

TRAILS

Maputo



Conversations on the
African human rights of
**PERSONS OF
FEMALE GENDER**





2018

Celebrating the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa



'Women' means persons
of female gender,
including girls

Art 1(b) paragraph 10
Protocol to the African Charter on Human and
Peoples' Rights on the Rights of Women in Africa

(Maputo Protocol)

Foreword

*Without community, there is no liberation
but community must not mean a shedding of our differences
nor the pathetic pretense that differences do not exist.*

Audre Lorde
(American poet and civil rights activist)

The **Maputo Protocol** and inclusivity

by

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The Maputo Protocol is the legal document in Africa that provides for the protection of women's rights across the continent. The Maputo Protocol was adopted as a 'supplement' to the African Charter on Human and Peoples' Rights (African Charter) because of the uniqueness of the 'burning problems' that concern women in Africa. The adoption of the Maputo Protocol was an indication that it was time 'for a more forceful promotion of women's rights on the African continent' and that African governments were ready to allocate adequate resources to ensure a better protection of the human rights of women. Its adoption has contributed to the 'climate for the advancement of women's rights' in Africa to be 'more favourable than ever'.

The Maputo Protocol 'advances the human rights of African women through creative, substantive and detailed language'. Despite the presence of the African Charter, which contains provisions concerning equality and non-discrimination, women in Africa were still victims of violations of their rights. The Maputo Protocol even goes a step further than the CEDAW since it contains more 'radical' provisions in view of 'finding African solutions to African problems'. The Maputo Protocol is therefore an important document for the protection of African women since it contains provisions aimed at the specific vulnerabilities that African women face.

The Maputo Protocol has defined women as 'persons of female gender, including girls'. The travaux préparatoires of the document does not indicate any extensive debate as to who should be considered as a women. The inclusion of girls was necessary to indicate that the Protocol's provisions apply to those under the age of 18. However, the use of the term 'gender' did not generate any debate as to whether the Maputo Protocol would be applicable to persons who were 'women' by birth or also to those who identified as women. Irrespective of whether the intention was to include transgender women, a literal interpretation of the definition would imply that the use of the word 'gender' instead of 'sex' in the definition of women means that the rights in the Maputo Protocol are also applicable to transgender women. Hence, all the rights and privileges in the Maputo Protocol include transgender women and states parties are obligated to ensure that all women, including transgender women, benefit from the rights therein.

Till now, the Maputo Protocol has not been used as an advocacy tool for the rights of transgender women. This might be due to the fact that only persons born with hetero normative female genitals have traditionally been considered as the beneficiaries of the provisions of the document. Moreover, as it is, the 40 states that have ratified the document have

reservations to some of the provisions. The withdrawal of the observer status conferred to the Coalition of African Lesbians (CALs) by the African Commission demonstrates the African continent is not ready to discuss sexual and gender minorities. The spotlight on the fact that the Protocol's provisions actually extend to sexual and gender minorities might create more stir and questioning of the document.

However, it is time that one uses this important document that clearly protects the rights of transgender women to ensure that there is no discrimination towards them. Whether the continent is ready or not, the document's protection extends to transgender women and there is a need to bring this particular article in the spotlight in the fight for the rights of transgender women.

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On the **Trans**Maputo project

by

David Nnanna Ikpo

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It has been roughly a year since the seeds that sprung the TransMaputo project were sowed. Prof Frans Viljoen was delivering a lecture on the African human rights system when he addressed the Maputo Protocol and the implication of the word gender as a defining denominator for inclusion. He said that transgender rights activists could give this provision a run for its money if they dared to. What?! Why was no one saying anything about it?

I had seen the protocol a hundred times or more. Theoretically, I knew that the Maputo Protocol is applicable to women. But then, in the usual way that words can be taken for granted, 'women' meant just women. Suddenly it could mean more emotionally and socially than just 'women'. A few weeks following this, a few friends and I did a photoshoot for the 'I Am Woman' visual campaign as part of the Centre for Human Rights work. This campaign would be celebrated beyond our anticipation. Nonetheless, as a queer man I believed that there was something yet undone.

We started talking about inclusivity and why 'women' should mostly mean and be accepted as one thing. Why was beauty just one thing? The smooth skin, the long hair, the feline looking eyes, soft flowy curves and seams?

What would inclusion mean? For us at the time, it meant giving every woman, especially the transwoman a seat at the table. We opened our doors for collaboration and reached out so many times. By way of photography, we sought to capture the conversation being had by transwomen themselves. But more importantly, we sought to cast some light on the reality of the transwoman. 'Let us come to you' we said, 'your world, where you feel most comfortable. Let us have a conversation about the Maputo Protocol, click a few shots and we will be on our way.'

After a while, people started reaching out to us. We started connecting, setting up meetings and moving. You know, there was the rush. Most of us were fundamentally lawyers before anything else. So the promise of anything in addition to black letter research would be a challenge, but ticklish like the smack of vanilla hitting all the right spots. Most of us on the team were cis gender, a few of us queer but very much socially conforming in our expressions. We had just rounded off an exhibition. As opposed to the reputation and finesse that such projects should garner, we garnered our 'rough edges', Nikon cameras, curiosity and headed out. This would be another one. Easy!

Nothing would prepare us for what would follow. I still remember meeting Progress Selota for the first time. Even I as a queer man was stunned by how graceful she was in spirit, physically and socially. She would welcome us warmly and lead us up to a room where Katlego and Dimpho were seated, two other transwomen and work colleagues. It was a still, beautiful, non-verbal conquering of our hearts. What had begun as an academic exercise

was becoming a relearning for all of us on the team. Transwomen are beautiful, fierce, pleasantly nerve wrecking, magical in the most sweetly unsettling way. No two are the same. Each one bearing her own charm, hacking at the trap of femininity. The large firm hands, dripping with gold nail polish. Silk fabric flowing across toned shoulders. Long hair brushing past fading stubs. Gentle eyes that can send anyone whose glance it locks to confession.

I mean, these women fuck gender up by their very existence. Every breath, every blink is a revolution! Connecting with a transwoman is nothing like we had ever known.

They opened their hearts, homes and offices to us. More importantly, we got to talk between blush strokes. Sometimes in the bad tempered Northern Cape late afternoon heat, other times in the airconditioned Pretoria offices. Although we believe in the Maputo Protocol and our legal training compels us to have faith international law, these made no dent in the varied responses of the women towards the Maputo Protocol. While some applauded its existence and showed some optimism, for others it may have as well not existed. Of course there were several variations in between. Their experiences were their experiences. And TransMaputo could never stand censoring their voices.

At the end of the project, we are not completely unaware of the critique of potential illegitimacy simply because of the non-participation of transwomen at the team level. This is a valid critique. The conversation should be had and curated by the transgender community.

Nonetheless exclusivity of participatiion in a discourse flattens its scope. It is equally important that as allies. and minorities ourselves, we claim the space to apply ourselves within the scope of our means and imagination to the conversation on marginalization of minorities. This is especially because we understand the greater evil of silence and non-participation. We all wear the shoes of marginalization. We hope that this work can contribute to trans-specific research and discourse past, present and future.

The TransMaputo is an important piece of art that we hope will ginger more conversations around the Maputo Protocol at all levels from the quiet spaces where hearts are sculpted to the high offices where policies are written.

Transwomen are women and we hope that it increasingly becomes okay to say and believe this in a world where non-conformity is not so easily forgiven.



Article 2
Elimination of discrimination against women

(1) State parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.

Speaking and writing it down does not mean something. Actually acting on it paints another picture.

Katlego

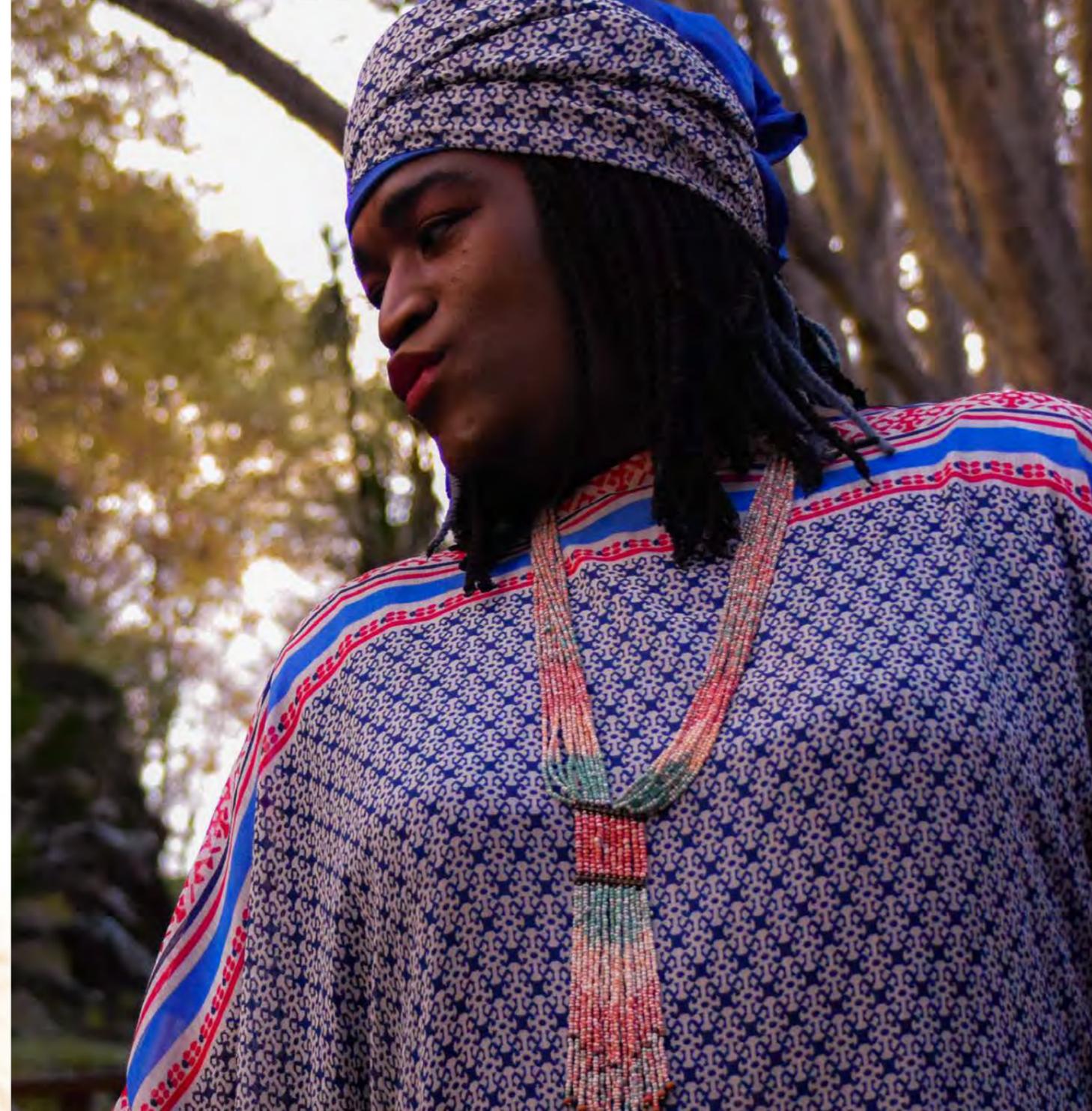


Article 3
Right to dignity

Every woman shall have the right to dignity inherent in a human being and to recognition and protection of her human and legal rights.

Everyday you wake up with love and care for your family and the moment that you step out of the door you have to put up all these barriers in front of you that you feel are going to protect you throughout your day in society.

Jholerina



Article 4
The rights to life, integrity and security of the person

(1) Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.



One teacher told me that I will not write my test until I take off my weave.

Lulubabalo

Article 5
Elimination of harmful practices

States shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. State parties shall take all necessary legislative and other measures to eliminate such practices, including:

(d) Protection of women who are at risk of being subjected to harmful practices of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.



You will sometimes stay in an abusive relationship because you want to be loved.

Skylar

**Article 6
Marriage**

State parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage.

Being trans is a blessing. You do not choose to be trans, you are born trans.

Dimpho



**Article 8
Access to justice and equal protection
before the law**

Women and men are equal before the law and shall have the right to equal protection and benefit of the law.

Some bouncers at the night club beat me up because of how I look. I arrested them and sued the state. We are still in court.

Uraq



Article 9
Right to participation in the political and decision making process

(1) State parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and measures.

I got to a space where you can't but listen to me.

Patsy



Article 10
Right to peace

Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace.

People have different challenges . And how we conquer and master those is what makes our lives great or not.

Ditshego



Article 11
Protection of women in armed conflict

(2) State parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.

There are not so subtle differences between cis-women and transwomen and they all should be addressed by the Maputo Protocol if it seeks to protect womanhood as an experience.

Thabiso



Article 12
Right to education and training

- (1) State parties shall take all appropriate measure to
- (b) eliminate all stereotypes in textbooks, syllabuses and media that perpetuate such discrimination.

In most peoples' eyes we will forever be striving towards being the other gender. So when we talk about women's rights, when it comes to us transwomen, it does not make sense for some people because to them we are not a women, we are just trying.

Patsy



Article 13
Economic and Social Welfare Rights

State parties shall adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities. In this respect they shall:

(c) Ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the work place.

I want to become a model. And if I don't become a model, I would like to have a modelling agency.

Progress



Article 14
Health and reproductive rights

(1) State parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:

(a) The right to control their fertility.

I have never been to other African countries because I am scared of being beaten up or being killed. What if they notice at the airport when they look at my passport. 'It says male, but you look like female. Are you a terrorist?'

Katlego



Article 16
Right to adequate housing

Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment.

I had to drop out of school because it was hectic at home. My parents did not accept me

Uraq



Article 17
Right to positive cultural context

(1) Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.

The Maputo Protocol isn't perfect...should there really be a male and female thing?

Lulubabalo

Article 18
Right to healthy and sustainable environment

Women shall have the right to live in a sustainable environment.

There is a range of talents and abilities that we are not making use of because we undervalue them or prefer not to see them.

Patsy



Article 17
Right to positive cultural context

(1) Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.

Transwomen are women, but they are not ciswomen. Transwomen will never be ciswomen because they have not experienced ciswomanhood. The transwoman experience is very specific. The ownership of womanhood by ciswomen needs to be relinquished to allow transwomen to partake in the womanhood experience.

Thabiso



Article 19
Right to sustainable development

Women shall have the right to fully enjoy their right to sustainable development . In this connection, the state parties shall take all appropriate measures to:
(a) Introduce the gender perspective in the national development planning procedures.



Focusing on transwomen is a very critical point that should be attended to. The future has always been female.

Dimpho

Article 17
Widows' rights

State parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:
(a) that widows are not subjected to inhuman, humiliating or degrading treatment.



We as transwomen actually have hearts and when societies shun us or treat us in a manner that makes us feel less than human, they should remember that we could be their children.

Skylar

Article 21
Right to inheritance

(1) A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In the case of remarriage, she shall retain this right if the house belongs to her or she has inherited it

(2) Women and women shall have the right to inherit, in equitable shares, their parents' properties.

As transgender women, we can be kind, good. We have things to offer. We have things to do, things to give.

Patsy



Article 22
Special protection for elderly women

State parties shall undertake to:
(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.

As women we do not have to be labelled differently to be protected.

Progress



**Article 25
Remedies**

The states shall undertake to:
(a) provide for appropriate remedies to any woman whose rights or freedoms, as herein (in the Maputo Protocol) recognised, have been violated.

Not everyone will accept you. You need to understand where their fear is coming from.

Jholerina



**Article 5
Elimination of harmful practice**

State parties shall take all necessary legislative and other measures to eliminate
(c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting.

To access my hormonal therapy I have to go through psychiatrists and psychologists for them to examine me and tell me if I'm mentally fit enough to take hormones. Perhaps it is for medical reasons, but it takes six to nine months!

Dimpho



Article 23
Special protection of women with disabilities

The states shall undertake to:
(b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.



I have always been an overachiever. I have always had to fight. That is because I learned at a very early age that I had to work three times as hard to get the praise that the heterosexual boy would get for doing the bare minimum.

Ditshego



Article 24
Special protection for women in distress

State parties shall undertake to:
(a) ensure the protection of poor women and women heads of families including women from marginalised population groups and provide an environment suitable to their condition and their special physical economic and social needs.

Categories do not sit well with me. We do not need to be categorised. We need to be seen as one. If we are seen as women that is when I can now say that I am being protected as a woman.

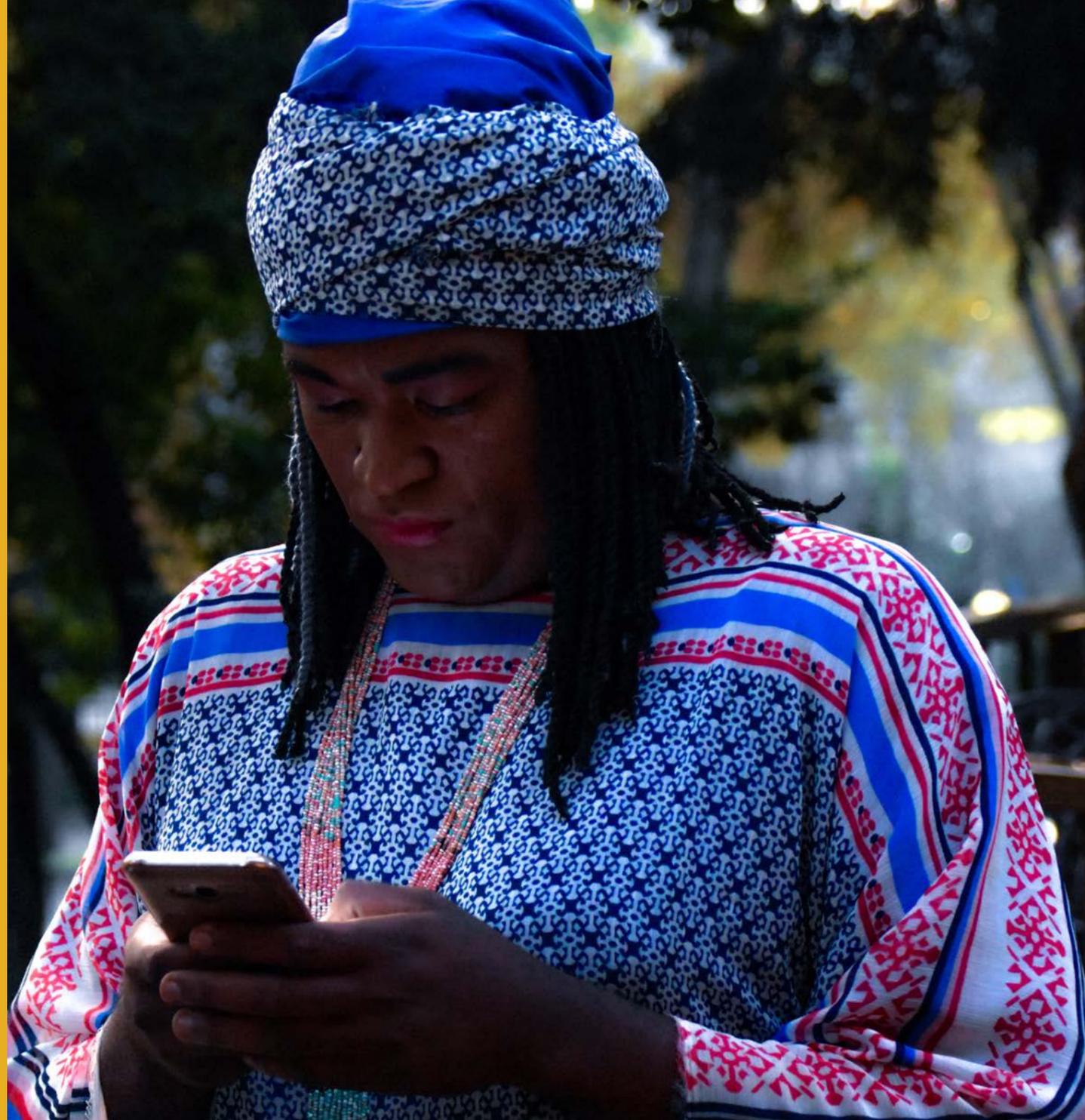
Katlego

Article 3
Right to dignity

(4) State parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for dignity and protection of women from all forms of violence.

For five minutes when I walk into the mall it is dead silent. Everybody stops doing what they are doing and it is like I am the centre of attention. And they start!

Jholerina



Article 12
Right to education and training

State parties shall take appropriate measures to

(c) Protect woman, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such.

I identify as a transwoman and there is no explicit mention of protection for tranwomen. Apart from the shared experiences that I have with ciswomen, the transgender womanhood experience is not explicitly covered by the Maputo Protocol. Therefore, I feel excluded by it.

Thabiso



Article 12
Right to education and training

State parties shall take appropriate measures to
(e) Integrate gender sensitisation and human rights education at all levels of education curricula including teacher training



When I returned home looking different, my mum started to know me, started to love me, started to understand me for who I am.

Katlego



Article 8
Access to justice and equal protection before the law

State parties shall take all appropriate measures to ensure:
(f) reform (of) the existing discriminatory laws and practices in order to promote and protect the rights of women.

If you think how I am is a problem, it means that the problem is with you not me, because I was born like this.

Uraq

I am an African Woman.
To understand me, get to know me.
This is who I am and what I am.
I am the modern day Cleopatra

- **Jholerina** Timbo

(as quoted in 'Proudly African and transgender' - collaborative portraits and stories with trans and intersex activists' by Gabrielle le Roux, published in S Ekine and H Abbas (eds) Queer African Reader)



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The TransMaputo TEAM



What we conceive and believe we can achieve. We set our hearts on this about a year ago and we have it in our hands today.

On the left : Student Ambassadors, Centre for Human Rights
From left:

Thiruna Naidoo
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Loyi Mamabolo (sitting)
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The Universe and all the opportunities that it threw at us in spite of our often apparent limitations

Time, for seeing to it that this gets done.



The Queer Space Collective is a project run collaboratively by the Centre for Human Rights and the Centre for Sexualities AIDS and Gender, both at University of Pretoria (UP) with the vision of making the UP more inclusive of queer expression and identities through the use of creative writing and expression. **Twitter:** @QSCollective | **Enquiries:** david.ikpo@up.ac.za