

Article 22

Special protection of elderly women

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- The States Parties undertake to:
- (a) provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training;
 - (b) ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.

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1 Introduction

An ageing population is a global and challenging phenomenon. Hence, over the years, the problems, needs and rights of the elderly have come into sharp focus.¹ International frameworks on ageing have been developed, with ongoing discussions on additional human rights standards.² At the African regional level, treaties with specific provisions on the elderly and a treaty dedicated to the rights of the elderly have been adopted. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is one of these treaties. Its article 22 on the rights of elderly women, is a notable novelty in the Protocol, supplementing the general provision on the elderly in the African Charter on Human and Peoples' Rights (African Charter).³ The general provision on the elderly in the African Charter is conflated with the rights of women, children and persons with disabilities in article 18 that primarily deals with the family. The explicitness in the Maputo Protocol is also significant because elderly women's rights are implied under existing United Nations (UN)

1 F Mégret 'The human rights of older persons: a growing challenge' (2011) 11(1) *Human Rights Law Review* 37-66; RKM Smith *International human rights law* (2020) 211.

2 Within the United Nations (UN), the elderly received attention (initially, incidentally) in 1948 (UN 'Report of the World Assembly on Ageing' UN Doc A/CONF.113/31 (1982) 1). The feasibility of further instruments and measures on ageing at UN level is under consideration (Open-ended Working Group on Ageing for the purpose of strengthening the protection of the human rights of older persons' (OEWGA), <https://social.un.org/ageing-working-group/index.shtml> (accessed 22 February 2022). The OEWGA was established by Resolution 65/182: Follow-up to the Second World Assembly on Ageing, General Assembly, UN Doc A/RES/65/182 (2011).

3 Article 18(4).

human rights treaties.⁴ The protection of elderly women in Africa has subsequently been reinforced in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons (Protocol on the Rights of Older Persons).⁵

Recognition of the intersection between age and gender in article 22 is significant because women experience ageing differently from men. Their situation is exacerbated by various intersectional factors including age discrimination, gendered disadvantages and ageist stereotypes.⁶ This necessitates the integration of gender in policies and programmes on the elderly and consideration of their specific needs.⁷ However, the intersection between ageing and gender has received less attention and is unevenly incorporated in decision-making and policy discussions.⁸ This is concerning since women comprise the majority of the elderly.

Worldwide, the ageing population is increasing (a billion in 2020, expected to increase to 1.4 billion by 2030 and 2.1 billion by 2050), with Africa witnessing a rapid increase.⁹ In Africa, there were over 62 million elderly persons in 2021. This number is expected to increase steeply, reaching 103 million by 2030 and over 203 million by 2050.¹⁰ Though the breakdown of the elderly by gender is not available for many countries in the region, elderly women will continue to be the majority, as life expectancy is generally higher for them.¹¹ The importance of paying attention to the intersection between old age and gender, and the vulnerabilities of women, has thus been emphasised.¹²

The African Commission on Human and Peoples' Rights (African Commission) recognises women and the elderly among vulnerable and disadvantaged groups.¹³ Generally, the elderly in Africa face many challenges including poverty, food insecurity, lack of social security, inadequate social welfare services, marginalisation, abuse, violence and more responsibilities to care for family members.¹⁴ Elderly women are a more vulnerable sub-group within the elderly. They have lower levels of education, are

4 For example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted 18 December 1979, entered into force 3 September 1981, UN Doc A/34/46, does not explicitly refer to the elderly. Its implicit recognition was confirmed in CEDAW Committee General Recommendation 27 on older women and protection of their human rights, UN Doc CEDAW/C/GC/27 (2010).

5 Adopted 31 January 2016, not yet in force (with nine ratifications – Angola, Benin, Burundi, Ethiopia, Kenya, Lesotho, Malawi, Rwanda and Togo, and 14 other signatories as at March 2023) art 9 & generally.

6 On intersection between gender and ageing, see C Mahler 'Human rights of older women: the intersection between aging and gender' UN Doc A/76/157 (2021) paras 5-15.

7 African Union (AU) Policy Framework and Plan of Action on Ageing 2002 (2003) 22.

8 Mahler (n 6) paras 6 & 12.

9 Smith (n 1) 233; WHO 'Ageing and health' (4 October 2021) <https://www.who.int/news-room/fact-sheets/detail/ageing-and-health> (accessed 22 February 2022); United Nations Development Fund (UNDP) *New threats to human security in the anthropocene: demanding greater solidarity* (2022) 97; United Nations Department of Economic and Social Affairs (UNDESA) 'World population ageing 2019: Highlights', UN Doc ST/ESA/SER.A/430 (2019) 1; Mahler (n 6) para 5.

10 AU Policy on Ageing (n 7) 5 & 6; World Health Organization (WHO) 'Assessing the impact of Covid-19 on older people in the African Region: a study conducted by the World Health' (2021) 1 & 5; I Doron, B Spanier & O Lazar 'The rights of older persons within the African Union' (2016) 10 *Elder Law Review* 6.

11 Doron et al (n 10) 5 ('The lifespan of African women in 2050 is predicted to be 70.8 years – higher than that of men, at 67 years'); UNDESA (n 9) 9 (globally, women at age 65 are expected to live another 18 years, while men at the same age add on average an additional 16 years to their lives); Mahler (n 6) para 5; C Stein & I Moritz 'A life course perspective of maintaining independence in older age' WHO/HSC/AHE/99.2 (1999) 4-5; UN 'World Assembly report' (n 2) 51.

12 WHO (n 10) 9.

13 ACHPR Principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples' Rights (2011) para 1.

14 AU 'Social policy framework for Africa' First session of the AU Conference of Ministers in Charge of Social Development (27-31 October 2008), CAMSD/EXP/4(I) (2008) para 69 (adopted January 2009 by AU Executive Council 'Decision on the First Session of the African Union Conference of Ministers in charge of Social Development' Doc.EX.CL/477(XIV), Decision Ex.CL/Dec.473(XIV) (14th ordinary session 2009) para 2); AU Policy on Ageing (n 7) 5 & 6; Doron et al (n 10) 17; R Kihumba 'The rights of older people: One of the most neglected areas in advancing human rights in Africa' (2018)

usually poorer than older men and do not typically own property.¹⁵ Following the death of their spouse, they face property disputes and, because of belief systems and socio-economic changes, are denied access to decent shelter.¹⁶ Many of them, due to spending most of their lives undertaking home care or informal work without direct financial income, lack professional training and are not able to earn a salary, resulting in them lacking pension or financial resources of their own to live on during old age.¹⁷ This is exacerbated by age and gender discrimination in various spheres including employment.¹⁸ Their abuse and neglect have been confirmed in various studies.¹⁹ Primary healthcare systems are generally not geared to address their health needs.²⁰ Elderly women thus have multifaceted needs. Understanding their needs is important for understanding the rationale for the special protection afforded to them under article 22 of the Maputo Protocol.

This chapter provides a guide to understanding article 22 of the Maputo Protocol. Section 2 of the chapter briefly explains the drafting history related to article 22. Section 3 then focuses on the meanings of the concepts of 'elderly women' and 'special protection'. It also considers the nature and scope of state obligations as well as other relevant treaty provisions and policy frameworks that reinforce or expand on the rights of elderly women and related state duties. Section 4 considers the implementation measures undertaken by states. Section 5, the conclusion, also highlights the role of other actors in the implementation of article 22.

2 Drafting history

African regional efforts to address challenges resulting from ageing commenced in 1999 when issues affecting older persons were considered at a session of the Organization of African Unity's Labour and Social Affairs Commission.²¹ Subsequent efforts resulted in the adoption of the Maputo Protocol incorporating article 22 on elderly women, and the Protocol on the Rights of Older Persons.

The content of article 22 of the Maputo Protocol goes beyond earlier drafts. Both the 1999 draft²² and 2000 draft²³ included a vague provision on elderly women and placed elderly women and women with disabilities (WWDs) into one provision, with a sentence on them having 'the right to specific measures of protection commensurate with their physical and moral needs'.²⁴ The vagueness, it has

<https://www.acdhrc.org/2018/07/rights-older-people/> (accessed 30 May 2022); DM Chirwa & CI Rushwaya 'Guarding the guardians: a critical appraisal of the Protocol to the African Charter on the Rights of Older Persons in Africa' (2019) 19 *Human Rights Law Review* 53.

15 Doron et al (n 10) 14-15.

16 AU Policy on Ageing (n 7) 14.

17 Doron et al (n 10) 13, 15 & 17-19. Also, the elderly have operated as society's first line of defence when confronted with HIV/AIDS, with the consequence of them having to continue working to care for younger generation (M Maboreke 'Empowering women – Building national capacity to combat HIV/AIDS' Special Address at the Lecture-Cum-Roundtable Discussion, Accra, Ghana (16 June 2001) 7.

18 Chirwa & Rushwaya (n 14) 76; WHO (n 10) 67; J Dhembha & B Dhembha 'Ageing and care of older persons in Southern Africa: Lesotho and Zimbabwe compared' (2015) 13 *Social Work & Society* 2.

19 Doron et al (n 10) 10. In South Africa, for example, research established that 60% of the elderly experience physical and economic abuse, with emotional and economic abuse prevalent among elderly women.

20 See the example of older persons living in community settings in South Africa in G Kelly, L Mrengqwa & L Geffen "'They don't care about us": older people's experiences of primary healthcare in Cape Town, South Africa' (2019) 19 *BMC Geriatrics* 1-14.

21 Kelly et al (n 20) 7.

22 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).

23 Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, 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.

24 Kigali Draft (n 22) art 6; Final Draft (n 23) art 22.

been argued, was deliberate to allow states leeway to act in accordance with prevailing conditions in their respective territories.²⁵ Further discussions resulted in subsequent drafts addressing elderly women in a separate provision, distinct from that on WWDs.²⁶

Hence, article 22 focuses on elderly women and their vulnerability to violence (including sexual violence) and intersectional discrimination.²⁷ The concept of special protection in article 22 is informed by the vulnerabilities of elderly women and the discrimination they face. Consideration was first given, in a 2001 draft, only to ‘physical and moral needs’ of the elderly (as used in article 18(4) of the African Charter), but subsequently expanded to ‘physical, economic and social needs’.²⁸ The explicit reference to violence was informed by the fact that acts of violence are obstacles to achieving equality, development and peace, and states’ obligation ‘to take special measures to eliminate violence against women, particularly those in vulnerable situations’ established by the Beijing Platform for Action.²⁹

3 Concepts

3.1 Elderly women

Old age goes beyond chronological age to include other determinants.³⁰ It is based on social assumptions and constructs, is context and purpose sensitive, and varies between and within states.³¹ Hence, considering other determinants, ageing is ‘the process of progressive change in the biological, psychological and social structure of individuals’.³² However, generally or for statistical purposes, ‘chronological age related to retirement and pension is used as the threshold for old age’, including in the context of women.³³

The Protocol on the Rights of Older Persons, drawing from relevant UN and AU frameworks, defines older persons as ‘those persons aged sixty (60) years and above’.³⁴ The Maputo Protocol defines women as ‘persons of [the] female gender, including girls’.³⁵ Elderly women, therefore, refer to persons of the female gender aged 60 years and above. However, some flexibility in the interpretation and application of this definition, taking into account domestic and functional variations, is necessary so as to not exclude elderly women that qualify as older persons in local contexts. The ‘elderly’ is a

25 Nsibirwa (n 23) 49-50.

26 Draft Protocol to the African Charter on Human and Peoples’ Rights of Women in Africa, as adopted by the Meeting of Governments Experts in Addis Ababa on 16 November 2001, CAB/LEG/66.6/Rev.1 (2001) 18 (art 21) (Revised Final Draft); 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), arts 22 & 23; Maputo Protocol, art 22.

27 One of the grounds on which women face multiple forms of discrimination is age (CEDAW Committee General Recommendation 27 (n 4) paras 1 & 2).

28 Comments by the Office of the Legal Counsel 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 (16 November 2001). See Comments by African Union Office of the Legal Counsel (AUOLC), CAB/LEG/66.6/Rev.1, 2002. This was made on the then art 21 that glossed elderly women and WWDs into one provision.

29 Revised Final Draft (n 26) 18.

30 Human Rights Council ‘Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons’ Report of the UN High Commissioner for Human Rights, UN Doc A.HRC/49/70 (2022) para 5; Office of the High Commissioner for Human Rights (OHCHR) ‘Normative standards in international human rights law in relation to older persons: Analytical Outcome Paper’ (2012) 6-7, <https://social.un.org/ageing-working-group/thirdsession.shtml> (accessed 23 June 2023).

31 Mahler (n 6) para 7.

32 Stein & Moritz (n 11) 3.

33 Mahler (n 6) paras 7 & 8.

34 Protocol on the Rights of Older Persons art 1.

35 Maputo Protocol art 1(k).

heterogeneous group, comprising people who are major contributors to the development of society and those in need of care and support.³⁶ Hence, 'elderly women' is a heterogeneous group.

3.2 Special protection

The obligation to protect rights requires states to take positive measures³⁷ (legislative and other measures, including the provision of effective remedies) to ensure third parties (state and private actors) do not violate rights.³⁸ In the context of special measures, 'protection' means 'protection from violations of human rights emanating from any source, including discriminatory activities of private persons, to ensure the equal enjoyment of human rights and fundamental freedoms'.³⁹ Protection also 'indicates that special measures may have preventive (of human rights violations) as well as corrective functions'.⁴⁰ The special protection (or special measures) concept is thus used in international human rights law when requiring additional protection for vulnerable or disadvantaged individuals and groups. Elderly women require special protection as they face multiple and intersectional discrimination.

Special protection measures serve the important function of correcting inequality and discrimination in the enjoyment of rights.⁴¹ Though they may be seen to have the effect of favouring a specific group or persons, such preferential treatment is legitimate and justifiable if aimed at securing their adequate advancement to enable rights enjoyment, reducing or suppressing conditions that perpetuate discrimination, and achieving substantive equality.⁴² In requiring special protection for elderly women, article 22 thus obligates states to meet the dimensions of substantive equality (redress disadvantage, address prejudice, stereotyping, stigma and violence, enhance voice and participation, and accommodate difference and achieve structural change⁴³).

Special protection measures are temporary in nature, thus 'should be discontinued after their intended objectives have been achieved'.⁴⁴ However, article 22 is crafted in a way that allows for temporary, short-term and long-term measures; that is, it does not explicitly limit the measures states are expected to take.

36 UN General Assembly 'Follow-up to the Second World Assembly on Ageing' Report of the Secretary-General, UN Doc A/64/127 (2019) para 6.

37 All human rights impose a combination of positive (take appropriate measures to ensure a right) and negative (refrain from interfering with a right) duties (African Commission 'ESCR principles and guidelines' (n 14) para 4; I Bantekas & L Oette *International human rights law and practice* (2020) 79.

38 *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria*, Communication 155/96, (2001) AHRLR 60 (ACHPR 2001) para 46; African Commission 'ESCR principles and guidelines' (n 13) para 7.

39 Committee on the Elimination of Racial Discrimination General Recommendation 32 on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination, UN Doc CERD/C/GC/32 (2009) para 23.

40 As above.

41 L Chenwi 'Protection of the economic, social and cultural rights of older persons and persons with disabilities in the African regional system' in DM Chirwa & L Chenwi *The protection of economic, social and cultural rights in Africa: international, regional and national perspectives* (2016) 189.

42 African Commission 'ESCR principles and guidelines' (n 13) paras 34-35; General Recommendation 25, on art 4, para 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, CEDAW Committee, UN Doc HRI/GEN/1/Rev.7 at 282 (2004) paras 18-19; General recommendation 23 on political and public life, CEDAW Committee, UN Doc A/52/38/Rev.1 at 61 (1997) para 15.

43 S Fredman 'Substantive equality revisited' (2016) 14(3) *J•CON* 712, 713 & 727 where the four dimensions are explained.

44 African Commission 'ESCR principles and guidelines' (n 13) para 35; M Bossuyt 'The concept and practice of affirmative action' (17 June 2002) UN Doc E/CN.4/Sub.2/2002/21 (2002) paras 46, 60, 68 & 106.

3.3 Nature and scope of state obligations

In requiring special protection for elderly women, article 22 outlines state obligations to:

- (a) provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training;
- (b) ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.

Measures adopted must be ‘deliberate, concrete and targeted’ towards meeting the needs of the elderly. This is in line with the African Commission’s interpretation of the obligation to take steps, which is an immediate obligation.⁴⁵ Hence, as required by article 22, specific measures adopted should be proportionate to the elderly’s needs. Ensuring elderly women’s freedom from violence includes a duty to not take or threaten to take acts against the elderly that cause or could cause economic, physical, psychological and sexual harm to them, or not impose arbitrary restrictions on, or deprivation of, their fundamental rights.⁴⁶ It also includes a duty to protect them from third parties’ acts that cause harm to them.⁴⁷ Elderly women are, therefore, ‘entitled to all rights and respect’ and ‘should not be prevented from living a full life because of age’.⁴⁸

Though the African Commission has not elaborated specifically on the nature of article 22 obligations, it has elaborated on the obligations of states to protect rights, and in relation to some of the rights of the elderly.⁴⁹ For example, to ensure equality and non-discrimination in the enjoyment of rights, states have to recognise and take steps to combat intersectional discrimination based on sex/gender and age.⁵⁰ Related regional standards require states to eliminate social and cultural stereotypes that marginalise elderly women, adopt corrective measures in areas where discrimination exists in law and practice, and enforce measures and initiatives aimed at eradicating all forms of discrimination.⁵¹ On the right to health, the African Commission has clarified that states should ‘[e]nsure that the health needs of the elderly are protected, through training for health personnel, and the strengthening of social support systems and health education for [them] on nutrition and exercise/mobility’.⁵² The African Commission has also recognised that discrimination based on age prevents women from realising their right to self-protection and protection from HIV infection, and underscored older women’s right to be informed of their health status.⁵³ On social security, states’ social protection systems should cover old age as one of the principal branches of social security (adoption of ‘appropriate measures’ establishing ‘social security schemes that provide benefits to older persons, starting at a specific age, to be prescribed by national law’).⁵⁴

45 African Commission ‘ESCR principles and guidelines’ (n 13) para 18.

46 This is in line with the definition of violence against women in Maputo Protocol, art 1.

47 This is in line with the state’s duty to protect rights.

48 AU ‘Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (simplified)’ version made by K Kouste (Women in Law and Development in Africa – West Africa 2005), https://www.peacewomen.org/assets/file/Resources/NGO/hr_protocoltotheafricancharteronhumanandpeoplesrightsontherightsofwomeninafrica_2003.pdf (accessed 23 June 2023).

49 See sec 3.4 below, identifying other relevant provisions.

50 African Commission ‘ESCR principles and guidelines’ (n 13) para 38.

51 Protocol on the Rights of Older Persons art 3.

52 African Commission ‘ESCR principles and guidelines’ (n 13) para 67.

53 General Comment 1 on art 14(1)(d) & (e) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, African Commission (6 November 2012) paras 4 & 15.

54 African Commission ‘ESCR principles and guidelines’ (n 13) para 82.

On access to employment and professional training for elderly women, considering that many undertake unpaid care and homework, states should take necessary specific measures to, *inter alia*, ‘recognise the economic value of care giving and other household work’ and adopt national budget systems ‘that record the value of women’s unpaid contributions to society’.⁵⁵ Also, states should ensure appropriate work for elderly women that takes into consideration their medical and physical abilities, experience and skills, and eliminate discrimination in the workplace.⁵⁶

Furthermore, states have a positive obligation to amend or repeal domestic laws that are contrary to the protections required under article 22. The African Court on Human and Peoples’ Rights (African Court) confirmed this in the *PALU Vagrancy Opinion*.⁵⁷ Although article 22 was not implicated in the case, in finding vagrancy laws to be incompatible with the right to protection of the family under article 18 of the African Charter (a provision that article 22 supplements), the Court held that ‘arrests and detentions under vagrancy laws may result in the forcible removal of the suspected “vagrants” from their families’ and, as a result, ‘other family members that rely on those arrested under vagrancy laws, most notably ... the elderly ... may suffer from the deprivation of financial and emotional support’, rendering them more vulnerable.⁵⁸ It then affirmed that states have a positive obligation to repeal or amend vagrancy (and related) laws, within a reasonable time but in the shortest time possible to ensure compliance with the Maputo Protocol and other regional human rights standards.⁵⁹ This is in sync with the state obligation under article 8(6) of the Protocol, to take all appropriate measures to ensure ‘reform of existing discriminatory laws and practices in order to promote and protect the rights of women’.

Also of relevance is *APDF and IHRDA v Mali*, in which the African Court found the application of religious and customary law that grants a woman half of the inheritance a man receives to violate the right to an equitable share in the inheritance of property in article 21(2) of the Maputo Protocol.⁶⁰ As the practices were discriminatory and undermine women and children’s rights, the court also found a violation of the right to non-discrimination in article 2 of the Maputo Protocol and article 16(1) of CEDAW, and a violation of Mali’s obligation to eliminate harmful practices or traditions towards women in, *inter alia*, article 2(2) of the Maputo Protocol and article 5(a) of CEDAW.⁶¹ Hence, the protection of elderly women includes a duty to eliminate domestic laws and practices that violate their inheritance rights.

The duty of states to eliminate customary laws that allow for unfair gender discrimination against elderly women in the division of property in divorce was affirmed in the South African case of *Gumede*.⁶² The Court in confirming South Africa’s international obligation to repeal such laws and practices cited the Maputo Protocol though not article 22, but speaking in the context of dignity and equality rights.⁶³ The implicated customary law unjustifiably and discriminatorily allowed for a marital property system

55 As above, para 59.

56 Protocol on the Rights of Older Persons art 6.

57 *Pan African Lawyers Union (PALU)*, Request 001/2018, Advisory Opinion on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and Other Human Rights Instruments Applicable in Africa (4 December 2020) (*Vagrancy Opinion*).

58 *Vagrancy Opinion* (n 57) para 104.

59 *Vagrancy Opinion* (n 57) para 155.

60 *Association pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and Institute for Human Rights and Development in Africa (IHRDA) v Mali*, Application 046/2016, Judgment (11 May 2018) paras 108-112. The court also found a violation of the right to non-discrimination and best interest of the child principle with reference to the African Charter on the Rights and Welfare of the Child (African Children’s Charter).

61 *APDF and IHRDA v Mali* (n 60) paras 120-125 & 135(vii). A violation of African Children’s Charter art 1(3) & 21, was also found in this regard.

62 *Gumede v President of the Republic of South Africa* 2009 (3) SA 152 (CC) (*Gumede*).

63 *Gumede* (n 62) para 20.

that rendered women extremely vulnerable, stripped them of their dignity and rendered them poor and dependent.⁶⁴ The case affords special protection to elderly women, as the applicant was an elderly woman.⁶⁵

Generally, regional and domestic pronouncements that require states to eliminate laws and practices that discriminate against women in terms of property and inheritance rights⁶⁶ would have implications for elderly women, since they are often subjected to discriminatory property and inheritance laws.⁶⁷ Pertinently, the African Commission has underscored states' duty to ensure elderly women do not face discrimination, enjoy their right to equal sharing of joint property deriving from marriage, and are provided with effective access to justice during divorce proceedings.⁶⁸ It also emphasised states' duty to include qualitative and quantitative data disaggregated by age when reporting on measures to ensure women's right to property.⁶⁹

3.4 Linkage to other related provisions

3.4.1 Other Maputo Protocol provisions

Article 22 should be read together with the general obligation clause, article 26(1) of the Maputo Protocol, which is of overarching applicability⁷⁰ and provides clarity on implementation measures required. States are obliged to adopt 'legislative and other measures' aimed at 'full realisation of the rights' in the Protocol. Article 26(2) also imposes a general obligation on states to 'provide budgetary and other resources for the full and effective implementation of the rights' of elderly women. In addition, article 2 of the Protocol reinforces the obligation of states to ensure elderly women are protected from discrimination. Article 24 of the Protocol, requiring special protection of poor women and women head of families including those from marginalised groups and provision of an environment suitable to their needs and condition, is also relevant, considering that elderly women face continuous marginalisation and poverty, and many of them head their households. Furthermore, provisions requiring states to eliminate harmful practices (article 5), ensure respect for dignity (article 3), the rights to health (article 14), property (article 7) and inheritance (article 21), widows' rights (article 20), and prohibit all forms of violence against women (article 4) are relevant, as these are among the key areas in which rights abuses concerning the elderly in Africa take place.⁷¹

3.4.2 Other international treaties

At the African regional level, in addition to guaranteeing rights for 'all' and requiring states to recognise and give effect to them, the African Charter guarantees the right of the elderly to 'special measures of protection in keeping with their physical and moral needs' in article 18(4). Also relevant is article 18(3), requiring states to eliminate discrimination against women and ensure protection of their rights.

64 *Gumede* (n 62) paras 36 & 49.

65 S Omondi, E Waweru & D Srinivasan *Breathing life into the Maputo Protocol: jurisprudence on the rights of women and girls in Africa* (2018) 96.

66 See Z Nampewo 'Article 21' in this volume.

67 HelpAge International 'Protecting the rights of older people in Africa' (April 2008) 2, <https://www.helpage.org/silo/files/protecting-the-rights-of-older-people-in-africa.pdf> (accessed 14 July 2022).

68 General Comment 6 on the Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa (Maputo Protocol): The Right to Property During Separation, Divorce or Annulment of Marriage (art 7(D)), adopted during the 27th extraordinary session of the African Commission held in Banjul, The Gambia in February 2020 (African Commission General Comment 6) paras 54 & 56.

69 African Commission General Comment 6 para 63.

70 This is in line with the African Court's interpretation of a similar obligation clause, art 1 of the African Charter (see *Thomas v Tanzania*, Application 005/2013, Judgment on Merits (20 November 2015) para 136.

71 See generally, HelpAge International (n 67) elaborating on the key areas.

The obligation to protect elderly women is reinforced in article 9 of the Protocol on the Rights of Older Persons, requiring their protection, through legislative and other measures, from violence, sexual abuse, gender discrimination and abuse related to property and land rights, and protection of their right of inheritance.⁷² As the main regional treaty on the elderly, other provisions in it are applicable to elderly women, some of which elaborate on state duties in relation to aspects of article 22 of the Maputo Protocol. On elderly women with disabilities, article 22 should be read alongside relevant provisions of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.⁷³ Particularly, its article 30, which places an obligation on states to ensure through legislative and other measures that the elderly with disabilities fully enjoy their rights and on an equal basis with other older persons, are protected from neglect and violence and have access to social protection programmes, appropriate services that respond to their needs and appropriate sexual and reproductive health services and information.

At the UN level, CEDAW, for example, is relevant.⁷⁴ The CEDAW Committee has elaborated on the rights of elderly women and their correlating state obligations under CEDAW. These include state obligations to ensure elderly women's protection from violence and discrimination, participation in paid work without discrimination based on age and gender, their right to dignity and access to appropriate social and economic benefits such as adequate non-contributory pensions.⁷⁵

3.4.3 Policy frameworks

The AU Policy on Ageing accentuates the duty of African states to develop policies on ageing, including recommendations on actions to be undertaken. It requires that states develop, review and revise legislation and policies to ensure that elderly women 'receive equitable treatment from customary and statutory laws' in the areas of property, land, inheritance and social security, among others, and their specific concerns are included in gender policies and programmes.⁷⁶ States should also '[e]nsure that social security and social programmes address the situation of older women whose employment has often been interrupted by maternity and family responsibilities'.⁷⁷

At the international level, relevant frameworks include the Vienna International Plan of Action on Ageing, which outlines principles and recommendations aimed at strengthening the capacities of states to deal with ageing.⁷⁸ Also, the UN Principles for Older Persons,⁷⁹ which African states are required to incorporate into their domestic laws,⁸⁰ outlines rights of the elderly in relation to independence, participation, care, self-fulfilment and dignity.

72 Protocol on the Rights of Older Persons art 9.

73 Adopted 29 January 2018, not yet in force (with five ratifications – Angola, Burundi, Kenya, Mali and Rwanda, and 10 other signatories as at March 2023).

74 CEDAW has been ratified by 52 African states as of March 2023.

75 See generally CEDAW Committee General Recommendation 27 (n 4).

76 AU Policy on Ageing (n 7) 8, 14-15 & 22.

77 AU Policy on Ageing (n 7) 18.

78 Vienna International Plan of Action on Ageing, adopted in 1982 at the First World Assembly on Ageing, endorsed by General Assembly resolution 37/51 on question of ageing, UN Doc A/RES/37/51 (3 December 1982).

79 UN Principles for Older Persons, adopted by General Assembly resolution 46/91 of 16 December 1991.

80 Protocol on the Rights of Older Persons Preamble & art 2(2).

4 Implementation

Though many African states do not have national legislation or policy specifically on the elderly,⁸¹ some (as seen below) have adopted legislative and other measures aimed at protecting the elderly and realising their rights. States that have reported specifically on the implementation of article 22 of the Maputo Protocol include Kenya, Seychelles, Zimbabwe, Angola, Burkina Faso, Malawi, Lesotho, Eswatini, Namibia, and South Africa. These states are used below as illustrative examples of implementation measures and challenges. Even when states do not report on the Maputo Protocol but on the African Charter, the African Commission, to its credit, has inquired about the elderly.

The African Commission has expressed concern over the lack of specific legislation on the elderly in, for example, Malawi,⁸² indicating that programme and policy measures alone are inadequate. Though it applauded Malawi for taking measures to protect the elderly, including the adoption and implementation of a National Policy on Older Persons, the state's failure to enact a draft Bill for older persons into law was an issue of concern. The African Commission thus called on Malawi to enact the law.⁸³

The African Commission's concern over the lack of legislation in Kenya⁸⁴ propelled the state to take further steps in ensuring the protection of the elderly. In reporting on article 22, Kenya referred to legislative and policy measures, including the adoption of a National Policy on Older Persons and Ageing and the Care and Protection of Older Members of Society Bill, and mandating its National Gender and Equality Commission to monitor and promote mainstream issues of the elderly in governance structures to achieve substantive equality and inclusion at all levels.⁸⁵ This reflected progress from its previous position of lack of specific legislation on the elderly.⁸⁶ Disbursement of grants to the elderly was among other measures reported under other provisions of the Protocol and African Charter.⁸⁷ The African Commission, in its concluding observations on the previous report, commended Kenya for its cash transfer programme that provided the elderly a monthly stipend of Ksh 2000 to protect beneficiaries against poverty, and its pilot programme for health cover under the National Health Insurance Fund for the elderly (inpatient and outpatient) that benefit from cash transfer (the pilot programme involves '500 beneficiaries who are spread across all Counties').⁸⁸

The impact or adequacy of measures is unclear in some cases due to scant reporting. Seychelles, for example, only referred to the establishment of the National Council for the Elderly, aimed at promoting management of the care of the elderly and other matters concerning them, to improve their quality of

81 HelpAge International Global Network 'Southern African expert meeting on older persons' (30 May 2018), https://www.chr.up.ac.za/images/campaigns/2018/AgeWithRights/files/southern_africa_meeting_presentations/gus_trigo.pdf (accessed 23 June 2023).

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

83 Combined Report of Malawi (n 82) paras 26, 42, 55 & 69.

84 Concluding Observations and Recommendations on the Combined 8th to 11th Periodic Report of Kenya 2008-2014, African Commission on Human and Peoples' Rights, adopted at the 19th extraordinary session (16-25 February 2016) paras 43 & 59. Kenya's draft Older Persons Bill and National Policy on Older Persons were both pending adoption at the time.

85 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) paras 307 & 308.

86 African Commission Concluding Observations Kenya (2016) (n 84) paras 43 & 59.

87 Kenya Report (n 85) paras 136-140, 279, 307.

88 African Commission Concluding Observations Kenya (2016) (n 84) para 20.

life.⁸⁹ The state also briefly referred to special protection for the elderly (income support for travel)⁹⁰ and adoption of legislation (Employment Act of 1995) that addresses consequences of discrimination based on age or gender in the workplace.⁹¹ As of September 2022, the African Commission had not published its observations on the report, but Seychelles' information on the elderly is underprovided.

The African Commission raised concern over lack of information on implementation measures and their impact in, for example, Zimbabwe.⁹² On article 22, Zimbabwe referred to its Older Persons Act 1 of 2012 providing for the wellbeing of the elderly and creating an Older Persons Fund. Zimbabwe's Constitution also guarantees elderly persons the right to 'care, assistance, health care and medical assistance' from the state, and 'financial support by way of social security and welfare'.⁹³ However, the government cited significant economic challenges severely hampering its efforts to fulfil this right.⁹⁴ Malawi faces similar challenges hampering its efforts to implement human rights related programmes.⁹⁵ The African Commission found Zimbabwe's social safety net programmes to be commendable and acknowledged the prevailing challenges.⁹⁶ Nevertheless, states have a duty to make effective use of limited resources.

The African Commission has called on states to allocate adequate resources and facilities to older persons. For example, this call was made to Eswatini, as limited financial and human resources and facilities had been dedicated to the elderly, with the African Commission also requesting the state to improve access to healthcare facilities and build necessary capacity to facilitate effective communication with the elderly.⁹⁷ Eswatini has adopted a Social Development Policy for the provision of social-development services, and provides elderly grants (for persons 60 years and older) and free healthcare services in government facilities to elderly persons.⁹⁸ However, the state faces the challenge of lack of a regulatory framework to monitor disbursement of the grants to the elderly so that only qualifying persons receive it.⁹⁹ Another challenge is elderly abuse and neglect.¹⁰⁰ The state also recognised the need for more educational campaigns amongst the elderly on their rights.¹⁰¹

89 Seychelles: 3rd Periodic Report 2006-2019 (2021) 47.

90 Seychelles Report (n 89) 49.

91 Seychelles Report (n 89) 33.

92 Concluding Observations and Recommendations on the Combined 11th to 15th Periodic Report of Zimbabwe, African Commission on Human and Peoples' Rights, adopted at the 69th ordinary session, (15 November-5 December 2021) para 50.

93 Combined 11th to 15th Periodic Report of Zimbabwe 2007-2019, African Commission on Human and Peoples' Rights, adopted at the 65th ordinary session (21 October-10 November 2019) part C paras 11.1 & 11.4.

94 Zimbabwe Report (n 93) part C para 11.11.

95 African Commission Concluding Observations Malawi (2022) (n 82) paras 28.

96 African Commission Concluding Observations Zimbabwe (2021) (n 92) paras 31 & 34.

97 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, ACHPR 70th ordinary session: 23 February-9 March 2022, paras 42 & 74.

98 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) part B paras 525, 625-628.

99 Eswatini (2022) (n 98) para 629. The development of a Social Grants Regulatory framework was underway para 630.

100 Concluding Observations and Recommendations Eswatini (n 98) para 631. The elderly can apply for protection orders in cases of abuse under the Sexual and Domestic Violence Act, 2018.

101 Eswatini (2022) (n 98) para 631.

Another implementation challenge identified by the African Commission is the inadequacy of measures aimed at fighting poverty among the elderly, for example, in Burkina Faso.¹⁰² On article 22, Burkina Faso has taken measures aimed at providing assistance to the elderly, protecting them and improving their situation, such as the establishment of private reception centres to care for them especially those that are victims of social exclusion.¹⁰³ The African Commission commended Burkina Faso for, *inter alia*, preparing a Bill on the rights of the elderly and providing subsidies to organisations towards addressing their specific needs. However, the measures were inadequate. Considering that the specific needs of the elderly are not taken into account in relation to economic, social and cultural rights, the African Commission recommended adoption of a system that provides benefits to the elderly to fight poverty among them.¹⁰⁴

A further implementation gap relates to variance between domestic law and regional standards on classification of the elderly. Some states have a higher age threshold for accessing social benefits, resulting in exclusion of the elderly that have no other source of income. Lesotho, for example, reported adoption of legislative and other measures aimed at protecting elderly women.¹⁰⁵ However, only those 'aged 70 years and above who are not earning a pension or social grant from consolidated fund' can access social grants under the state's universal old age pension.¹⁰⁶ Additional implementation challenges included:

- that many elderly women who live alone end up being targeted for rape, robbery and other violent crimes;
- a lack of specific reporting mechanism for elderly women to report cases of abuse;
- delays in dealing with reported cases of abuse with some elderly women dying before obtaining justice (due to a general backlog of cases in the Lesotho courts);
- a lack of resources to provide financial assistance (social grants) to elderly women below 70 years that are not in a position to earn an income due to ill health
- violence and fatal attacks against elderly women by the community based on allegations of their involvement in witchcraft; and
- that elderly women are being forced to take on child care responsibilities.¹⁰⁷

The African Commission was concerned over the lack of specific legislation on the elderly, attacks on the elderly, childcare burden placed on them, their poor quality of life, lack of awareness on dementia affecting them, and lack of care facilities and homes for the elderly in Maseru even though the country has two institutions of this type.¹⁰⁸ The African Commission thus called on the state to, *inter alia*, enact legislation on the elderly that is in line with the Protocol on the Rights of Older Persons, protect them from violence and discrimination, ensure universal pension for them 'starts at the age of 65 or ideally 60', provide more facilities to cater for them and their needs, raise awareness on issues of the elderly, and respect of their rights.¹⁰⁹

102 Concluding Observations and Recommendations on the Combined 3rd and 4th Periodic Report of Burkina Faso 2011-2013, African Commission on Human and Peoples' Rights, adopted at the 21st extraordinary session (23 February-4 March 2017) para 31.

103 Combined 3rd and 4th Periodic Report of Burkina Faso 2011-2013, African Commission on Human and Peoples' Rights, adopted at the 57th ordinary session (4-18 November 2015) paras 354 & 357-360.

104 African Commission Concluding Observations Burkina Faso (2017) (n 102) paras 12, 24 & 31.

105 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 515-521.

106 Lesotho (2021) (n 105) para 516.

107 Lesotho (2021) (n 105) paras 522-526.

108 Concluding Observations and Recommendations on the Combined 2nd to 8th Periodic Report of Lesotho, African Commission on Human and Peoples' Rights, adopted at the 68th ordinary session (14 April-4 May 2021) para 52.

109 African Commission Concluding Observations Lesotho (2021) (n 108) para 73.

Namibia has also made provision for pension for the elderly, unlimited access to public health facilities and free medical assistance, and free funeral services for the deceased elderly persons.¹¹⁰ In South Africa as well, the elderly have access to old age pension, from age 60.¹¹¹ The state also has specific legislation on the elderly (Older Persons Act) that provides a framework for the empowerment and protection of the elderly and promotion and maintenance of their rights and needs, including making abuse (physical, sexual, psychological and economic) of the elderly an offence punishable in law.¹¹² The African Commission commended the state for measures taken to protect the elderly and facilitate their access to social assistance.¹¹³ However, stereotypes and other perceptions undermine the full realisation of their rights, requiring the state to develop a proactive sensitisation policy to reduce or eliminate the stereotypes/perceptions.¹¹⁴

Monitoring implementation is marred by the lack of disaggregated statistics on the elderly in state reports. For example, the African Commission has raised concern over the lack of disaggregated statistical data for older persons in Malawi's report, requesting the state to include such data in its subsequent report.¹¹⁵ Malawi's report on article 22, though highlighting the state's strategies to protect the elderly, which includes implementation of old age gender-sensitive and inclusive programmes, was scant.¹¹⁶ South Africa has also been called to provide adequate disaggregated data on, *inter alia*, gender and age, due to lack of adequate disaggregated data in its state report.¹¹⁷ Lack of comprehensive disaggregated data (including gender-disaggregated data) and failure to provide additional information on issues raised during presentation of the states' report was also a concern in relation to Rwanda.¹¹⁸ Rwanda's reporting on article 22 was brief, highlighting programmes on provision of housing facilities and food to the elderly, a law allowing for the inheritance of property that will benefit elderly women, provision of legal aid services to the elderly where needed, and provision of assistance to the elderly to acquire community-based health insurance funded by the state, among other measures.¹¹⁹ The state's reporting on the elderly under article 18 of the African Charter was also deficient.¹²⁰ The African Commission commended the state for the housing facilities and community-based health insurance measures and for including the crime of rape or harassment committed on an elderly person in its

110 Republic of Namibia 7th Periodic Report on the African Charter on Human and Peoples' Rights and the second report under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2020) sec A para 27, sec B para 84 & sec C para 32.

111 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) part C para 525.

112 South Africa (2016) (n 111) part C paras 523-524.

113 Concluding Observations and Recommendations on the Combined 2nd Periodic Report under the African Charter on Human and Peoples' Rights and the initial report under the Protocol to the African Charter on the Rights of Women in Africa of South Africa, African Commission on Human and Peoples' Rights, adopted at the 20th extraordinary session (9-18 June 2016) para 18.

114 African Commission Concluding Observations South Africa (2016) para 55.

115 African Commission Concluding Observations Malawi (2022) (n 82) paras 43 & 55.

116 Republic of Malawi 2nd to 3rd Periodic Report on the implementation of the provisions of the African Charter and the Protocol to the African Charter on the Rights of Women in Africa, 2015-2019 (2020) para 247.

117 African Commission Concluding Observations South Africa (2016) (n 113) paras 39 & 55.

118 Concluding Observations and Recommendations on the Combined 11th to 13th Periodic Report under the African Charter on Human and Peoples' Rights and initial report under the Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa of Rwanda, African Commission on Human and Peoples' Rights, adopted at the 64th ordinary session (2019) paras 30-31.

119 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) part B, paras 118-122.

120 As above, paras 145-152.

Penal Code.¹²¹ However, the African Commission called on Rwanda to provide more information on the rights of the elderly in its subsequent periodic report.¹²²

Where disaggregated data is provided, it has generally been to a limited extent. For example, on article 22, Angola has provided for the rights of the elderly to housing, economic security, family and community life, and to active participation in community life, through legislative measures.¹²³ The report provides some disaggregated statistics to show elderly women beneficiaries. The state reported on policies and programmes to assist and protect the elderly, especially those living ‘in absolute vulnerability’ (through the Assistance Programme for the Elderly) and those ‘experiencing family abandonment, negligence or lack of means of subsistence, of whom 534 ... are women’ (through hosting them in care homes for the elderly).¹²⁴ Social protection has been provided to ‘37,391 elderly women in the community, out of a total of 67,984 elderly’ through the states’ Social Support Programme.¹²⁵ The elderly, including women, have also received assistance in terms of developing income-generation activities.¹²⁶ In article 18 of the African Charter, the state referred to assistance with food and non-food items to the elderly in the community.¹²⁷

Generally, most measures adopted by states are in line with article 22 of the Maputo Protocol, but inadequate in some instances. The challenge remains in translating the measures into concrete benefits for elderly women, which can be realised with effective implementation of the measures and monitoring of their impact. Weak implementation of laws and policies is identified in state reports as a major challenge to implementation.¹²⁸ Also, making the elderly (especially elderly women) visible, through accurate disaggregated statistics, remains a challenge.

5 Conclusion

Article 22 of the Maputo Protocol departs from the approach in the African Charter in not conflating elderly women with WWDs and children, and not limiting the rights of elderly women to a provision on the family. While it takes a step forward in terms of the protection of elderly women and outlines distinct state obligations, it is not detailed enough. It should therefore be read with other relevant treaty provisions, especially the Protocol on the Rights of Older Persons. Gaps remain in terms of practical implementation of measures adopted, resulting in discrimination and abuse against elderly women and violation of their rights. Disaggregated data by gender and age of beneficiaries of measures and programmes adopted in response to article 22 is relevant to ensure proper monitoring of implementation. An additional challenge is that of measures that are inadequately tailored to the needs of elderly women, partly on account of resource constraints (financial and human). Both preventive and protective measures should be adopted and practices that disadvantage elderly women should be removed. Overall, an ageing and gender perspective should be mainstreamed into domestic laws and policies. Also critical is awareness raising on the rights and needs of elderly women, ratification and domestication of the Protocol on the Rights of Older Persons, and alignment of national definition of ‘elderly’ with regional standards.

121 African Commission Concluding Observations Rwanda (2019) (n 118) para 77.

122 African Commission Concluding Observations Rwanda (2019) (n 118) para 56.

123 6th and 7th Periodic Report of Angola on 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, African Commission on Human and Peoples’ Rights, adopted at the 62nd ordinary session (25 April-9 May 2018) part C para 117. See also part B para 112.

124 Angola (2018) (n 123) part C paras 118-120. See also part B para 115.

125 Angola (2018) (n 123) part C para 121.

126 Angola (2018) (n 123) part B paras 114 & 116, part C 122.

127 Angola (2018) (n 123) part B para 116.a.

128 See eg, Malawi (2020) (n 116) para 142.

While the primary responsibility for implementation of article 22 rests with states, other actors have a role to play. The African Commission is a relevant actor through its reporting process as seen above. The African Commission can also play an enforcement role through its complaints procedure if presented with an opportunity to decide on the rights of elderly women. Other mechanisms within the African Commission for advancement of the rights of elderly women include its Working Group on the Rights of Older Persons and Persons with Disabilities, mandated to, *inter alia*, ensure ‘proper mainstreaming’ of the rights of the elderly ‘in the policies and development programmes of Member States’ and identify ‘good practices to be replicated in Member States’.¹²⁹ Also, the Special Rapporteur on Women in Africa has a role in monitoring implementation and has recently called on states to ensure that gender mainstreaming efforts at national level are ‘comprehensive and inclusive of all categories of women especially ... elderly women’,¹³⁰ thus pointing to an implementation gap in this respect. In addition, the African Court has a role to play through its interpretive mandate, in cases of violations of the rights of elderly women if presented with an opportunity to substantively address states’ compliance with their obligations in relation to elderly women.¹³¹ Other non-state actors such as civil society organisations (CSOs) and individuals (including elderly women) and society at large have a role to play. Elderly women can initiate measures on eliminating barriers to their rights enjoyment.¹³² CSOs can monitor practical implementation, identify gaps and assist with implementation of social protection programmes. Society should respect the rights of elderly women and treat them with dignity.

129 Resolution 143 on the transformation of the Focal Point on the Rights of Older Persons in Africa into a Working Group on the Rights of Older Persons and People with Disabilities in Africa, African Commission (27 May 2009) ACHPR/Res.143(XXXV)09. The group comprises five members (two Commissioners of the African Commission and three experts in the field).

130 Special Rapporteur on Rights of Women in Africa (MT Manuela) ‘Inter-session Activity Report (May-November 2021)’, African Commission (69th ordinary session 15 November-5 December 2021) para 25 (Recommendation 6).

131 Maputo Protocol, art 27. This interpretive mandate is reaffirmed in Protocol on the Rights of Older Persons art 22(4) & (5).

132 This is in line with position reiterated in African Commission ‘Statement of the Working Group on the Rights of Older Persons and Persons with Disabilities in Africa of the African Commission on Human and Peoples’ Rights, on the occasion of the 27th International Day of Older Persons’ (1 October 2017), <https://www.achpr.org/news/viewdetail?id=25> (accessed 30 May 2022).