to the right to human dignity under the Maputo Protocol, states have nonetheless reported on measures taken to protect women from violence, degrading treatment, and exploitation, all of which strike the core of human dignity. Measures taken generally include the implementation of legislation, policies, and programmes that seek to: criminalise indecent assault;¹²⁰ criminalise and eradicate non-consensual sexual acts;¹²¹ protect women from and address

113 Constitution of Ghana, Mali, Namibia, South Africa, and Eritrea. For an overview of human dignity in national constitutions, see D Shultiner & G E Carmi 'Human dignity in national constitutions: functions, promises and dangers' (2014) 62 *The American Journal of Comparative Law* 461-490.

114 Angola, Mozambique, and Seychelles.

115 Egypt, Democratic Republic of the Congo, Ethiopia, Malawi, and Tanzania.

116 Kenya.

117 Eswatini, Kenya, and Uganda.

118 Burundi.

119 African Commission 'Guidelines for state reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' 2016 https://www.maputoprotocol.up.ac.za/images/files/instruments/state_reporting_guidelines_pages.pdf (accessed 27 July 2022) (Reporting Guidelines).

120 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).para 325.

121 Lesotho: Periodic Report, 2001-2017 (n 120) para 326; Kingdom of Eswatini Combined 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 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 (2022) para 374.

domestic violence, including providing support to survivors of domestic violence;¹²² protect women from sexual harassment in the workplace;¹²³ adjust criminal court proceedings to be less traumatising for the victims of sexual violence;¹²⁴ eradicate FGM and educate the public on issues related to FGM;¹²⁵ address gender-based violence;¹²⁶ address stereotypes and cultural practices that undermine women's rights;¹²⁷ prohibit child marriage¹²⁸ and eliminate the trafficking of women.¹²⁹

Although speaking of sexual orientation in reporting on steps taken to comply with state obligations in respect of human dignity, it is concerning that Lesotho, for example, reports that the law does not recognise persons with non-heteronormative sexual orientations or gender identities while also recognising that individuals face societal discrimination and persecution based on these grounds.¹³⁰ Eswatini reported on the occurrence of an event celebrating persons with non-heteronormative sexual orientations or gender identities but without engaging on why it reports on the issue in relation to the right to human dignity under the Maputo Protocol.¹³¹

Despite the steps taken, the African Commission highlights the lack of real change for women. For example, in its Concluding Observations on Lesotho, the African Commission expressed concern over the persistence of cultural practices that engrain gender prejudice despite laws and policies addressing the inequalities these practices create.¹³² While welcoming the measures taken in Botswana to address gender-based violence, the African Commission nonetheless drew attention to its prevalence.¹³³ Similarly, although many countries prohibit FGM and other forms of violence against women and have taken various measures to protect women, women continue to be exposed to these harms as a result of ineffective implementation, whether due to administrative, financial, or other constraints.¹³⁴ The African Commission has, furthermore, recommended that Malawi criminalise marital rape. Yet, by 2022, this has not been complied with.¹³⁵ This by no means represents an exhaustive list of the

122 Republic of Angola: 6th Periodic Report, 2011-2016 (2018) at Part B: paras 106-108 and Part C: paras 9, 16, 26-37; Burkina Faso: 3rd and 4th Periodic Report, 2011-2013 (2015) para 328; Eswatini: Periodic Report, 2001-2019 (n 122) para 373.

123 Lesotho: Periodic Report, 2001-2017 (n 120) paras 324-326; Burkina Faso: Periodic Report, 2011-2013 (n 121) para 326.

124 Lesotho: Periodic Report, 2001-2017 (n 120) paras 330-331.

125 Most African states prohibit FGM. See, eg: Burkina Faso: Periodic Report, 2011-2013 (n 122) para 331; Federal Democratic Republic of Ethiopia: 5th and 6th Periodic Report, 2009-2013 (2015) 100.

126 Republic of Botswana: 2nd & 3rd Periodic Report, 2011-2015 (2018) 27; Ethiopia: Periodic Report, 2009-2013 (n 125) 102.

127 Botswana: Periodic Report, 2011-2015 (n 126) 28-29; Republic of The Gambia: 2nd Periodic Report, 1994-2018 (2018) 23-26.

128 Ethiopia: Periodic Report, 2009-2013 (n 126) 101-102; Kenya: Combined report of the 12th and 13th Periodic Report (2021) para 266.

129 Kenya: Periodic Report (2021) (n 128) para 244.

130 Lesotho: Periodic Report, 2001-2017 (n 120) para 342.

131 Eswatini: Periodic Report, 2001-2019 (n 121) para 377; Mauritius: 9th to 10th Combined Periodic Report, 2016-2019 (2020) paras 296-299.

132 African Commission Concluding Observations and Recommendations on the Kingdom of Lesotho's Combined 2nd to 8th 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 at its 68th ordinary session 14 April to 4 May 2021 para 33.

133 Concluding Observations and Recommendations – Botswana: 2nd and 3rd Periodic Report, 2011-2015 (2019) para 52.

134 Concluding Observations and Recommendations on the Combined Periodic Report of Burkina Faso, 2011-2013 (2017) para 62; Concluding Observations and Recommendations – Kingdom of Eswatini's Combined 1st to 9th Periodic Report, 2001-2020 (2022) para 49; Concluding Observations and Recommendations – Ethiopia: 5th and 6th Periodic Report, 2009-2013 (2015) para 36; Concluding Observations and Recommendations – Gambia: 2nd Periodic Report, 1994-2018 (2021) para 62.

135 Concluding Observations and Recommendations – Malawi, 2015-2019 (n 55) para 74.

concerns highlighted by the African Commission. Instead, it illustrates that despite steps taken by state parties to ensure women's right to human dignity, practices that undermine women's dignity remain alive across the continent.

5 Conclusion

Article 3 guarantees a comprehensive right to human dignity for women. It goes further than the conventional protection against degrading treatment, explicitly outlining an obligation on states to not only address all forms of violence against women but also ensure their right to the free development of the personality. Despite the scope of article 3, the African Commission falls short in utilising the provision. This is evident from the lack of engagement with article 3 in its communications. In contrast, the ECOWAS Court has relied extensively on human dignity concerning complaints of sexual violence and harmful cultural practices.

Considering the contexts in which human dignity has been referred to under the Maputo Protocol by the African Commission and the ECOWAS Court, it is not unreasonable to fear that its scope will remain limited to violence-related issues. Unlike in relation to the right to non-discrimination, the African Commission has not yet sufficiently elaborated on how human dignity informs other rights, for example, the right to education and training or economic and social welfare rights. This can be deemed a missed opportunity to strengthen human dignity as an underlying right, giving content to all rights enshrined under the Maputo Protocol.

For the right to human dignity to have this impact, states must commit to complying with reporting timelines and improve the quality of state reports. States must commit to engage seriously with the African Commission's recommendations in its Concluding Observations, interrogating the underlying cultural, religious, and moral considerations that may prevent them from ensuring that women's inherent human dignity is guaranteed, respected, and protected. This includes utilising the Maputo Protocol in national case law and taking guidance from article 3 when implementing legislation and policies aimed at protecting women from violence. These recommendations also speak to the challenges to the implementation of article 3. Finally, non-state actors have an important role to play not only in contributing to research on the right to human dignity of women, but also in advocating for changes in policy and legislation aimed at, for example, addressing violence against women and facilitating litigation against states parties, as well as educating women on the various aspects of human dignity and enabling them to take ownership of this right.