

Preface

Frans Viljoen

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: a commentary is a first. It is the first comprehensive article-by-article examination of the provisions of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). It is also the first time that an African-based publisher, Pretoria University Law Press (PULP), has brought together mainly African-based and African-educated authors to collaborate in preparing a commentary of this nature on an African human rights treaty.

PULP is an open-access publisher established within and managed by the Centre for Human Rights (CHR), Faculty of Law, University of Pretoria. It aims to cultivate African scholarship, particularly on human rights. The opportunity that this *Commentary* provides – to disseminate knowledge and foster an understanding of African human rights standards and practice – is fully aligned with PULP and the CHR's ambition of advancing African scholarship that matters. *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: a commentary* is the first in a series of PULP commentaries on African human rights law, under the series title *PULP Commentaries on African human rights law* with myself as the series editor.

This *Commentary* is part of a proud tradition. It locates, on African soil, an evolving publishing practice by some of the world's leading publishers. The tradition of human rights treaty commentaries emerged as the outputs of the United Nations (UN) human rights system started to become more and more visible and significant. A prominent initial example is Manfred Nowak's commentary on the International Covenant on Civil and Political Rights (ICCPR), initially in German (published by NP Verlag in 1989) and subsequently in English (*UN Covenant on Civil and Political Rights. CCPR commentary*, published by NP Verlag in 1993). Between 2005 and 2012, Brill published a series of self-standing monographs, each dealing with a provision of the UN Convention on the Rights of the Child (*A commentary on the United Nations Convention on the Rights of the Child*). Other early examples are *The United Nations Convention against Torture: a commentary*, by Manfred Nowak, Elizabeth McArthur and Kerstin Buchinger (Oxford University Press, 2008) and *The UN Convention on the Elimination of All Forms of Discrimination against Women: a commentary*, by Marsha A Freeman, Christine Chinkin and Beate Rudolf (Oxford University Press, 2012). In the last decade, this practice really picked up, with the publication of a number of commentaries on UN and regional human rights treaties as part of the *Oxford Commentaries on International Law*. These titles include: William Schabas *European Convention on Human Rights: a commentary* (2015); Patrick Thornberry *The International Convention on the Elimination of All Forms of Racial Discrimination: a commentary* (2016); Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds) *The UN Convention on the Rights of Persons with Disabilities: a commentary* (2018); Rachel Murray *African Charter on Human and Peoples' Rights: a commentary* (2019); and Ludovic Hennebel and H el ene Tigroudja *The American Convention on Human Rights: a commentary* (2022), all published by Oxford University Press. Other publishers have also, in recent times, become more involved in this domain; see, for example, Paul M Taylor *A commentary on the International Covenant on Civil and Political Rights: the UN Human Rights Committee's monitoring of ICCPR rights* (Cambridge University Press, 2020).

Since its adoption on 11 July 2003, the Maputo Protocol has become an unmistakable landmark on the African human rights landscape. It has received much scholarly attention, as reflected in the number of academic articles dealing with its various aspects. Unfortunately, the academic interest has

not, with the exception of a few decisions by the African Court on Human and Peoples' Rights and the Economic Community of West African States Community Court of Justice, culminated in the development of significant case law. There has, in particular, been a dearth of cases before the African Commission on Human and Peoples' Rights (African Commission) for reasons that are explored in the pages of this publication. The *Commentary* aims not only to provide a comprehensive legal analysis that consolidates and deepens existing jurisprudence and scholarly writing, but also endeavours to stimulate greater interest and further open up possibilities for the Protocol's practical application. This *Commentary* aims to be a 'first-stop-shop' for anyone interested in the Maputo Protocol – researchers, teachers, students, practitioners, policymakers and activists.

The *Commentary* is also a celebration. Its publication has been timed to coincide with the 20th anniversary of the Maputo Protocol's adoption on 11 July 2003. The *Commentary* charts the extensive influence of the Maputo Protocol over these twenty years. A variety of factors may explain the extent of this influence. First, the Maputo Protocol was the first normative expansion (in the form of a 'protocol') to the African Charter, and its adoption came at a time when the African Commission had already established itself as a credible supra-national human rights supervisory mechanism. Different from the African Charter on the Rights and Welfare of the Child, which established its own supervisory arm and struggled to gain prominence, the Maputo Protocol was superimposed on a firmly established basis, allowing it to benefit from the Commission's already-existing radiating effect. Second, the Maputo Protocol is of a general and comprehensive scope, covering numerous aspects of women's rights. In this respect, it differs from the women-specific treaties in the Inter-American and European human rights systems (the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, known as the Convention of Belém do Pará, and the Council of Europe Convention on preventing and combating violence against women and domestic violence, known as the Istanbul Convention), which are more narrowly focused on violence against women. Third, the inclusive and protracted drafting process, involving numerous actors, drew attention to the Maputo Protocol and elevated its level of inclusiveness. These elements of the drafting process translated into a subsequent sense of continental ownership. Fourth, the specificity of provisions (such as those dealing with 'female genital mutilation', HIV and abortion), which were included in response to African realities and challenges, set the Maputo Protocol apart from the corresponding UN treaty, the Convention on the Elimination of All Forms of Discrimination against Women. The level of specificity of these provisions has also facilitated domestication. Fifth, the relatively short time it took the Maputo Protocol to enter into force, and the subsequent pace of ratification, allowed state practice to evolve without too much delay. Sixth, within the African Commission, the Protocol was nurtured by a dedicated special procedure, the Special Rapporteur on the Rights of Women in Africa, which was established in 1999. Finally, the Maputo Protocol was also given further prominence when it became the basis for the first-ever 'General Comment' adopted by the African Commission.

Unlike most of the works cited earlier, which are written by one or a few authors, this *Commentary* consists of a collection of edited chapters by 28 authors. This project has deliberately been undertaken in a spirit of collaboration, bringing together expert commentators with diverse backgrounds from across different parts of the continent and beyond.

Sincere thanks and appreciation must go to the three co-editors – Annika Rudman, professor in the Department of Public Law at the Faculty of Law, University of Stellenbosch; Trésor Muhindo Makunya, a postdoctoral fellow with the CHR and the CHR's publications coordinator; and Celestine Nyamu Musembi, senior lecturer at the University of Nairobi School of Law – the 28 contributors and five reviewers. The very competent, resilient, and dedicated team of co-editors with determined professionalism undertook the immense task of coordinating authors and co-authors and the writing, reviewing and editing of 30 chapters. A special word of thanks also goes to Chantelle Hough Louw, who acted as the technical editor for this publication.

Warm words of thanks further go to Professor Sylvia Tamale, Professor Rachel Murray, Lawrence Mute, Meskerem Geset Techane and Karen Stefiszyn, who acted as reviewers. Their participation ensured quality control and added another layer of legitimacy to this publication.

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