



# Promotion & protection of the rights of older women in Africa

investigating the need for a  
thematic general comment on  
article 22 of the maputo protocol  
and the rights specific to older  
women in the protocol on the  
rights of older persons



Centre for  
Human rights  
**2025**



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“Promotion and Protection of the Rights of Older Women in Africa: Investigating the Need For a Thematic General Comment on Article 22 Of The Maputo Protocol and the Rights Specific to Older Women in the Protocol on the Rights of Older Persons”

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## Foreword

Older women in Africa have important but frequently disregarded responsibilities in their families and communities. Despite their contributions, they continue to be among the most marginalised and invisible groups in terms of policy formation, legal protection and resource allocation. This invisibility is more common in the African human rights discourse, where the relationship of age and gender is underexplored. This report, “Promotion and Protection of the Rights of Older Women in Africa: Investigating the Need for a Thematic General Comment on Article 22 of the Maputo Protocol and the Rights Specific to Older Women in the Protocol on the Rights of Older Persons”, makes a significant contribution to reducing this gap. Rooted in a human rights-based approach, the report highlights the limited recognition of older women’s rights within existing legal frameworks and policies across Africa. While Article 22 of the Maputo Protocol affirms elderly women’s rights, its vague interpretation and lack of enforcement leave many without proper protection. The ratification of the Protocol on the Rights of Older Persons in Africa creates new opportunities to enhance protection, especially if gender issues are explicitly included. The report advocates for a specific General Comment on Article 22 to clarify state responsibilities and support consistent national action. As efforts toward gender equality, dignified aging and comprehensive human rights continue, this report provides valuable insights and guidance. It will be a good resource for policymakers, civil society groups and other advocates interested in promotion and protection of the rights of older persons.

**(PROF) EBENEZER DUROJAYE**

*Acting Director: Centre for Human Rights*

## Executive Summary

This report examines the promotion and protection of the rights of older women in Africa through an analysis of Article 22 of the Maputo Protocol. It advocates for the development of a thematic General Comment to enhance the article's interpretation and guide its implementation. The report also explores the connection between Article 22 and the Protocol on the Rights of Older Persons in Africa, which recently entered into force. Older women across the continent continue to face intersecting challenges, including age and gender based discrimination, poverty, harmful cultural practices and limited access to healthcare and social protection. Despite recognition in the Maputo Protocol, the absence of detailed interpretive guidance has led to inconsistent or inadequate protection at the national level. Based on desktop research and legal analysis, the report draws from regional literature and human rights instruments. The focus of the report remains on interpreting Article 22 of the Maputo Protocol to advocate for the protection of Older women on the African continent.

### Key findings include



**A lack of  
jurisprudence  
and normative  
clarity on  
Article 22**



**Minimal  
inclusion of  
older women in  
national ageing  
and gender  
policies**



**Continued  
exposure  
to harmful  
practices  
like widow  
inheritance  
and witchcraft  
accusations**



**Overdependence  
on informal  
family-based  
care without  
sufficient state  
support**

With the Older Persons Protocol now in force, the report urges its alignment with Article 22 to ensure comprehensive protection. Without such clarity, the rights of older women risk remaining unaddressed. The report calls on the African Commission on Human and Peoples' Rights to adopt a thematic General Comment on Article 22. By enhancing the implementation of Article 22 and harmonising it with the Older Persons Protocol, the African human rights system can better uphold the dignity, rights and equality of older women across the continent.

## Acknowledgements

This report was principally compiled by Dr Chipo Irene Rushwaya and Adv. Boogie N.S. Khutsoane with technical support from Dr Lydia T Chibwe (Project Officer, Women's Rights Unit, Centre for Human Rights) and Ms Matilda Lasseko-Phooko (Manager, Women's Rights Unit Centre for Human Rights,).

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## **Methodology note**

The analysis presented in this report is based on comprehensive desktop research, including an extensive literature review, legal and policy analysis and the examination of stakeholder perspectives. The report focuses on the rights of older women in Africa, assessing the scope and implementation of article 22 of the Maputo Protocol and relevant provisions of the Protocol on the Rights of Older Persons. It also explores the necessity for the African Commission on Human and Peoples' Rights to adopt a thematic general comment to guide states in fulfilling their obligations.

## Abbreviations

|          |  |
|----------|--|
| ACERWC   | African Committee of Experts on the Rights and Welfare of the Child        |
| ACHPR    | African Charter on Human and Peoples' Rights                               |
| ACRWC    | African Charter on the Rights and Welfare of the Child                     |
| AU       | African Union  |
| AUOLC    | African Union Office of the Legal Counsel                                  |
| CAT      | Committee against Torture  |
| CEDAW    | Convention on the Elimination of All Forms of Discrimination Against Women |
| CERD     | Committee on the Elimination of Racial Discrimination                      |
| CESCR    | Committee on Economic, Social and Cultural Rights                          |
| CEDEW    | Convention on the Elimination of All Forms of Discrimination against Women |
| CRC      | Convention on the Rights of the Child                                      |
| DRC      | Democratic Republic of the Congo   |
| EWLA     | Ethiopian Women Lawyers Association  |
| HIV/AIDS | Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome            |
| ICESCR   | International Covenant on Economic, Social and Cultural Rights             |
| MANEPO   | Malawi Network of Older Persons Organisations                              |
| NCPOP    | National Centre for the Protection of Older People                         |
| NGO      | Non-Governmental Organisation  |
| OAU      | Organisation of African Unity  |
| SERAC    | Social and Economic Rights Action Centre                                   |
| STI      | Sexually Transmitted Infections  |
| UNPF     | United Nations Population Fund   |
| WHO      | World Health Organisation  |

## Glossary

### **Care work:**

Unpaid or underpaid labour related to caregiving activities, often performed by older women and typically unrecognised in economic systems.

### **Customary law:**

Traditional laws and practices passed down within communities, which can both support and limit women's rights depending on the context.

### **General Comment:**

An authoritative interpretation or elaboration issued by a human rights treaty body to clarify the meaning and scope of treaty provisions.

### **Older person:**

A person aged 60 years or older, as defined by the Protocol on the Rights of Older Persons in Africa.

### **Special protection:**

Measures required to address the specific vulnerabilities and needs of marginalised groups, such as older women, including legal, social and economic interventions.

### **Widow inheritance:**

A cultural practice whereby a widow is 'inherited' by a relative of her deceased husband, often without her consent.

### **Witchcraft accusations:**

Harmful traditional beliefs often targeting older women, especially widows, resulting in social exclusion, violence, or dispossession.

# Section 1: Introduction

## 1 Background

Africa's population is rapidly ageing. By 2050, the number of Africans over the age of 60 will have risen from slightly under 50 million to over 200 million.<sup>1</sup> Many people in Africa are experiencing chronic and worsening poverty, as well as the weakening of family and community structures as a result of migration, conflict, natural catastrophes and the effects of HIV/AIDS.<sup>2</sup> A lack of attention to older persons, along with increasing economic conditions, is exacerbating already serious abuses of older peoples' rights. Older women and men face discrimination under the law, as well as within their families and communities.<sup>3</sup> Few elderly persons have equal access to social security, healthcare, education and legal protection. Furthermore, they are frequently denied the right to engage in development initiatives.

Experiences of ageing persons are not uniform. Older persons are a heterogeneous group, encompassing both people who are major

contributors to the development of society, as well as those who are in need of care and support.<sup>4</sup> Older women in particular experience ageing differently from their male counterparts. Their ability to fully capitalise on extended life expectancy is restricted by gender-based disadvantages that accumulate over one's lifetime. These challenges are further amplified by ageist stereotypes and discrimination based on age.<sup>5</sup> They endure discrimination in accessing services and are also subjected to discriminatory inheritance and property laws.<sup>6</sup> Witchcraft accusations are common due to age and gender preconceptions, and older women are occasionally pushed out of their homes or even killed.<sup>7</sup> Furthermore, elder women bear the duty of caring for grandchildren and ailing family members.<sup>8</sup> These characteristics have an impact on their overall health and well-being as they get older. Older women as a vulnerable group are also not homogenous. Concrete forms of discrimination against older women may differ considerably under various

1 UNDESA, 'Population ageing 2006' <https://www.un.org/esa/socdev/ageing/documents/ageing2006chart.pdf> (accessed 11 June 2023).

2 ND Mbirimtengerenji 'Is HIV/AIDS epidemic outcome of poverty in sub-saharan Africa?' (2007) 48 *Croatian Medical Journal* 605. .

3 R Kornfeld-Matte & CL Belloni (eds) 'International Conference on Human Rights of older persons & non-discrimination report' (2017) <https://www.ohchr.org/sites/default/files/Documents/Issues/OlderPersons/ConferenceSantiagoReport.pdf> (accessed on 11 June 2023).

4 A Gutterman Ageism and intersectionality: Older persons as members of other vulnerable groups (2022) <https://ssrn.com/abstract=3972842> (accessed 21 February 2024).

5 UN General Assembly 'Human Rights of older women: The intersection between ageing and gender – Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler' UN Doc A/76/157 (2021).

6 HelpAge International 'Protecting the rights of older people in Africa' (2008).

7 As above.

8 II Doron, B Spanier & O Lazar 'The rights of older persons within the African Union' (2016) 1 *Elder Law Review* 1.

socio-economic circumstances and in various socio-cultural environments, depending on the equality of opportunities and choices regarding education, employment, health, family and private life. Older women living in rural areas or urban slums often suffer a severe lack of basic resources for subsistence, income security, access to healthcare, and information on and enjoyment of their entitlements and rights.<sup>9</sup>

Member states to the African Union (AU), on 31 January 2016, adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (Protocol on the Rights of Older Persons).<sup>10</sup> Since there is no specific law on the African continent ensuring the protection of older persons rights, the Protocol on the Rights of Older Persons aims to fill this gap. The Protocol on the Rights of Older Persons is a transformative legal instrument providing norms and standards for protecting the rights of older persons in Africa.

The Protocol on the Rights of Older Persons officially entered into force, following ratification by the required 15<sup>11</sup> African Union member states.<sup>12</sup> This development marks a significant milestone in ensuring the enforceability of provisions aimed at protecting the rights of older persons, including older women, across the continent. Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which focuses on special protection of elderly women, continues to provide a complementary and binding framework for safeguarding the rights of older women.<sup>13</sup> Given the overlapping protections in both instruments, it is essential to consider how the provisions of the Protocol on the Rights of Older Persons align with and reinforce the obligations set out in article 22. Currently, 45 African states are parties to the Maputo Protocol, and its provisions remain binding on them. In states that have not ratified the Protocol on the Rights of Older Persons, article 22 of the

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9 CEDAW, General Recommendation 27 on Older Women and Protection of Their Human Rights, 16 December 2010, UN Doc CEDAW/C/GC/27 (2010) <https://www.refworld.org/legal/general/cedaw/2010/en/27430> (accessed 26 February 2024).

10 African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, 31 January 2016 <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-older-persons> (accessed 11 June 2023).

11 Angola, Benin, Burundi, Cameroon, Ethiopia, Kenya, Lesotho, Malawi, Mozambique, Niger, Nigeria, Rwanda, Sahrawi Arab Democratic Republic, São Tomé and Príncipe, and Togo.

12 HelpAge International 'A new era for older people in Africa: AU Protocol on Rights of Older Persons comes into force' (2024) <https://www.helpage.org/news/a-new-era-for-older-people-in-africa-au-protocol-on-rights-of-older-persons-comes-into-force/> (accessed 2 July 2025).

13 African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 11 July 2003 (Maputo Protocol) art 22.



Maputo Protocol remains a vital source of legal protection for older women.<sup>14</sup>

The Maputo Protocol came into force in November 2005, it is an additional Protocol drafted by virtue of article 66 of the African Charter on Human and Peoples' Rights (African Charter)<sup>15</sup> which protects the rights of 'older women'. The Maputo Protocol was drafted primarily in response to the violations of human rights committed against women in Africa.

While the provisions of the Maputo Protocol as a whole apply to older women, on the special protection of older women, article 22 of the Maputo Protocol provides that states parties should:

*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;*

---

14 Algeria, Angola, Benin, Burkina Faso, Cameroon, Cape Verde, Côte d'Ivoire, Comoros, Congo, Djibouti, Democratic Republic of Congo, Equatorial Guinea, Ethiopia, Gabon, Gambia, Ghana, Guinea-Bissau, Guinea, Kenya, Libya, Lesotho, Liberia, Mali, Malawi, Mozambique, Mauritania, Mauritius, Namibia, Nigeria, Rwanda, South Africa, Sahrawi Arab Democratic Republic, Senegal, Seychelles, Sierra Leone, South Sudan, São Tomé and Príncipe, Eswatini, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe. Botswana is reported to have ratified, but this is not yet reflected on the AU website.

15 Organisation of African Unity (OAU), African Charter on Human and Peoples' Rights (Banjul Charter), CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982), 27 June 1981 .

*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.*<sup>16</sup>

There are various provisions in the Protocol on the Rights of the Older Persons that align with article 22 of the Maputo Protocol. These provisions include article 9 of the Older Persons Protocol which specifically speaks on the protection of older women from violence, sexual abuse and discrimination based on gender as well as protection against abuse related to property and land rights. The other provisions that are related to article 22 of the Maputo Protocol include: article 3 and 6 on the elimination of discrimination; article 4 on access to justice; article 5 on decision rights; article 7 on social protection; article 8 on protection against harmful practices; article 15 on health rights; article 16 on education rights; article 17 on participation rights; article 18 on access to infrastructure; and article 19 on information and awareness of old age.

Institutionally, the mechanisms for monitoring and reviewing the implementation of the Maputo Protocol is the African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights (African Court).<sup>17</sup> No general comments have been developed by the African

Commission on article 22 of the Maputo Protocol. There is also no jurisprudence by the African Court that clarifies this provision. AU member states that have recently reported to the African Commission under article 22 of the Maputo Protocol only focused on what they have been doing in granting social protection to older persons in general without looking at the specific concerns of older women. They have also neglected to report on the other aspects that are covered under this provision, for instance protection of older women against violence, as well as their physical and economic needs. Thus, this research intends to examine the necessity for guidance to member states on implementing the provisions of article 22. This guidance may be in the form of a general comment on article 22 of the Maputo Protocol. Thematic resolutions issued by the African Commission clarify in greater detail the state obligations in respect of a specific right and describe the standard set by the Charter.<sup>18</sup>

Clarification to improve the understanding of article 22 of the Maputo Protocol by the African Commission through a general comment would guide states parties to adequately protect, promote and implement all human rights and fundamental freedoms of older women. This study will investigate whether the elaboration of the provisions of article 22 of the Maputo

16 n 13.

17 Arts XXVI and XXVII of the Maputo Protocol.

18 BD Nibogora 'Advancing the rights of sexual and gender minorities under the African Charter on Human and Peoples' Rights: The journey to Resolution 275' in E Durojaye, G Mirugi-Mukundi & C Ngwena (eds) *Advancing sexual and reproductive health and rights in Africa* (2021).

Protocol is needed to advance the rights of older women and address the challenges that they face. The study will document the challenges while considering the extent to which the full and effective implementation of article 22 of the Maputo Protocol read together with the other provisions of the Maputo Protocol and the provisions of the Protocol on the Rights of Older Persons will assist states in addressing these challenges.

## 2 Research questions

- What challenges do older women in Africa face?
- How does article 22 of the Maputo Protocol protect the rights of older women in Africa and are there other measures and policies in place for protection of older women's rights?
- Are AU member states implementing the obligations imposed under article 22 of the Maputo Protocol?
- Is there a need for a thematic resolution or guide on any/all aspects of the obligations under article 22 of the Maputo Protocol? If so, which aspects?

## 3 Objectives

- To facilitate evidence generation and documentation concerning challenges that are faced by older women in Africa.
- To evaluate how and to what extent article 22 of the Maputo Protocol affords

protection to the rights of older women in Africa given that the Older Persons Protocol has not yet come into force to protect the rights of older women.

- To determine to what extent member states implement, enforce and give effect to article 22 of the Maputo Protocol.
- To contribute to advocacy on the adoption of general comment/interpretive documents on article 22 of the Maputo Protocol.

## 4 Methodology

The primary objective of this desktop research is to comprehensively investigate the rights of older women in Africa, specifically focusing on article 22 of the Maputo Protocol. The overarching goal is to assess the adequacy of current legal provisions, identify gaps or challenges, and determine the necessity for a general comment to enhance the protection and promotion of older women's rights.

### 4.1 Literature review

The study was initiated with an exhaustive literature review, delving into academic publications, reports, and legal documents pertinent to the rights of older women in Africa. This encompassed an examination of regional human rights instruments, scholarly works, and legal commentaries addressing issues relevant to older women's rights, with a specific emphasis on article 22 of the Maputo Protocol.

## 4.2 Legal analysis

A meticulous legal analysis was conducted to scrutinise the language, provisions, and interpretations of article 22 of the Maputo Protocol. This analysis included an in-depth study of relevant case law, decisions from regional human rights bodies, and state reports submitted under the Maputo Protocol. The objective was to understand the current legal landscape and identify potential gaps or ambiguities.

## 4.3 Stakeholder perspectives

The desktop research encompassed an analysis of reports, policy papers, and statements from relevant stakeholders, including governmental bodies, non-governmental organisations (NGOs), and international agencies. This provided valuable insights into the perspectives, challenges, and initiatives related to the rights of older women in Africa, contributing to an informed discussion on the necessity of a general comment.

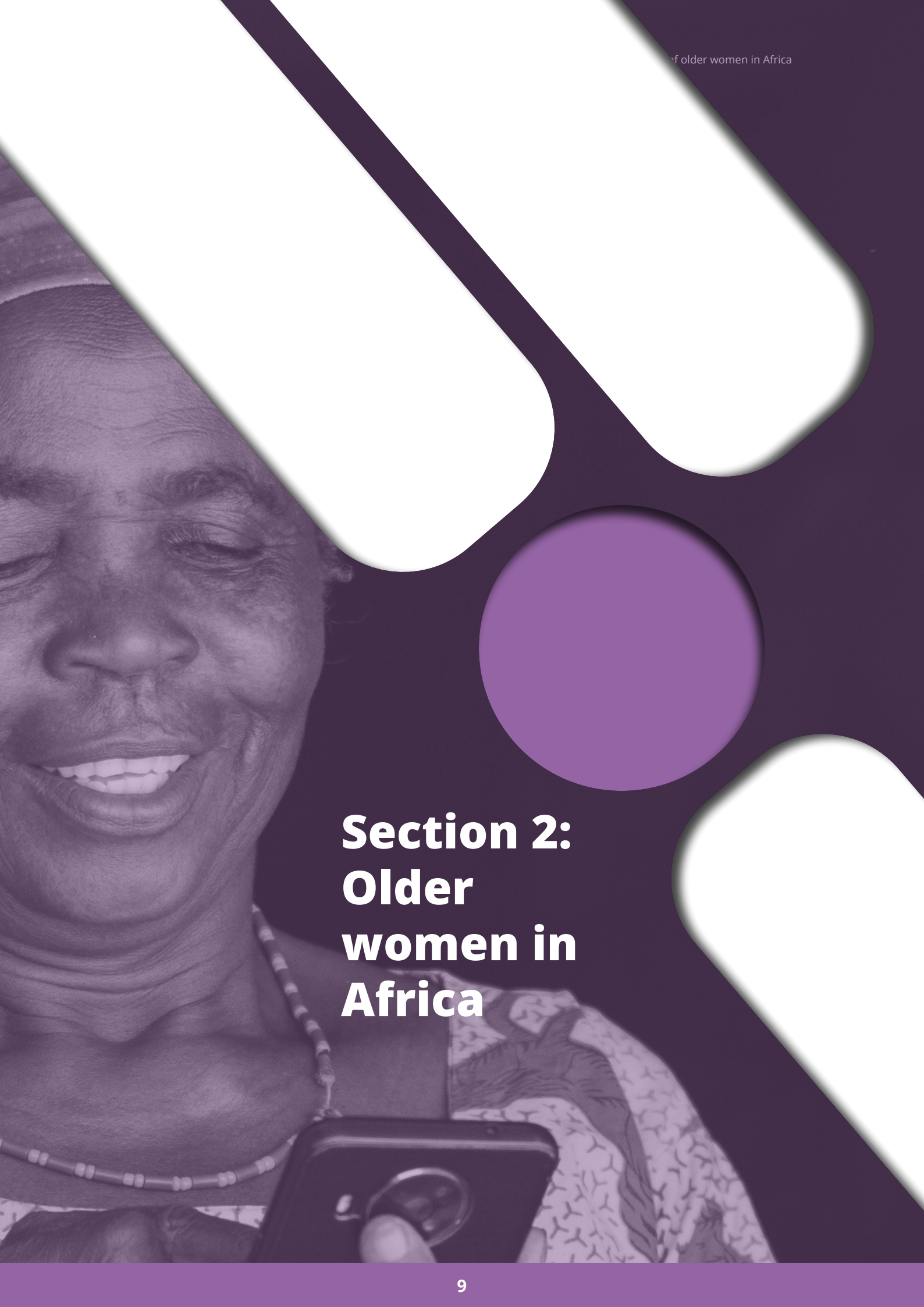
Information gathered through the literature review, legal analysis and stakeholder perspectives was systematically synthesised. This process aimed to identify common themes, recurring challenges, and potential areas for improvement in the protection and promotion of older women's rights in Africa.

## 5 Limitation and delineation of research

The study aims to advocate for the adoption of the general comment/interpretive document on article 22 of the Maputo Protocol to elaborate further on these rights and to improve the enjoyment of the rights of older women on the African continent. This study will focus only on article 22 of the Maputo Protocol.

Furthermore, given the limited time frame for the study, in-depth interviews with a wide scale of correspondents were not achievable. As such, the qualitative research, if any, will be limited to written correspondence with contact persons and organisations working with older persons in African countries.





## **Section 2: Older women in Africa**

## 1 Introduction

The Maputo Protocol is intended to be a transformative legal document for African women. The various provisions aim to address the way that they experience human rights violations. In order to consider the circumstances that give rise to violations that article 22 is intended to protect older women against, the specific challenges faced by older women are investigated in this section. Older women face multiple forms of inequalities and discrimination in employment, healthcare and in accessing basic services. They also experience different forms of violence, abuse, neglect as well as high levels of poverty. This section provides an overview of the challenges faced by older women in Africa. It specifically focuses

on violence related to witchcraft accusations, access to healthcare, property and inheritance rights, the right to social security (pensions and social insurance), and the impact of HIV/AIDS and poverty.

## 2 Violence and abuse related to witchcraft accusations

Witchcraft accusations constitute a gendered ideology in that there is a direct relationship between women and the stereotype of witchcraft as it is predominantly women who are regarded as being witches.<sup>19</sup> There are instances where older men and younger women are also accused of practicing witchcraft but, because of the gendered nature of this phenomenon, many elderly women become suspects.<sup>20</sup> It is

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- 19 A Singh & N Hashim Msuya 'Witchcraft accusation and the challenges related thereto: Can South Africa provide a response to this phenomenon experienced in Tanzania?' (2019) 40 *Obiter* <https://doi.org/10.17159/obiter.v40i3.111193>. (accessed 20 February 2024).
- 20 HM Machangu 'Vulnerability of elderly women to witchcraft accusations among the Fipa of Sumbawanga' (2015) 16 *Journal of International Women's Studies* 274, 284; N de Jong & J Pokwana ka Menziwa 'Witchcraft and witchcraft-related violence in Amazizi chiefdom of Kwazangeshe, Eastern Cape' (2022) 78 *Theological Studies*; WF Mohammed 'Interrogating dominant ideology in media representations of witchcraft-related gendered violence: The case of Mariama Akua Denteh' (2023) 17 *International Journal of Communication* 4778-4795; ActionAid International 'Condemned without trial: Women and witchcraft in Ghana' (2020) 1,8, <https://www.actionaid.org.uk/sites/default/files/publications/condemned-without-trial-women-and-witchcraft-in-ghana> (accessed 17 October 2023); S Roxburg 'Witchcraft and violence in Ghana' (2016) 224 *Open Edition Journal* 891, 914; S Pierre 'Human rights violations and accusations of witchcraft in Ghana' (2018) 6 *IHRIP Working Paper Series* 1, 5; S Spence 'Witchcraft accusations and persecutions as a mechanism for the marginalisation of women' (2017) 66; M Adinkrah 'Witchcraft beliefs in Ghana' (2015) 53-107; A Crampton 'No peace in the house: Witchcraft as an "old woman's problem" in Ghana' (2013) 34 *Anthropology of Ageing Quarterly* 1, 5; ES Owusu 'The superstition that maims the vulnerable: Establishing the magnitude of witchcraft-driven mistreatment of children and older women in Ghana' (2020) 58 *International Analysis of Criminology* 223-290; HelpAge International 'Using the law to tackle accusations of witchcraft: HelpAge International's position' (2011) [a4id.org/wp-content/uploads/2016/03/Using-the-law-to-tackle-accusations-of-witchcraft-HelpAge-Internationals-position-1.pdf](https://www.helpage.org/wp-content/uploads/2016/03/Using-the-law-to-tackle-accusations-of-witchcraft-HelpAge-Internationals-position-1.pdf) (accessed on 17 October 2023); and HelpAge International 'Older people in Kenya must be protected against witchcraft accusations' (22 October 2021) [helpage.org/news/older-people-must-be-protected-from-witchcraft-accusations/](https://www.helpage.org/news/older-people-must-be-protected-from-witchcraft-accusations/) (accessed on 17 October 2023).

a gender-specific form of violence that targets mostly women.<sup>21</sup>

Violence related to witchcraft accusations is one of the challenges faced by older women in Africa. In many African countries, such as Ghana, Nigeria and Tanzania, belief in witchcraft is widespread and entrenched especially in rural areas and among the less educated.<sup>22</sup> Witches and wizards are believed to possess inherent, supernatural powers that are used to create evil or misfortune. Accusations of witchcraft are often connected to events such as death, sicknesses, sleep talking, quarrel with a neighbour, the inability to have children or even appearing in someone's dream.<sup>23</sup>

In Tanzania and Kenya, older women are susceptible to witchcraft accusations due to their low status, their inability to defend themselves, the characteristics of old age such as red eyes, wrinkled skin, dementia, and low levels of literacy.<sup>24</sup> In the event of widowhood, family members use such accusations to prevent a widowed woman from inheriting property.<sup>25</sup>

Older women accused of witchcraft are often driven violently from their homes and communities, physically assaulted and in extreme cases, also murdered. According to a 2022 Tanzania Human Rights Report, there were a total of at least 24 incidents of violence against the elderly increasing from 16 documented in 2021.<sup>26</sup> The 2021 Tanzania Human Rights Report indicates that older

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21 Singh & Hashim Msuya (n 1).

22 Other countries include Burkina Faso, Kenya, Malawi, Mozambique and South Africa, Cameroon, Côte d'Ivoire, Burkina Faso and Senegal. HM Machangu 'Vulnerability of elderly women to witchcraft accusations among the Fipa of Sumbawanga' (2015) 16 *Journal of International Women's Studies* 274, 284; De Jong & Pokwana (n 2); Mohammed (n 2); ActionAid International 'Condemned without trial: Women and witchcraft in Ghana' (n 2); Roxburg (n 2); Pierre (n 2); Spence (n 2); Adinkrah (n 2); Crampton (n 2); Owusu (n 2); HelpAge International (n 2).

23 Source?n 17 above. See also UN General Assembly 'Report of the independent expert on the enjoyment of the human rights by persons with albinism on the expert workshop on witchcraft and human rights' UN Doc A/HRC/37/57/Add.2 (23 January 2018) 5; UN General Assembly 'Human rights of older women: The intersection between ageing and gender' UN Doc A/76/157 (16 July 2021) para 57.

24 HelpAge International 'The ageing and development report: A summary – Poverty, independence & the world's older people' <https://www.helpage.org/silo/files/the-ageing-and-development-report-a-summary.pdf> (accessed 17 October 2023). See also UN General Assembly 'Report of the independent expert on the enjoyment of all human rights by older persons: Visit to Nigeria' UN Doc A/HRC/54/26/Add.1 (24 July 2023) para 33.

25 HelpAge International 'The ageing and development report: A summary' (n 6). See also UN General Assembly 'Report of the Independent Expert on the enjoyment of all human rights by older Persons: Visit to Nigeria' (n 6) para 33.

26 Legal and Human Rights Centre 'Tanzania Human Rights Report' (2022) 130. It should be noted that this could just be a small fraction of the actual number of incidents reported, considering the problem of non-reporting.

women continue to be the majority of victims killed over witchcraft suspicion.<sup>27</sup> Further, police crime statistics reported a total of 723 killings related to witchcraft between 2017-2021, 52 per cent of the victims were older women.<sup>28</sup> The Special Rapporteur on Extra Judicial Summary or Arbitrary Executions has also reported that in Tanzania, 'as many as a thousand, mostly elderly Tanzanian women are targeted and killed annually'.<sup>29</sup>

In Malawi, statistics from the Malawi Network of Older Persons Organisations (MANEPO) report that in 2023, five older women were killed between January and February 2023.<sup>30</sup> Similarly, in 2022, 15 elderly women were killed and 88 harassed on account of witchcraft accusations.<sup>31</sup> In Kenya, statistics indicate that about six people face violence every month on suspicion of being a witch in Gusiiland.<sup>32</sup>

Older women, especially widows, women with disabilities, women living alone, in rural areas and in poverty are at a heightened risk of suffering extreme acts of violence related to accusations of witchcraft.<sup>33</sup>

### 3 Access to healthcare

Health systems can only ensure good health and wellbeing of the aged if they are prepared to respond to older persons' access to health facilities, goods and services which is a critical element of the right to the highest attainable standard of health.<sup>34</sup> However, older women on the continent face numerous barriers in accessing healthcare. This especially impacts older women living in rural areas. The difference between urban and rural women is due to the fact that the health and wellbeing of individuals is shaped by the conditions and environments in which they are born, grow, work, live and age, and the wider set of forces and systems shaping their daily lives.<sup>35</sup> Gender

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27 Legal and Human Rights Centre (n 8) 205.

28 Legal and Human Rights Centre (n 8) 32. See also Tanzania Police Force Data.

29 Office of the High Commissioner for Human Rights 'Witches in the 21st century' <https://www.ohchr.org/EN/NEWSEVENTS/Pages/Witches21stCentury.aspx> (accessed 17 October 2023).

30 C Mpaka 'Belief in witchcraft costing lives of elderly women in Malawi' (2023) [globalissues.org/news/2023/03/17/33340](https://globalissues.org/news/2023/03/17/33340) (accessed 18 October 2023).

31 The Report also indicates that in 2021, 13 elderly women were killed and 58 harassed on accusations of witchcraft.  
32 HelpAge International specific (n 2).

33 UN General Assembly 'Report of the independent expert on the enjoyment of all human rights by older persons: Visit to Nigeria' (n 6) para 33.

34 UN Economic and Social Council, General Comment 14: The right to the highest attainable standard of health (art 12 of the Covenant), 11 August 2000, UN Doc E/C.12/2000/4 (2000) para 1.

35 HelpAge International 'Achieving universal health coverage fit for an ageing world' <https://www.helpage.org/wp-content/uploads/2022/12/HelpAge-Achieving-UniversalHealth-Coverage-fit-for-an-ageing-world-2022.pdf> (accessed 17 October 2023).

specific factors that result in older women's increased vulnerability to poor health include the following: inequitable access to food and care in childhood; gender discrimination on access to education at all levels; experiences of childbirth without adequate healthcare and support; low incomes and discriminatory access to employment and an employee-based pension; exposure to domestic violence at various stages of one's life-cycle; loss of income and social isolation associated with widowhood and cultural traditions and attitudes that limit access to healthcare in older age.<sup>36</sup>

Poverty and exorbitant fees for health services present a barrier for older women in enjoying their right to health. The findings from an empirical study in Tanzania found that older women are unable to access health services due to poverty and the costs involved in accessing health services.<sup>37</sup> The World Health Organisation (WHO) World Health Survey

found that 60 per cent of older persons in low-income countries do not have access to healthcare either because of the cost of the visit or the cost of transportation.<sup>38</sup> This raises significant concern, particularly in light of the health risks associated with the aging process. Older women also face significant barriers in physically accessing health services. Studies show that in sub-Saharan Africa, approximately ten per cent of people aged 60 years and above have an estimated travel time to the nearest hospital of six hours or longer.<sup>39</sup>

For older women with mobility issues and limited resources, healthcare facilities are not accessible. Similarly, the findings from a study in Kenya, found that health services were not accessible to older women due to long waiting periods in queues and a lack of user-friendly infrastructure to cater for older women with disabilities.<sup>40</sup> Older women living in rural areas face larger distances particularly in cases where

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36 WHO 'Women, ageing and health: A framework for action' (2007) <https://www.who.int/publications/item/9789241563529> (accessed 20 February 2024).

37 HelpAge International 'Achieving universal health coverage fit for an ageing world' (n 17). See also Z J Dhemba & B Dhemba 'Ageing and care of older persons in Southern Africa: Lesotho and Zimbabwe' (2015) 13 *Social Work and Society International Online Journal* 1, 5; HelpAge International 'Protecting the rights of older people in Africa' (n 6) 1, 4; 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, 70.

38 WHO 'Ageing and health' (2022) <https://www.who.int/news-room/fact-sheets/detail/ageing-and-health> (accessed 17 October 2023).

39 HelpAge International 'Specific title' (n 2) 10. HelpAge International 'Healthy ageing for us all: What older people say about their right to health' (2023) 8 <https://www.helpage.org/silo/files/healthy-ageing-report.pdf> (accessed 19 October 2023); and G Geldsetzer 'Mapping physical access to healthcare for older adults in sub-Saharan Africa: A cross-sectional analysis with implications for the COVID-19 response' (2020).

40 Which source?. See also HelpAge International 'Achieving universal health coverage fit for an ageing world' (n 17) 10.

more specialised healthcare is required, and they have more limited transport options.<sup>41</sup> Such conditions often deter older women from seeking medical assistance.

Access to health-related information and education is a critical component of the right to health.<sup>42</sup> Older women often lack accessible information and education about health services. A study conducted by HelpAge International on the right to health in old age in Ethiopia shows that 36 per cent of the older people surveyed were not aware of the free government health services for poor people.<sup>43</sup> Where information is available, it is often not provided in a variety of languages or formats to meet the communication needs of older women.<sup>44</sup>

Further, older women face age and gender-based discrimination that violates their right

to access health facilities, goods and services on an equal basis with others. Studies in Kenya, South Africa, Rwanda and Uganda reveal that older women also face discrimination and negative attitudes from medical personnel who often give them low priority for treatment.<sup>45</sup> Their health concerns are frequently disregarded under the guise of 'old age', and regrettably, they often encounter instances where they are perceived as burdens rather than individuals deserving of proper care and attention.<sup>46</sup>

Access to medicines to promote healthy ageing is also a challenge faced by older women. In a study conducted in Ethiopia, Mozambique, Tanzania and Zimbabwe, older people (including older women) reported being unable to access medicine either because it was not available free of charge or not available at all.<sup>47</sup> Even when health services are available, they do not always respond to the health needs of older women. Studies reveal that health

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- 41 UN General Assembly 'Visit to Mozambique: Report of the independent expert on the enjoyment of all human rights by older persons' UN Doc A/HRC/42/43/Add.2 (17 July 2019) para 72.
- 42 CESCR, General Comment 14 (n 16) para X (b).
- 43 HelpAge International 'The right to health in old age: Unavailable, inaccessible and unacceptable' (August 2011) <https://social.un.org/ageing-working-group/documents/HelpAge%20briefing%20right%20to%20health%20Aug%2011.pdf> (accessed 19 October 2023).
- 44 HelpAge International 'Achieving universal health coverage fit for an ageing world' (n 17) 10.
- 45 HelpAge International (n 26). HelpAge International 'Protecting the rights of older people in Africa' (n 6) 4; HelpAge International 'The ageing and development report: A summary' (n 6) 12.
- 46 HelpAge International 'Achieving universal health coverage fit for an ageing world' (n 17) 12; HelpAge International 'Ageing in the 21st Century: A celebration and a challenge' (UNFPA: New York 2012) <https://www.unfpa.org/sites/default/files/pub-pdf/Ageing%20report.pdf> (accessed 19 October 2023) 137; United Nations Population Fund (UNPF) 'Rapid review of healthy ageing and long-term care systems in East and Southern Africa' (2022).
- 47 HelpAge International 'Achieving universal health coverage fit for an ageing world' (n 17) 11; HelpAge International 'Cash transfers and older people's access to health: A multi-country study in Ethiopia, Mozambique, Tanzania and Zimbabwe' (2017).



services often focus on younger age groups and fail to respond to the rights and needs of older women, including those related to sexual and reproductive health rights.<sup>48</sup> Furthermore, the healthcare personnel often lack the training and skills needed to respond to older women's needs.<sup>49</sup>

Although older women face unique sexual and reproductive health needs, such as those related to menopause and post-menopause, their sexuality and sexual health as well as the

long-term impacts of childbirth, they are often excluded from sexual and reproductive health programmes due to discrimination.<sup>50</sup> Older women also struggle to access appropriate advice or care related to their sexual health, contributing to the growing burden of sexually transmitted infections (STIs) and HIV/AIDS in this group.<sup>51</sup> This is especially concerning in Southern and East Africa, where HIV/AIDS continues to have a significant impact on older people.<sup>52</sup>

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48 HelpAge International 'Achieving universal health coverage fit for an ageing world' (n 17). HelpAge International 'Older women's lived experiences of gendered ageism' (March 2023) 4 <https://www.helpage.org/silo/files/older-womens-lived-experiences-of-gendered-ageism.pdf> (accessed 3 July 2025); HelpAge International 'Achieving gender transformative universal health coverage fit for an ageing world' (2023) <https://helpage.org/resource/achieving-gender-transformative-universal-health-coverage-fit-for-an-ageing-world/> (accessed 19 October 2023).

49 HelpAge International 'Achieving gender transformative universal health coverage fit for an ageing world' (n 30).

50 UNPF (n 28).

51 As above.

52 As above.

A major obstacle for older women in accessing a range of entitlements, including free healthcare is lack of identification documents. The common reasons for not having identification documents include cultural and gender-related factors as well as the costs involved in obtaining documentation.<sup>53</sup>

#### 4. Property and inheritance rights

Older women often face discrimination in terms of property and inheritance rights. In many African countries, older women's property and inheritance rights are limited by statutory and customary laws, socio-cultural

norms, discriminatory laws and patriarchal practices.<sup>54</sup> Older women, particularly widows face discrimination based on age, gender and marital status as widows. In some countries, such as Nigeria, the Kingdom of Lesotho, and Angola, customary laws deny widows the right to inheritance and property.<sup>55</sup> This especially affects older women living in rural areas where land ownership is regulated by customary law.<sup>56</sup>

Older widows are also vulnerable to property grabbing following the death of their spouse.<sup>57</sup> Property grabbing is often accompanied by extreme acts of violence against women, including physical and mental abuse in violation

53 HelpAge 'Protecting the Rights of Older People' (n 6) 3. See also UN General Assembly 'Visit to Mozambique' (n 23) para 47.

54 HelpAge International 'Why it's time for a convention on the rights of older people' HelpAge Position Paper (2009) 3; African Commission on Human and Peoples' Rights, 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 (Article 7 (D)), adopted at the 27th Extra Ordinary Session of the African Commission on Human and Peoples' Rights, held from 19 February to 4 March 2020 in Banjul, Gambia, paras 3 and 4. H Zaremba & A Bailey 'Women's land rights in the Gambia' (2021); Y Olomjobi 'Women's right to own property' (2016) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2716902](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2716902), (accessed 25 October 2023); and HelpAge International 'Submission for the consultation on the human rights of older women by the Independent Expert on the Enjoyment of All Human Rights by Older Persons' (March 2021) 3.

55 CN Chinwe & KO Chinwe 'Customary law, law and women's rights to inheritance and the challenges' (2016) 19 Nigerian Law Journal 199; JC Mubangizi & MT Tlale 'How gender-based cultural practices violate women's property rights and inhibit property ownership: A South African perspective' (2023) 96 Women's Studies International Forum 1, 1-5. See also Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation 27 on Older Women and Protection of their Human Rights, 16 December 2010, UN Doc CEDAW/C/GC/27 (2010) para 26.

56 AU 'Policy framework and plan of action on ageing' (2002) <https://www.helpage.org/silo/files/au-policy-framework-and-plan-of-action-on-ageing-.pdf> (accessed 3 July 2025) para 4.6.

57 Property grabbing is the taking of property (including the home, land, livestock, household possessions and other assets) of a deceased person from the surviving wife and/or children to whom it rightfully belongs. See also Human Rights Watch 'You will get nothing – Violations of property and inheritance rights of widows in Zimbabwe' (2017) <https://www.hrw.org/report/2017/01/24/you-will-get-nothing/violations-property-and-inheritance-rights-women-zimbabwe> (accessed on 25 October 2023); and CEDAW General Recommendation 27 (n 37) para 26.

of women's human rights. An empirical study in Zimbabwe on the property and inheritance rights of widows found that most widows were physically and verbally assaulted, intimidated and forcibly evicted from their home after their husbands died.<sup>58</sup> The denial of women's property and inheritance rights contributes to poverty and homelessness for the widows and any dependants they care for.<sup>59</sup> Older women are often the primary carers of children who have been orphaned by HIV/AIDS.<sup>60</sup> Therefore, older women have even more need for the security provided by access to property and inheritance rights.

Widows are also affected by the practice of 'widow inheritance', a practice that is common in some African communities, when a woman's brother-in-law automatically 'inherits' her upon the death of her husband.<sup>61</sup> If she does not agree to it, the widowed woman is at risk of violence, being ostracised or evicted from her home or community.<sup>62</sup> A widow may also be accused of witchcraft or causing the death of

her husband through witchcraft which provides license for property grabbing and violence by the relatives.<sup>63</sup>

The situation of older women is worsened by lack of knowledge about widows' inheritance rights, illiteracy, particularly among older women in rural areas, lack of knowledge about how to access appropriate legal information and where to seek guidance and advice.<sup>64</sup> Widows also face significant challenges accessing legal remedies for property grabbing. Such hurdles include cumbersome court procedures, lack of knowledge on how to challenge property grabbing, high legal costs and distances from rural homes to courts in urban areas and travel costs to courts.<sup>65</sup> For widows living in poverty, the limited availability of courts is a structural barrier to accessing justice and maintaining their rights to property.<sup>66</sup>

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58 Human Rights Watch (n 39) 21.

59 HelpAge International 'Protecting the rights of older people' (n 6) 6; Human Rights Watch (n 39).

60 United Nations General Assembly 'Human rights of older women' (n 5) para 24; HelpAge International 'Protecting the rights of older people' (n 6) 5.

61 HelpAge International 'Protecting inheritance in multi-generational households affected by HIV and AIDS' (2012); HelpAge International 'Protecting the rights of older people' (n 6) 6.

62 As above.

63 HelpAge International 'Security of tenure for older people'  
<https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/SecurityTenureHelpAgeSecurityTenureForOlderWomen.pdf> (accessed 25 October 2023) 2.

64 As above.

65 Human Rights Watch (n 39) 32.

66 Human Rights Watch (n 39) 33.

## 5 Pensions and social insurance

Pensions and social insurance schemes are essential tools for ensuring income security for women in old age. Nonetheless, many older women on the continent do not have access to social protection.<sup>67</sup> Contributory pensions are restricted as they rely on formal employment. This has a gender dimension as fewer women than men are employed in the formal sector. According to UN Women, 90 per cent of women in Western, Central and Eastern Africa are in informal employment compared to 86,4 per cent of men.<sup>68</sup> Older women are less likely to work in the formal sector due to

factors such as gender-discriminatory laws, lower levels of education and illiteracy, traditional gender roles and discrimination based on gender or marital status in relation to financial resources.<sup>69</sup>

However, formal social security systems cannot fully address the problem of endemic poverty that is affecting older women in Africa because in many African countries the formal security system is either 'non-existent' or limited in coverage or not easily accessible for those in informal employment or the rural dwellers.<sup>70</sup>

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67 See also HelpAge International 'Older people's right to economic security: International submission to the 12th Session of the Open-Ended Working Group on Ageing' (February 2022), noting that older women are less likely than men to receive a pension.

68 UN Women 'Putting gender equality at the centre of social protection strategies in sub-Saharan Africa: How far have we come?' Policy Brief 24 (2021) [unwomen.org/sites/default/files/2021-12/Policy-brief-Putting-gender-equality-at-the-centre-of-social-protection-strategies-in-sub-Saharan-Africa-en.pdf](https://unwomen.org/sites/default/files/2021-12/Policy-brief-Putting-gender-equality-at-the-centre-of-social-protection-strategies-in-sub-Saharan-Africa-en.pdf) (accessed 29 October 2023).

69 UN Women 'Advocacy brief: Older women – Inequality at the intersection of age and gender' (2022) <https://www.un.org/development/desa/ageing/wp-content/uploads/sites/24/2022/03/UN-Advocacy-Brief-Older-Women.pdf> (accessed 29 October 2023).

70 Chirwa & Rushwaya (n 19) 72; E Kaseke 'Informal social security in Southern Africa' Paper prepared for the SASPEN and FES International Conference on Social Protection for those Working Informally (2013) 1, 3; United Nations 'International strategy for the disaster reduction, Malawi: Disaster and risk profile, basic country statistics and indicators' (2014) [www.preventionweb.net/countries/mwi/data](http://www.preventionweb.net/countries/mwi/data), (accessed 29 October 2023), noting that an estimated 84% of the population of Malawi lives in the rural areas and engaged in subsistence farming; E Kaseke 'Social exclusion and social security: The case of Zimbabwe' (2008) 18 *Journal of Social Science Development on Africa* 33, 33, noting that many of the poor in Zimbabwe reside in rural areas and are engaged in subsistence farming; L Tshoose 'The impact of HIV/AIDS regarding informal social security: Issues and perspectives from a South African context' (2010) 13 *Potchefstroom Electronic Law Journal* 408, 423, observing that 'many of the poor in South Africa live in rural areas, where there is an acute shortage of basic services and infrastructure' and the AU Framework (n 38) 17 noting that: 'the ability to contribute to and benefit from social security programmes is generally limited to those in the formal sector and as a result, most people enter old age totally reliant on their ability to continue generating their own income. For those covered by social security schemes, the value of their benefits are eroded by inflation and mismanagement'; E Camilletti 'Social protection and its effects on gender equality: A literature review' Office of Research, Innocenti Working Paper 2020-06 (Florence: UNICEF Office of Research – Innocenti2020) <https://www.unicef.org/innocenti/media/5836/file/Social-Protection-Effects-Gender-Equality-2020.pdf> (accessed 29 October 2023) Mozambique, para 59 and 61.

Some countries have introduced and implemented programmes for the extension of old-age pensions to informal economy workers (and uncovered populations) through the extension of social insurance or through the universal or means-tested non-contributory basic old-age pensions.<sup>71</sup> For instance, Cabo Verde has had an old-age pension scheme for more than 15 years that is entirely tax financed.<sup>72</sup> Similar schemes exist in Namibia, Botswana, Lesotho and Zanzibar (United Republic of Tanzania).<sup>73</sup> South Africa covers around two-thirds of its older population through its old-age grant.<sup>74</sup> Some other countries, such as Egypt, Zambia and Côte d'Ivoire have extended contributory old-age pension coverage to previously excluded workers such as self-employed workers in the informal economy.<sup>75</sup> Studies have documented their positive effect

on poverty reduction and promoting gender equality.<sup>76</sup>

Although non-contributory pensions play a crucial role in guaranteeing women's access to an income in older age, reducing poverty and promoting gender equality, benefits levels are often inadequate and insufficient.<sup>77</sup> Several empirical studies have shown that many older women whether on contributory or non-contributory pension are unable to maintain an adequate standard of living or afford basic necessities such as food, water, medical care and clothing.<sup>78</sup> For non-contributory pension schemes to become an effective measure in reducing old-age poverty, adequacy issues need to be addressed. In South Africa, it has been found that where poor rural women are receiving pensions, they commonly use them to

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- 71 ILO 'World Social Protection Report 2020-22: Regional Companion Report for Africa' (ILO 2022) [ilo.org/wcmsp5/groups/public/@ed\\_protect/@soc\\_sec/documents/publication/wcms\\_849597.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_protect/@soc_sec/documents/publication/wcms_849597.pdf) (accessed 29 October 2023). These countries include Cabo Verde, Botswana, Lesotho, Namibia and Zanzibar (United Republic of Tanzania).
- 72 As above.
- 73 As above.
- 74 As above.
- 75 As above.
- 76 As above.
- 77 UN Women 'Protecting women's income security in old age: Toward gender-responsive pension systems' Policy Brief 3 (2015) [unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2015/UNwomen-PolicyBrief03-ProtectingWomensIncomeSecurityInOldAge-en.pdf](https://unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2015/UNwomen-PolicyBrief03-ProtectingWomensIncomeSecurityInOldAge-en.pdf) (accessed 29 October 2023); ILO 'World Social Protection Report 2020-22: Social protection at the crossroads – In pursuit of a better future' (ILO 2022) [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed\\_protect/@soc\\_sec/documents/publication/wcms\\_817572.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@soc_sec/documents/publication/wcms_817572.pdf) (accessed 29 October 2023); ILO World Report on Social Protection (n 53) 26. United Nations General Assembly 'Human rights of older women' (n 5) para 30.
- 78 HelpAge International 'Living, not just surviving: What older people say about their rights to social protection and social security, and to education, training, lifelong learning and capacity building' (2019) 4 and 6-7 <https://social.un.org/ageing-working-group/documents/tenth/Living%20not%20just%20surviving%202019.pdf> (accessed 28 October 2023). For instance, studies in Kenya, Rwanda, South Africa, Tanzania and Lesotho.

pay school fees for their grandchildren, and not to provide for their own needs.<sup>79</sup>

The need for identification documents which prove eligibility for entitlements constitutes a barrier to the enjoyment of older women's right to social security. In Gaza Province (Mozambique), for instance, it is reported that 40 per cent of older persons do not have identification documents and therefore cannot be registered for cash transfer programmes.<sup>80</sup> Similarly, in Namibia, it is reported that many older persons are not able to access the old-age grants due to lack of identification documents.<sup>81</sup>

Other barriers that can impede older women's access to social security include lack of information, geographical distance to facilities where applicants need to register or collect their benefits and lower levels of literacy.<sup>82</sup>

## 6 The Impact of HIV/AIDS on older women

The HIV/AIDS epidemic has had a detrimental impact on older women in Africa. It affects older women in several ways. First, it places a burden on older women as carers of people with HIV-related illnesses. A research project by WHO in Zimbabwe found that over 70 per cent of carers of people with HIV are over the age of 60 years.<sup>83</sup>

Second, it puts older women at risk of infection. Many older women provide home-based care for people living with HIV/AIDS but are not directly targeted by prevention and educational or awareness campaigns.<sup>84</sup> Therefore, they lack knowledge of how to treat the disease and protect themselves against infection.<sup>85</sup> This also makes them vulnerable to many health and socio-economic challenges.<sup>86</sup> Evidence suggests that HIV infection amongst older persons is on the increase.<sup>87</sup> Third, older women are increasingly responsible for the care of children

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79 HelpAge International 'The ageing and development report: A summary' (n 6) 14.

80 UN General Assembly 'Visit to Mozambique' (n 23) para 65.

81 UN General Assembly 'Report of the independent expert on the enjoyment of all human rights by older persons on her visit to Namibia' UN Doc A/HRC/36/48/Add.2 (5 July 2017) para 62.

82 UN General Assembly 'Visit to Namibia' (n 59) para 63; UN General Assembly 'Visit to Mozambique' (n 23) para 64; UN General Assembly 'Visit to Nigeria' (n 6) para 43.

83 As above.

84 HelpAge International 'Older People in Africa: A forgotten generation' (2008) <https://www.helpage.org/silo/files/older-people-in-africa-a-forgotten-generation.pdf> (accessed 27 October 2023). United Nations General Assembly 'Human rights of older women' (n 5) para 40.

85 As above.

86 EL Mokgele 'A literature review on the impact of HIV and AIDS on the role of the elderly in the sub-Saharan African community' (2011) *Health SA Gesondheid* 1, 1.

87 As above.

orphaned by HIV/AIDS.<sup>88</sup> In sub-Saharan Africa, nine out of ten AIDS orphans are cared for by their grandparents.<sup>89</sup> In Namibia, South Africa, Botswana, Malawi, Tanzania and Zimbabwe, up to 60 per cent of orphaned children live in grand-parent headed households.<sup>90</sup> This explains why they have been termed 'Africa's Newest Mothers'.<sup>91</sup>

Research in Africa points to a wide range of challenges faced by older women carers. These include financial hardships, exhaustion, lack of resources and knowledge for dealing with adult children affected by HIV/AIDS, social stigma, exclusion and discrimination from

support services and information.<sup>92</sup> Caring responsibilities also exact financial costs. For instance, in Tanzania, many older women reported using their savings in order to support the people under their care.<sup>93</sup>

## 7 Ageing, gender and poverty

Older people remain the poorest population groups in Africa.<sup>94</sup> A survey of 15 African countries found that in 11 of these countries, the proportion of older people living in poverty was higher than the national average.<sup>95</sup> In Mozambique, for instance, it is reported that half of older persons (58 per cent) live below the official poverty line compared to 54 per cent of

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- 88 EN Kalomo 'Caregiving in sub-Saharan Africa and older female caregivers in the era of HIV/AIDS: A Namibian perspective' (2018) 5 *The Contemporary Journal of Research, Practice and Policy* 1, 4; United Nations General Assembly 'Human rights of older women' (n 5) para 24; HelpAge International 'Protecting the Rights of Older Persons' (n 6) 5.
- 89 J Small and others 'Ageing and HIV-related caregiving in sub-Saharan Africa: A social ecological approach' (2019) 59 *Gerontologist* 223; M Ntuli & S Madiba 'The role of the elderly carers in HIV prevention and care: The perspectives of older adults in underprivileged communities in South Africa' (2021) 7 *Cogent Social Sciences* [tandfonline.com/doi/full/10.1080/23311886.2020.1827763](https://doi.org/10.1080/23311886.2020.1827763) (accessed 18 November 2023); and E Kalomo & FH Besthorn 'Caregiving in sub-Saharan Africa and older, female caregivers in the era of HIV/AIDS: A Namibian perspective' (2018) 5 *The Contemporary Journal of Research Practice and Policy* 33.
- 90 As above.
- 91 TM Nhongo 'The changing role of older people in African households and the impact of ageing on African family structures' (2004) *Ageing in Africa* 1, 10.
- 92 HelpAge International 'Mind the Gap: HIV and AIDS and older people in Africa' (2008) <https://www.helpage.org/silo/files/mind-the-gap-hiv-and-aids-and-older-people-in-africa.pdf> (accessed 3 July 2025); HelpAge International 'Stronger together: Supporting the vital role played by older persons in the fight against HIV and AIDS pandemic' (2008); HelpAge International 'Psychosocial care and support for older carers of orphaned and vulnerable children: Policy guidelines' <https://www.helpage.org/silo/files/psychosocial-care-and-support-for-older-carers-of-orphaned-and-vulnerable-children-policy-guidelines.pdf> (accessed 28 October 2023); HelpAge International & International HIV/AIDS Alliance 'Forgotten families: Older people as carers of orphans and vulnerable children' (2003) <https://www.helpage.org/silo/files/forgotten-families-older-people-as-carers-of-orphans-and-vulnerable-children.pdf> (accessed 28 October 2023).
- 93 As above.
- 94 UN General Assembly 'Visit to Mozambique' (n 23) para 52.
- 95 HelpAge International 'Older people in Africa: A forgotten generation' (n 66).



the rest of the population.<sup>96</sup>

Poverty is higher among older women, particularly older women living in rural areas and older women with disabilities.<sup>97</sup> Cumulative effects of gender discrimination throughout the life course of women are key impediments to escaping poverty in old age.<sup>98</sup> The higher levels of poverty in older age are linked to economic insecurity, lack of an income, lack of social security, discriminatory inheritance laws and mandatory retirement laws. Furthermore, factors such as marital status, illiteracy and

health are all determinants of poverty in old age.<sup>99</sup> Poverty erodes the enjoyment of economic, social and cultural rights such as the right to health, education and adequate housing.

Older women make essential contributions to economic growth and the well-being of the population around them through their care work. However, the care work is not recognised or accounted for in economic policies. They are perceived as ‘unproductive’ and ‘economically

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96 UN General Assembly ‘Visit to Mozambique’ (n 23) para 52.

97 United Nations Economic Commission for Africa ‘The state of older people in Africa: Regional review and appraisal of the Madrid International Plan of Action on Ageing’ (2007) 47 [https://www.un.org/esa/socdev/ageing/documents/regional\\_review/Africa2007.pdf](https://www.un.org/esa/socdev/ageing/documents/regional_review/Africa2007.pdf) (accessed 3 July 2025). See also Doron, Spanier & Lazar (n 8) 16.

98 As above.

99 As above.

dependent' and their care work is often perceived as 'helping out' or 'passing time'.<sup>100</sup> The failure to recognise older women's care work means that they do not receive adequate assistance and protection and lack a framework within which to enforce workers' rights and social protection.<sup>101</sup>

## 8 Technology challenges for older women

In Africa, older women face a unique set of challenges when it comes to embracing and adapting to technology. One primary obstacle is the prevalent digital divide, with limited access to technology and the internet in many regions.<sup>102</sup> This lack of infrastructure and connectivity hinders older women's ability to leverage digital tools for communication, information access, and social connection.<sup>103</sup>

Additionally, there is often a disparity in digital literacy skills among older women in Africa. Limited educational opportunities and exposure to technological advancements can result in lower proficiency in using digital devices and platforms.<sup>104</sup> This in turn exacerbates their

sense of alienation from the rapidly evolving technological landscape.

Cultural factors also play a significant role, as traditional gender roles and societal expectations may discourage older women from engaging with technology. Stereotypes and biases may perpetuate the perception that technology is primarily for younger generations, deterring older women from exploring its potential benefits.

Moreover, economic constraints can pose challenges, with affordability and availability of devices being significant barriers.<sup>105</sup> Many older women in Africa lack the financial means to acquire and maintain technological devices, limiting their access to the advantages that technology can offer in terms of healthcare information, social connectivity, and access to essential services.

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100 D Budlender (ed) *Time use studies and unpaid care work* 1st ed (Routledge 2010) <https://doi.org/10.4324/9780203846148> (accessed 22 February 2024) See also L Rost with AHunt, E Samman & F Samuels 'Older women's economic empowerment: A review of the literature' ODI Working Paper 540 (November 2018) <https://media.odi.org/documents/12510.pdf> (accessed 3 July 2025).

101 As above.

102 E Vaportzis, MG Clausen & AJ Gow 'Older adults perceptions of technology and barriers to interacting with tablet computers: A focus group study' (2017) 8 *Frontiers in Psychology* 1687.

103 As above.

104 ST Faloye & N Ajayi 'Understanding the impact of the digital divide on South African students in higher educational institutions' (2022) 14 *African Journal of Science, Technology, Innovation and Development* 1734.

105 As above.

## 9 Justice and equality for older persons

Older persons in Africa encounter a myriad of challenges when attempting to access justice and equal protection before the law.<sup>106</sup> Limited legal awareness poses a significant hurdle, as many older persons may not be fully informed about their rights or the available legal avenues.<sup>107</sup> Inadequate legal representation compounds the issue, as affordable and competent advocacy is often elusive.

Discrimination and societal stigma further impede their progress, influencing legal processes and diminishing the level of protection afforded to older persons. Financial constraints, inefficient legal systems, cultural and social barriers, and a lack of specialised services tailored to the needs of older persons contribute to a complex web of obstacles.<sup>108</sup> Additionally, health challenges, such as physical or cognitive impairments, can further complicate their engagement with the legal system.

## 10 Conclusion

As this section has shown, older women in Africa face significant challenges including access to healthcare and social security. They are also vulnerable to violence related to witchcraft accusations. Poverty is higher among older women due to illiteracy, lack of social security and discriminatory property

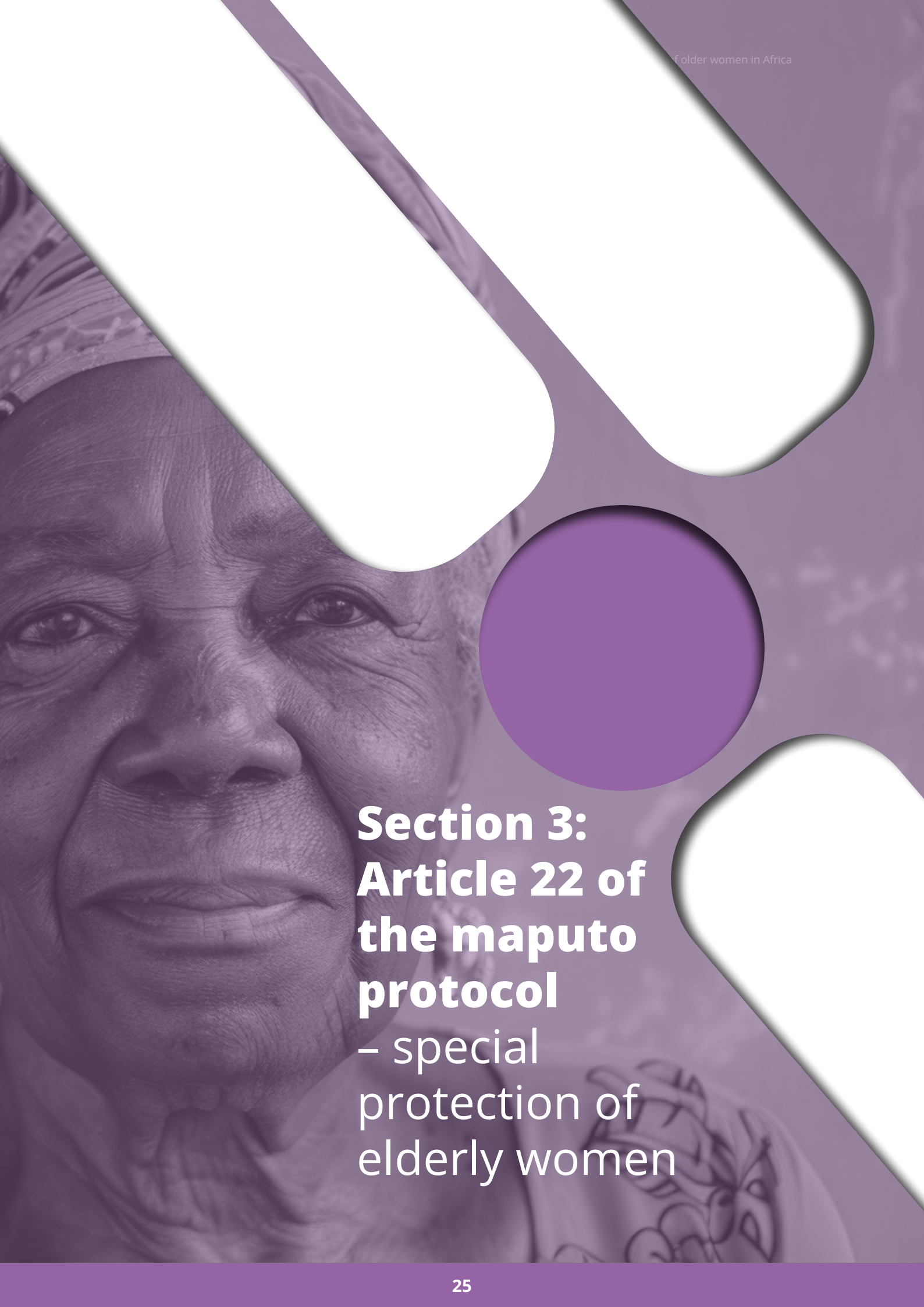
and inheritance laws. The HIV/AIDS epidemic has also impacted on older women, with many older women increasingly responsible for the care of children orphaned by HIV/AIDS. In view of the challenges encountered by older women in Africa, it becomes important to examine how article 22 of the Maputo Protocol protects the rights of older women.

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106 HelpAge International 'Protecting the rights of older people in Africa' (n 6).

107 As above.

108 As above.



**Section 3:  
Article 22 of  
the maputo  
protocol**  
– special  
protection of  
elderly women

## 1 Introduction

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)<sup>109</sup> dedicates its article 22 to elderly women. Article 22 of the Maputo Protocol is an important provision in that it responds to the challenges faced by older women in Africa. It recognises older women as a vulnerable group that deserves protection.

This section provides a guide to understanding article 22 of the Maputo Protocol. First, it briefly explains the drafting history related to article 22. This is followed by a discussion on the concepts of 'elderly women' and 'special protection' that are incorporated in article 22. It also considers the nature and scope of state obligations as well as other relevant treaty provisions and policy frameworks that reinforce and elaborate on what is required of states in relation to protection of the rights of elderly women.

## 2 Drafting history

Article 22 goes beyond earlier drafts of the Maputo Protocol in terms of its content. The Kigali Draft<sup>110</sup> and the Final Draft<sup>111</sup> included a vague provision on elderly women and lumped elderly women and women with disabilities together into one provision as if their legal position, concerns and needs were the same. This vagueness has been seen as deliberate to allow states leeway to act in accordance with prevailing conditions in their separate territories.<sup>112</sup> Further discussions resulted in subsequent drafts addressing elderly women in a separate provision, distinct from that on women with disabilities.<sup>113</sup> As regards the needs of elderly women, only two categories of needs were considered but were subsequently expanded to include 'physical, economic and social needs'.<sup>114</sup> Article 22 of the Maputo Protocol recognises the vulnerability of elderly women to human rights violations and of the need to protect their rights.

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109 Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputi, Mozambique on 11 July 2003, entry into force 25 November 2005.

110 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.

111 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) (2000 Draft), reproduced 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 40, 53-63.

112 Nsibirwa (n 3) 49-50.

113 L Chenwi 'Article 22: Special protection of elderly women' in A Rudman, CN Musembi & TM Makunya (eds) *The Protocol to the African Charter on Human and Peoples' Rights: A commentary* (2023) 462.

114 Chenwi (n ) 462; African Union Office of the Legal Counsel (AUOLC), 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).

### 3 Key concepts and definitions

#### 3.1 Elderly women

The question of who an 'elderly' woman is goes beyond biological or chronological age.<sup>115</sup> It encompasses a number of factors including physical and mental health, functional capacity and social involvement.<sup>116</sup> It also depends on the cultural practices and values of the communities to which they belong.<sup>117</sup> As Mégret argues 'the elderly is better seen as constructed by a series of continuously evolving social phenomena and representations'.<sup>118</sup> In Africa, in particular, conceptions of childhood, adulthood and old age are not fixed within the same societal grouping and differ from one society to another.<sup>119</sup>

It is therefore surprising that the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (Protocol on the Rights of Older Persons),<sup>120</sup> drawing from the UN Principles for Older Persons<sup>121</sup> and the AU's Policy Framework and Plan of Action on Ageing,<sup>122</sup> adopts age as the single and absolute criterion of an older person. Accordingly, it provides that an older person is a person who is at least 60 years old.<sup>123</sup> The Maputo Protocol defines women as 'persons of female gender, including girls'.<sup>124</sup> Hence, the concept of 'elderly women' refers to persons of the female gender who are at least 60 years old.

Although age-linked definitions might have the advantage of certainty and consistency in the determination of a given class of persons, they lack flexibility with the consequence of

115 JM Miller 'International human rights and the elderly' (2010) 11 *Marquette Elder's Advisor* 343, 345; Human Rights Council 'Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons' UN Doc A/HRC/49/70 (28 January 2022) para 5; 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, 63; F Mégret 'The human rights of older persons: A growing challenge' (2011) 11 *Human Rights Law Review* 37, 45.

116 As above.

117 G Quinn & I Doron *Against ageism and towards active social citizenship of older persons: The current use and future potential of the European Social Charter* (Council of Europe 2021) 15-17; Human Rights Council (n 7) para 5.

118 Mégret (n 7) 44. See also National Centre for Protection of Old People (NCPOP) 'Public perceptions of older people and ageing: A literature review' (2009), 6-8.

119 Chirwa & Rushwaya (n 5) 63.

120 Adopted by the African Union on 31 January 2016.

121 General Assembly (46th sess: 1991-1992), *Implementation of the International Plan of Action on Ageing and related activities: Resolution/adopted by the General Assembly, 16 December 1991, UN Doc A/RES/46/91* (1991).

122 Adopted by the African Union during the 38th Ordinary Session of the Assembly of Heads of State and Government in Durban, South Africa in July 2002.

123 Article 1 of the Protocol on the Rights of Older Persons.

124 Article 1(k) of the Maputo Protocol.

excluding elderly women that qualify as older persons in local contexts.<sup>125</sup> The problem of age-linked definitions in Africa is further compounded by the absence in some African countries of reliable birth registration and identity systems.<sup>126</sup> Some flexibility in the application of this definition taking into account domestic variations is therefore necessary so as not to exclude elderly women that qualify as older persons in local contexts.<sup>127</sup>

The definition of 'elderly women' has implications for who benefits from the protection rights guaranteed in article 22 of the Maputo Protocol. In the context of article 22, persons of the female gender who are at least 60 years old are entitled to the protection rights guaranteed in article 22 of the Maputo Protocol.

### 3.2 The concept of special protection

The concept of 'special protection' or 'special measures of protection' is used in international human rights law when requiring additional protection for vulnerable, marginalised and disadvantaged individuals and groups.<sup>128</sup> Elderly

women are among the vulnerable groups that are often denied the full enjoyment of their rights. They are vulnerable to systemic and direct violations of their rights and therefore require special protection.<sup>129</sup>

Article 22 of the Maputo Protocol recognises elderly women as a vulnerable group that deserves protection and thus makes specific provision for their additional protection. Similarly, article 18(4) of the African Charter on Human and Peoples' Rights provides that: '[t]he aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs'. In its General Comment on the Economic, Social and Cultural Rights of Older Persons, the Committee on Economic, Social and Cultural Rights (CESCR) has also noted that 'in so far as respect for the rights of older persons requires special measures to be taken, States parties are required by the Covenant to do so to the maximum of their available resources'.<sup>130</sup> Further, the Committee on the Elimination

125 Chenwi (n 5) 462.

126 Chirwa & Rushwaya (n 5) 63; P Kowal & JE Dowd 'Definition of an older person: Proposed working definition of an older person in Africa for the MDS Project' (Geneva: World Health Organization; 2001) .

127 Chenwi (n 5) 462.

128 For instance, art 20 of the UN General Assembly, Convention on the Rights of the Child, United Nations, Treaty Series, vol 1577, p 3, 20 November 1989 requires special protection for children deprived of their family environment; art 23 of the Maputo Protocol deals with special protection of women with disabilities; and art 24 of the Maputo Protocol deals with special protection of women in distress.

129 L Chenwi 'Protection of the economic, social and cultural rights of older persons and persons with disabilities in the African regional system' in D Chirwa & L Chenwi (eds) *The protection of economic, social and cultural rights in Africa: International, regional and national perspectives* (2016) 180, 183.

130 Committee on Economic, Social and Cultural Rights (CESCR), General Comment 6: The economic, social and cultural

of Discrimination against Women (CEDAW Committee) in its General Recommendation on Older Women and Protection of their Human Rights requires states to adopt 'special measures' for the protection of the rights of older women.<sup>131</sup>

Although the Maputo Protocol makes provision for 'special protection' for elderly women, it is silent on the 'special protection' measures that are required in order to fulfil the obligations under article 22 of the Maputo Protocol.

Generally, the obligation to protect requires states to take positive measures (legislative

and other measures, including the provision of remedies) to ensure that third parties do not violate the rights of elderly women.<sup>132</sup> It is documented that third parties may affect the enjoyment of the rights of elderly women through discriminatory customary laws, socio-cultural norms and patriarchal practices.<sup>133</sup> In essence, this obligation requires the state to take measures to protect beneficiaries against violations of their rights.

The obligation to protect commonly involves developing and enforcing legal frameworks where laws and regulations interact to allow individuals to realise their rights. In *Social and*

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rights of older persons, 8 December 1995, UN Doc E/1996/22 (1995) para 10.

131 Committee on the Elimination of Discrimination Against Women (CEDAW Committee), General Recommendation 27 on older women and protection of their human rights, 16 December 2010, UN Doc CEDAW/C/GC/27 (2010) paras 29 and 42.

132 African Commission on Human and Peoples' Rights, General Comment 3 on the African Charter on Human and Peoples' Rights: The Right to Life (art 4), Adopted during the 57th Ordinary Session of the African Charter on Human and Peoples' Rights held from 4-18 November 2015 in Banjul, The Gambia, para 38; African Commission on Human and Peoples' Rights, General Comment 2 on art 14.1(a), (b), (c) and (f) and art 14.2(a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, para 43; African Commission on Human and Peoples' Rights, General Comment 5 on the African Charter on Human and Peoples' Rights: The Right to Freedom of Movement and Residence (art 12 (1)), para 40 and Committee on Economic, Social and Cultural Rights (CESCR), General Comment 22 (2016) on the right to sexual and reproductive health (art 12 of the International Covenant on Economic, Social and Cultural Rights), 2 May 2016, UN Doc E/C.12/GC/22 (2016) para 42; CEDAW Committee and the Committee on the Rights of the Child, Joint General Recommendation 31 of the Committee on the Elimination of Discrimination against Women/General Comment 18 of the Committee on the Rights of the Child (2019) on harmful practices, 8 May 2019, UN Doc CEDAW/C/GC/31/Rev.1-CRC/C/GC/18/Rev.1 (2019) para 13; African Commission on Human and Peoples' Rights 'Principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples' Rights' (2011) para 7 and Social and Economic Rights Action Centre (SERAC) v Nigeria Communication No 155/96 (2001) AHRLR 60 (ACHPR 2001) para 46.

133 African Commission on Human and Peoples' Rights, General Comment 6 on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol): The right to property during separation, divorce or annulment of marriage (art 7(d)), adopted at the 27th Extra Ordinary Session of the African Commission on Human and Peoples' Rights, held from 19 February-4 March 2020 in Banjul, Gambia, paras 3 and 4; HelpAge International 'Why it's time for a convention on the rights of older people'-HelpAge Position Paper 3 (2020).

*Economic Rights Action Centre v Nigeria*,<sup>134</sup> the African Commission held that:

*The State is obliged to protect right-holders against other subjects by legislation and provision of effective remedies. This obligation requires the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms.*<sup>135</sup>

In the context of ‘special measures’, protection ‘indicates that special measures may have preventive (of human rights violations) as well as corrective functions’.<sup>136</sup> It also means ‘protection from violations of human rights emanating from any source, including discriminatory activities of private persons, in order to ensure the equal enjoyment of human rights and fundamental freedoms’.<sup>137</sup> In requiring ‘special protection’ for elderly women, article 22 of the Maputo Protocol thus obligates states to take measures to promote the advancement, development

and protection of elderly women. States parties are expected to take ‘special measures’ in favour of elderly women in several fields, including education, health, public and private employment and participation in public life and to address the disadvantages faced by elderly women in the enjoyment of their rights. States are also required to adopt measures aimed at achieving the realisation of both de jure and de facto equality for elderly women. These ‘special measures’ could include affirmative measures (affirmative action or positive action) to eliminate or diminish conditions which cause or help to perpetuate discrimination against elderly women,<sup>138</sup> changes in legislation, administrative and resource allocation, as well as preferential treatment to elderly women to achieve equality and educational measures to change negative attitudes against elderly women.

The CEDAW Committee has also noted that the term ‘measures’:

*encompasses a wide variety of legislative, executive, administrative or other regulatory instruments, policies and practices, such as*

134 n 24. See also T Talumba Mkali & A Rudman ‘Article 9: Right to participate in the political and decision-making process’ in A Rudman, CN Musembi & TM Makunya *The Protocol to the African Charter on Human and Peoples’ Rights: A commentary* (2003) 214.

135 Para 46. African Commission (n 24) para 7. See also SERAC (n 24) para 46.

136 Committee on the Elimination of Racial Discrimination (CERD), General Comment 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, 24 September 2009, UN Doc CERD/C/GC/32 (2009) para 23.

137 As above.

138 CERD (n 28) para 12.



*outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment hiring and promotion; numerical goals connected with time frames; and quota systems.*<sup>139</sup>

Special protection measures serve the important function of correcting existing inequalities in the enjoyment of the rights of elderly women. Such measures are valid provided that they are 'reasonable, objective and proportional' to remedy de facto discrimination and are discontinued when substantive equality has

been achieved.<sup>140</sup> The choice of a particular measure will depend on the context in which it is applied and on the specific goal it aims to achieve.<sup>141</sup> Similarly, the CESCR has pointed out that '[t]he nature, duration and application of such measures should be designed with reference to the specific issue and context, and should be adjusted as circumstances require'.<sup>142</sup>

### 3.3 Nature and scope of state obligations

Article 22 of the Maputo Protocol provides that states parties undertake to:

139 CEDAW, 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, 2004, para 22.

140 CESCR, General Comment 20: Non-discrimination in economic, social and cultural rights (art 2, para 2 of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, UN Doc E/C.12/GC/20 (2009) para 9.

141 As above.

142 As above.

- 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.*

### **3.3.1 The obligation to 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**

In requiring special protection for elderly women, article 22(a) of the Maputo Protocol requires states parties to ‘provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment’. As noted above, the Maputo Protocol does not offer any insight into the ‘special protection’ measures that states should take to fulfil the obligations under article 22 of the Maputo Protocol. However, the jurisprudence of the African Commission has elaborated on the obligations of states to protect the rights of elderly women. For instance, considering

that elderly women experience discrimination in employment, states should eliminate discrimination against elderly women at the workplace and ensure that appropriate work opportunities for elderly women are created, taking into account their medical and physical abilities, skills and experience.<sup>143</sup>

On access to employment and professional training for elderly women, considering that many elderly women undertake unpaid care work, states should take the necessary specific measures to ‘recognise the economic value of caregiving and other household work’ and adopt national budgets and systems ‘that record the value of women’s unpaid contributions to society’.<sup>144</sup> States should also ensure appropriate work for elderly women that takes into account their physical and mental disabilities, skills and experience and eradicate discrimination in the workplace.<sup>145</sup>

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’.<sup>146</sup> On the right to health, the African Commission has noted that states should :

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143 Art 6 of the Protocol on the Rights of Older Persons.

144 African Commission (n 24) para 59 (I).

145 Art 6 of the Protocol on the Rights of Older Persons.

146 African Commission (n 24) para 82.

*[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.<sup>147</sup>*

The jurisprudence of human rights treaty bodies also elaborates on the measures that states should adopt to protect the rights of elderly women. Considering that elderly women suffer from disabling and degenerative chronic diseases such as osteoporosis and dementia, the CEDAW Committee General Recommendation 24 on the right to health urges states to 'take appropriate measures to ensure access of older women to health services that address the handicaps and disabilities associated with ageing<sup>148</sup> and to 'give special attention to the health needs and rights of older women'.<sup>149</sup> CEDAW Committee General Recommendation 27 on older women and protection of their human rights further urges states to adopt a comprehensive health policy aimed at protecting the health needs of older women.<sup>150</sup> Such policy should :

*ensure affordable and accessible health care to all older women through, where appropriate, the elimination of user fees, training of health workers in geriatric illnesses, provision of medicine to treat age-related chronic and non-communicable diseases, long-term health and social care, including care that allows for independent living and palliative care.<sup>151</sup>*

Further, states should adopt special programmes tailored to meet the physical, mental and emotional health needs of older women.<sup>152</sup>

On poverty, the CEDAW Committee urges states to 'develop a gender-responsive social protection system that provides access to benefits for self-employed women and older women experiencing so-called old-age poverty<sup>153</sup> and to

*address the feminization of old-age poverty by strengthening social services and the availability of care centres catering for the needs of older women, especially those without a partner or family support, to prevent poverty and isolation.<sup>154</sup>*

147 African Commission (n 24) para 67.

148 CEDAW Committee, General Recommendation 24: Article 12 of the Convention (Women and Health), UN Doc A/54/38/Rev.1, chap I (1999) para 24.

149 CEDAW Committee (n 40) para 6.

150 CEDAW Committee, General Recommendation 27 (n 23) para 45.

151 As above.

152 CEDAW Committee, General Recommendation 27 (n 23) para 46.

153 CEDAW Committee, Concluding Observations on the Eighth Periodic Report of Jamaica, 15 November 2023, UN Doc CEDAW/C/JAM/CO/8 (2023), para 35(c).

154 CEDAW Committee, Concluding Observations on the Eighth Periodic Report of Jamaica (n 45) para 39 (b).

On the right to education, states are expected to 'strengthen inclusive and targeted adult literacy programmes for women, prioritizing disadvantaged groups of women, including women with disabilities, older women and rural women and girls'.<sup>155</sup> States are also enjoined to 'ensure that older women have access to adult education and lifelong learning opportunities as well as to the educational information they need for their well-being and that of their families'.<sup>156</sup>

On social security, states are encouraged to

*extend social protection to older women who were employed in the informal economy or engaged in unpaid work; take child-raising periods, unpaid care work and work in family businesses and agriculture into account for the calculation of pension benefits; and provide adequate housing and financial support to homeless older women.*<sup>157</sup>

States should ensure that pension policies are not discriminatory and that older women who have been active have access to adequate pensions.<sup>158</sup> States are further urged to adopt all appropriate measures, including, where

necessary, temporary special measures to guarantee such pensions.<sup>159</sup>

In the context of 'special measures', states are expected to:

*adopt temporary special measures, such as regulatory instruments, policies and practices, outreach and support programmes, allocation of resources, preferential treatment, targeted recruitment, hiring and promotion, and affirmative actions, as well as establish time-bound targets, as a necessary strategy to accelerate the achievement of substantive equality of women and men in all areas where women are underrepresented or disadvantaged, such as in completion of mandatory schooling, enrolment in vocational training and tertiary education programmes, decreasing illiteracy through campaigns targeting adult and rural women, access to full-time formal employment opportunities, economic and social benefits and insurances, and unhindered access to affordable sexual and reproductive information and services, with particular attention to refugee, stateless and migrant women, women with disabilities, rural women and older women.*<sup>160</sup>

155 CEDAW Committee, Concluding Observations on the Seventh Periodic Report of Tunisia, 2 March 2023, UN Doc CEDAW/C/TUN/CO/7 (2023) para 37 (b).

156 CEDAW Committee, General Recommendation 27 (n 23) para 40.

157 CEDAW Committee, Concluding Observations on the Eighth Periodic Report of Tunisia (n 47) para 60.

158 CEDAW Committee, General Recommendation 27 (n 23) para 42.

159 As above.

160 CEDAW Committee, Concluding Observations on the Fourth Periodic Report of Mauritania, 2 March 2023, UN Doc CEDAW/C/MRT/CO/4 (2023) para 18 (b).

States also have an obligation to take the necessary measures to ensure older women have access to adequate housing that meets their specific needs and to abolish laws and practices that negatively affect older women's right to housing, land and property.<sup>161</sup> States should repeal all legislation that discriminates against older women in respect of property and inheritance and protect them from land grabbing.<sup>162</sup>

### 3.3.2 Ensure the right of elderly women to freedom from violence, including sexual abuse

Freedom from violence is a core principle that should underlie any system of protection for the rights of elderly women. Article 22(b) of the Maputo Protocol requires states parties to 'ensure the right of elderly women to freedom from violence, including sexual abuse'. The term 'ensure' denotes mandatory intent. It is an imperative command, usually indicating that certain actions are obligatory. The explicit reference to violence was informed by the fact that acts of violence against elderly women are obstacles to achieving equality, development and peace.<sup>163</sup>

Ensuring elderly women's right to freedom from violence includes a duty to protect them from physical, psychological, economical and sexual harm by third parties. This is in line with the state's duty to protect rights. The state should therefore adopt, amend and implement laws and policies prohibiting conduct by third parties that causes harm to elderly women or undermines the full enjoyment of the rights of elderly women.

Related human rights treaty bodies require states to draft legislation recognising and prohibiting violence, including domestic, sexual violence and violence in institutional settings against older women.<sup>164</sup> States are also expected to investigate, prosecute and punish all acts of violence against older women, including those committed as a result traditional practices and beliefs<sup>165</sup> and to take all measures necessary to protect older women from gender-based violence triggered by accusations of witchcraft.<sup>166</sup>

161 CEDAW Committee, General Recommendation 27 (n 23) para 48.

162 CEDAW Committee, General Recommendation 27 (n 23) para 52.

163 CEDAW Committee, General Recommendation 19: Violence against Women, Adopted at the Eleventh Session of the Committee on the Elimination of Discrimination against Women (Contained in Document A/47/38) (1992) para 1; and CEDAW Committee, General Recommendation 35 on gender-base violence against women, Updating General Recommendation 19, 26 July 2017, UN Doc CEDAW/C/GC/35 (2017) para 15.

164 CEDAW Committee, General Recommendation 27 (n 23) para 37.

165 As above.

166 CEDAW Committee, Concluding Observations on the Eighth Periodic Report of Malawi, 14 November 2023, UN Doc CEDAW/C/MWI/CO/8 (2023) para 46.



The jurisprudence of the African Commission also encourages states to investigate, prosecute and punish perpetrators of violence against women and to take the necessary measures to ensure that the rights of victims of violence are guaranteed irrespective of age.<sup>167</sup> In *Equality Now and Ethiopian Women Lawyers Association (EWLA) v Federal Republic of Ethiopia*, the African Commission stressed that:

*It is to be recalled that a State incurs international responsibility for violation of rights and freedoms when it breaches its international law obligations with respect to the rights and freedoms in question. A state breaches its obligations when*

*its conduct does not meet the demands of international law obligations it has voluntarily undertaken. With respect to violations primarily committed by non-state actors, the principle is well settled that an illegal act which violates human rights and which is initially not directly imputable to a State (for example because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence (1) to prevent the violation or (2) to respond to it as required by the Convention [in the present case, the African Charter]. What is decisive is ... whether the State has allowed*

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167 African Commission on Human and Peoples' Rights 'Guidelines on combating sexual violence and its consequences in Africa' adopted by the African Commission on Human and Peoples' Rights during its 16th Ordinary Session held in Niamey, Niger from 8-22 May 2017, para 18; and African Commission 'Principles and guidelines' (n 24) para 67 (ii) (1) and (2).

*the act to take place without taking measures to prevent it or to punish those responsible.*<sup>168</sup>

Hence, the protection of elderly women under article 22 includes a duty to investigate, prosecute and punish perpetrators of violence against women. Furthermore, states parties are expected to 'establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women', to 'provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women'.<sup>169</sup>

The jurisprudence of the African Commission further expects states to provide remedies for violations of rights.<sup>170</sup> In *Zimbabwe Human Rights NGO Forum v Zimbabwe*, the African Commission held/stressed that:

*Human rights standards do not contain merely limitations on State's authority or organs of*

*State. They also impose positive obligations on States to prevent and sanction private violations of human rights. Indeed, human rights law imposes obligations on States to protect citizens or individuals under their jurisdiction from the harmful acts of others. Thus, an act by a private individual and therefore not directly imputable to a State can generate responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or for not taking the necessary steps to provide the victims with reparation.*<sup>171</sup>

States should adopt legislative and any other measures required to guarantee effective, sufficient and timeous remedies, including reparation of victims.<sup>172</sup> Such remedies must be 'affordable and accessible without unjustified delays'.<sup>173</sup> The African Commission, General Comment 4 also stresses the importance of redress for victims of sexual and gender-based violence and the need for accountability and criminalisation of perpetrators.<sup>174</sup> In the context of article 22, states should provide remedies for

168 Para 122. See also *Association of Victims of Post Electoral Violence and Interights v Cameroon* (2009) Communication 272/03, para 89 and *Velasquez-Rodriguez v Honduras* (Merits) [1998] IACHR Ser C No 4, paras 172-173.

169 Art 4 (2) (f) and (i) of the Maputo Protocol.

170 African Commission 'Guidelines on combating sexual violence and its consequences in Africa' (n 59) para 19; and African Commission 'Principles and guidelines' (n 24) para 19.

171 (2006) AHRLR 128 (ACHPR 2006) para 186. See also Committee against Torture (CAT), General Comment 2: Implementation of Art 2 by States Parties, 24 January 2008, UN Doc CAT/C/GC/2 (2008) para 18.

172 As above.

173 As above.

174 African Commission, General Comment 4 on the African Commission on Human and Peoples' Rights: The right to redress for victims of torture and other cruel, inhuman or degrading punishment or treatment (art 5), adopted at the 21st Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, held from 23 February to 4 March 2017 in Banjul, The Gambia, para 61.

violations of elderly women's rights.

### 3.3.3 Discrimination based on age

Apart from freedom from violence, non-discrimination is also another fundamental principle that should underpin a robust system that protects the rights of elderly women in Africa. Article 22(b) of the Maputo Protocol requires states parties to 'ensure the right of elderly women to freedom from discrimination based on age'. To ensure that the rights of elderly women are adequately protected, article 22 explicitly prohibits discrimination based on age. It recognises that age negates the enjoyment of rights by a significant number of elderly women in Africa.

Although the African Commission has not elaborated specifically on the nature of article 22 obligations, it has elaborated on the obligations of states to protect the right to equality and non-discrimination of elderly women. For instance, to ensure equality and non-discrimination in the enjoyment of rights, states are required to take steps to combat intersectional discrimination based on sex, gender and age.<sup>175</sup>

States are also enjoined 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.<sup>176</sup>

The African Commission also recognises 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.<sup>177</sup>

Considering that elderly women face discrimination in accessing health services, states are obligated to 'ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalised groups' and to 'ensure 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'.<sup>178</sup>

In relation to the right to property of vulnerable groups, considering that many elderly women face discrimination in inheritance, states are required to 'ensure equitable and non-discriminatory access and inheritance especially by women' and to 'take measures to modify or prohibit harmful social, cultural or other practices that prevent women and other members of vulnerable and disadvantaged groups from enjoying their rights'.<sup>179</sup> In its General Comment 6 on the right to property

175 African Commission 'Principles and guidelines' (n 24) para 38.

176 Art 3 of the Protocol on the Rights of Older Persons.

177 General Comment 1 on art 14(1)(d) and (e) of the Protocol

178 African Commission 'Principles and guidelines' (n 24) para 67.

179 African Commission 'Principles and guidelines' (n 24) para 55 (h).

during separation, divorce or annulment of marriage, the African Commission further stressed states duty to ensure elderly women are not subjected to discrimination and are able to enjoy their right to equal sharing of joint property deriving from marriage and are provided with effective access to justice during divorce proceedings.<sup>180</sup> It also underscored states duty to include qualitative and quantitative data disaggregated by age when reporting on measures to ensure women's right to property.<sup>181</sup>

Concluding Observations of states party reports issued by the African Commission have included recommendations on specific action to end discrimination against elderly women in relation to inheritance and property rights. For instance, in its Concluding Observations to Angola's State Party report, the African Commission expressed concern about the discrimination against widowed older women

in the allocation of inherited land and the distribution of inheritance due to cultural factors.<sup>182</sup> It recommended that the State Party 'adopt legislative and other appropriate measures to correct existing inequalities between men and women in all areas of life and particularly with regard to inheritance'.<sup>183</sup> Similarly, the African Commission expressed concern about discriminatory customary laws that violate women's property rights.<sup>184</sup> It recommended that the State Party take the necessary measures to 'combat discriminatory practices inspired by customary law that affect the full enjoyment of the right to property'.<sup>185</sup>

The principle of non-discrimination has implications for the protection of the rights of elderly women. First, a state would respect the non-discrimination principle and abstain from taking measures that would discriminate against elderly women. Secondly, pursuant to its duty to ensure that all persons within its jurisdiction

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180 African Commission, General Comment 6 on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol): The right to property during separation, divorce or annulment of marriage (art 7 (d)), paras 54 and 56.

181 African Commission, General Comment 6 (n 72) para 63.

182 Concluding Observations on the 6th and 7th Periodic Reports of the Republic of Angola on the Implementation of the African Charter on Human and Peoples' Rights and the Initial Report on the Protocol to the African Charter on the Rights of Women in Africa (2011-2016), para 54.

183 Concluding Observations on the 6th and 7th Periodic Reports of the Republic of Angola (n 74) para x.

184 Concluding Observations and Recommendations on the Kingdom of Lesotho's Combined Second to Eighth Periodic Report under the African Charter on Human and Peoples' Rights and its Initial Report under the Protocol to the African Charter on the Rights of Women, 68th Ordinary Session of the African Commission on Human and Peoples' Rights (2021) para 51 (v); and Concluding Observations on the 1st to 7th Periodic Report of the Republic of Zambia under the African Charter on Human and Peoples' Rights and the Initial Report under the Maputo Protocol (July 2023) 15.

185 Concluding Observations and Recommendations on the Kingdom of Lesotho's Combined Second to Eighth Periodic Report (n 76) para 15.

enjoy all the rights without discrimination of any kind, the state should proscribe discrimination, provide for effective remedies in case of violations and conduct awareness raising and educational campaigns targeting the public at large and specific group of professionals with a view to eliminating and preventing de facto discrimination against elderly women. Addressing discrimination may also require changes in legislation, administrative and resource allocation, preferential treatment, targeted recruitment hiring and promotion.

### 3.3.4 The right to be treated with dignity

Human dignity is a principle of international law that recognises that all human beings are equal and that their rights should be protected and respected.<sup>186</sup> In *Purohit v The Gambia*, the African Commission underscored the importance of the right to human dignity. It stressed that:

*Human dignity is an inherent basic right to which all human beings, regardless of their mental capabilities or disabilities as the case may be, are entitled to without discrimination. It is therefore an inherent right which every human being is*

*obliged to respect by all means possible and on the other hand it confers a duty on every human being to respect this right.*<sup>187</sup>

Article 22 of the Maputo Protocol mandates states parties to guarantee the right of elderly women to be treated with dignity. Whereas article 22 codifies the general obligations of states parties in relation to the right of elderly women to be treated with dignity, it does not do so comprehensively.

In its jurisprudence, the African Commission has considered conducts that cause humiliation (acts that humiliate or diminish the self-worth of a person/group), degradation (acts that degrade/diminish the value of human beings) and dehumanisation (acts that strip a person/group of their human characteristics) as constituting violations of the respect for human dignity.<sup>188</sup> In *Equality Now and Ethiopian Women Lawyers Association (EWLA) v Federal Republic of Ethiopia*, the African Commission noted with respect to the right to dignity that:

186 C Kreuser 'Article 3: Right to dignity' in A Rudman, CN Musembi & TM Makunya The Protocol to the African Charter on Human and Peoples' Rights: A commentary (PULP 2023) 74.

187 (2003) AHRLE 96 (ACHPR 2003) para 57.

188 *International Pen v Nigeria*; *John K Modise v Botswana* (Communication 97 of 1993) [1993] ACHPR 6 (3 March 1993); *Amnesty International v Zambia* (Communication 212 of 1998) [1999] ACHPR 1 (5 May 1999); *Centre for Minority Rights Development and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (Communication 276 of 2003) [2009] ACHPR 102 (25 November 2009). See also the jurisprudence of the European Court of Human Rights: *Dordevic v Croatia* [2012] ECHR 1640 (24 July 2012) para 52; and the Inter-American Court of Human Rights: *Lopez Alvarez v Honduras* IACHR Series C No 141, IHRL 1525 (IACHR 2006) paras 105-106; and *Garcia Asto and Ramirez Rojas v Peru* IACHR Series C no 137 (Official Case No): IHRL 1521 (IACHR 2005) para 221.

*Human dignity is the fountain of all other rights. At the core of human dignity is the idea and recognition that a human being has a unique worth, value and significance that is innate, and not acquired. It also entails that a human being is a moral agent possessed with the conscience and personal volition to decide what happens to his or her body. The right to respect of dignity is a guarantee that a human being should not be subjected to acts or omissions that degrade or humiliate him or her. The worth, value and significance of a human being may not and need to be conceptualised with scientific precision. As such, the point at which the intensity of a given act or omission amounts to degradation of a human being cannot and need not be delineated and fixed with mathematical precision. The preoccupation of human rights law which recognises human dignity is the pragmatic protection of rights as opposed to vexing over theoretical conceptions of dignity.<sup>189</sup>*

In the context of article 22, the protection of elderly women includes a duty to eliminate conduct by third parties that causes degradation, humiliation or dehumanisation to elderly women. Given that special measures are required, such measures could include legislative, administrative and resource allocation as well as educational measures to change negative attitudes that undermine the dignity of elderly women.

#### **4 Linkage to other related provisions in the Maputo Protocol**

Several articles of the Maputo Protocol are directly relevant to article 22 and the measures which states must take to protect the rights of elderly women. More specifically, article 22 of the Maputo Protocol is closely related to provisions requiring states to eliminate harmful cultural practices (article 5), marriage (article 6), property (article 7), health and reproductive rights (article 14), inheritance (article 21) and widows rights (article 20), as these are among the key areas in which violations of the rights of elderly women in Africa take place.<sup>190</sup>

In addition, article 22 of the Maputo should be read with article 26 which provides guidance on the implementation measures required. In terms of article 26(1) of the Maputo Protocol, states parties are required to take 'legislative and other measures' to ensure 'the full realisation of the rights' of elderly women. Article 26(2) of the Maputo Protocol further obligates states to 'provide budgetary and other resources for the full and effective implementation of the rights' of elderly women.

189 (Communication 341/2007) [2021] ACHPR 523 (14 October 2021) para 118. The Oxford Dictionary defines dignity as: 'the state or quality of being worthy of honour or respect'. Humans are worthy of respect; human beings are entitled to be treated as worthy of respect and concern.

190 See Section 2.

## 5 Article 22 of the Maputo Protocol and provisions in other regional instruments

At the African regional level, the African Charter on Human and Peoples' Rights<sup>191</sup> is relevant to protecting the rights of elderly women in Africa. Article 18(4) of the African Charter guarantees the right of the aged to 'special measures of protection in keeping with their physical or moral needs'. Also relevant is article 18(3) of the African Charter which requires states to eliminate discrimination against women and ensure protection of their rights. In addition to elderly-specific rights, the African Charter contains provisions on non-discrimination (article 2), violence against women (article 4), the right to dignity (article 5), the right to property (article 14), the right to work (article 15) and the right to health (article 16) which are also relevant to elderly women.

The Protocol on the Rights of Older Persons in Africa<sup>192</sup> contains various provisions that elaborate on state duties in relation to aspects of article 22 of the Maputo Protocol. For instance, article 9 of the Maputo Protocol places an obligation on states parties to ensure the protection of elderly women through legislative and other measures from violence, sexual abuse, discrimination based on gender,

abuses related to property and land rights and protection of their inheritance rights.<sup>193</sup>

On protection against discrimination in employment, article 6 places an obligation on states to 'take measures to eliminate work place discrimination against Older Persons with regard to access to employment taking into consideration occupational requirements' and to 'ensure appropriate work opportunities for Older persons taking into account to their medical and physical abilities, skills and experience'.<sup>194</sup> Another important link to article 22 of the Maputo Protocol is the call on states to develop laws and policies to ensure that older persons who retire are provided with 'adequate pensions and other forms of social security', to ensure that 'universal social protection mechanisms exist to provide income security for those Older persons who did not have the opportunity to contribute to any social security provisions'.<sup>195</sup>

Article 8 further requires states to 'prohibit and criminalise harmful traditional practices targeted at Older Persons' and to 'take all necessary measures to eliminate harmful traditional practices including witchcraft accusations, which affect the welfare, health, life and dignity of Older Persons, particularly

191 Adopted by the OAU on 27 January 1983, entry into force 21 October 1986.

192 Adopted on 31 January 2016, not yet in force (with nine ratifications – Angola, Benin, Burundi, Ethiopia, Kenya, Lesotho, Malawi, Rwanda and Togo – and 14 signatories as at October 2023).

193 Art 9(1), (2) and (3) of the Protocol on the Rights of Older Persons.

194 Art 6(1) and (2) of the Protocol on the Rights of Older Persons in Africa.

195 Art 7(1) and (2) of the Protocol on the Rights of Older Persons in Africa.



Older Women’.<sup>196</sup> Equally important is article 3 of the Protocol on the Rights of Older Persons which calls upon states parties to eliminate all forms of discrimination against older persons and to take corrective measures in areas where discrimination and stigmatisation against older persons exists in law and in fact.<sup>197</sup> Furthermore, provisions on access to justice (article 4), health rights (article 15), education (article 16) and access to infrastructure (article 18) are related to article 22 of the Maputo Protocol.

## 6 Article 22 of the Maputo Protocol and provisions in international instruments

At the international level, the CESCR has expounded on the rights of elderly women and the nature of state obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>198</sup> These include state obligations to ensure women’s right to equality and non-discrimination,<sup>199</sup> the right to work without discrimination based on age,<sup>200</sup> the right to social security,<sup>201</sup> the right to health and education.<sup>202</sup>

196 Art 8(1) and (2) of the Protocol on the Rights of Older Persons in Africa.

197 Art 3(1) and (2) of the Protocol on the Rights of Older Persons in Africa.

198 Adopted and Opened for Signature, Ratification and Accession by the General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with art 27. The ICESCR has been adopted by 51 African states as at 2023.

199 CESCR General Comment 6 (n 22) para 20.

200 CESCR General Comment 6 (n 22) para 22.

201 CESCR General Comment 6 (n 22) paras 26-30.

202 CESCR General Comment 6 (n 22) paras 34-42.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>203</sup> is also relevant. The CEDAW Committee has elaborated on the rights of elderly women and state obligations under CEDAW.<sup>204</sup> In the context of article 22 of the Maputo Protocol, the CEDAW Committee requires states to take all appropriate measures, including legislation, to eliminate discrimination against older women and to prohibit violence against older women.<sup>205</sup> States are also required to investigate, prosecute and punish all acts of violence against older women,<sup>206</sup> to ensure that older women have access to work without discrimination based on age and pension benefits, including adequate non-contributory pensions and that older women who have the responsibility for the care of children have access to appropriate social and economic benefits such as child care benefits.<sup>207</sup> In addition, states are expected to repeal all legislation that discriminates against older women in the area of marriage, property, inheritance and to protect them from land grabbing,<sup>208</sup> to ensure their right to education and health.<sup>209</sup>

## 7 Policy frameworks for the protection of the rights of elderly women in Africa

The AU Policy Framework and Plan of Action on Ageing reiterates the duty of states to 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 that their specific concerns are included in gender policies and programmes.<sup>210</sup> States are also required to ‘ensure that social security and social programmes address the situation of older women whose employment has often been interrupted by maternity and family responsibilities’.<sup>211</sup>

At the international level, the UN Principles for Older Persons recognise the rights of older persons in relation to independence, participation, care, self-fulfilment and dignity. The UN Principles also include the recognition of the need for older persons to have access to basic necessities, social integration and participation in society, access to healthcare and

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203 Adopted and Opened for Signature, Ratification and Accession by General Assembly Resolution 34/180 of 18 December 1979, entry into force 3 September 1981, in accordance with art 27(1). CEDAW has been ratified by 52 African states as of March 2023.

204 CEDAW Committee, General Recommendation 27 (n 23).

205 CEDAW Committee, General Recommendation 27 (n 23) paras 29 and 37.

206 CEDAW Committee, General Recommendation 27 (n 23) para 37.

207 CEDAW Committee, General Recommendation 27 (n 23) paras 41-44.

208 CEDAW Committee, General Recommendation 27 (n 23) para 51-52.

209 CEDAW Committee, General Recommendation 27 (n 23) paras 40, 45-46.

210 AU Policy Framework and Plan of Action on Ageing (2002) paras 8, 14-15 and 22.

211 AU Policy Framework and Plan of Action on Ageing, para18.

enjoyment of human rights and fundamental freedoms.<sup>212</sup> In relation to dignity, the UN Principles for Older Persons provide that older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse.<sup>213</sup>

The Madrid International Plan of Action on Ageing<sup>214</sup> which African states are required to incorporate into their domestic laws<sup>215</sup> outlines the rights of the elderly in relation to equality and non-discrimination, work, pensions and health. Among its central themes are the full realisation of the human rights and fundamental freedoms of all older persons, elimination of all forms of violence and discrimination against older persons and achievement of secure ageing, among others. The Vienna International Plan of Action on Ageing<sup>216</sup> also outlines principles and recommendations aimed at strengthening the capacities of states to deal with ageing.<sup>217</sup>

## 8 Conclusion

The adoption of article 22 of the Maputo Protocol is a significant step in recognising the vulnerability of elderly women as a distinct group of people and highlights the need for the protection of their rights. Article 22 of the Maputo Protocol specifies the obligations of states parties in relation to specific rights of

elderly women. Notable in its provisions is the emphasis on the obligations of states to 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. States are also expected to provide protection to elderly women and to take specific measures commensurate with their needs as well as access to employment and professional training.

While article 22 of the Maputo Protocol codifies the general obligations of states parties in relation to the rights of elderly women, it does not do so comprehensively. It should therefore be read with other relevant treaty provisions and policy frameworks that elaborate on the rights of elderly women and related state obligations.

Further, article 22 of the Maputo Protocol does not offer any insight on the meaning of 'special protection' measures that are required in order to fulfil the obligations under article 22 of the Maputo Protocol. It was established that 'special protection' measures could include affirmative measures (affirmative action), legislative, administrative or other regulatory instruments, policies and practices, preferential treatment and targeted recruitment, hiring and promotion

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212 UN Principles for Older Persons, paras 10-14.

213 Art 17(1) of the UN Principles for Older Persons.

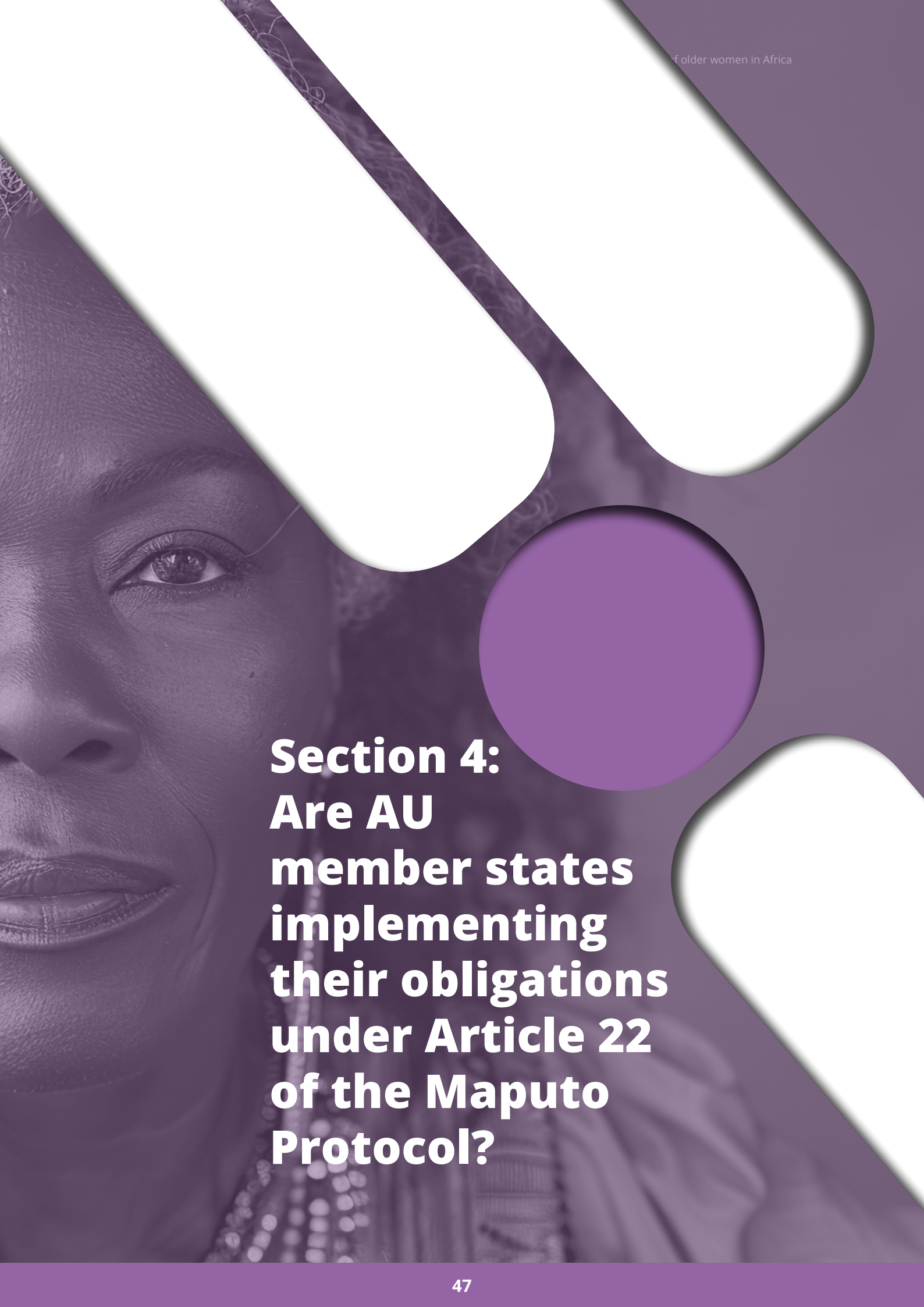
214 Madrid International Plan of Action on Ageing (2002).

215 See Preamble of the Protocol on the Rights of Older Persons.

216 Vienna International Plan of Action on Ageing (1982).

217 As above.

among other measures. To ensure better understanding and implementation of article 22, the African Commission must furthermore adopt a General Comment to clarify the concepts in article 22 so that states are clear on the meaning of 'special protection' measures that are required to meet their obligations under article 22 of the Maputo Protocol.



**Section 4:  
Are AU  
member states  
implementing  
their obligations  
under Article 22  
of the Maputo  
Protocol?**

## 1 Introduction

This section presents an analysis of the implementation of article 22 of the Maputo Protocol. In assessing the status of implementation, this section draws from concluding observations and state reports on article 22 of the Maputo Protocol. States that have reported specifically on implementing article 22 of the Maputo Protocol include Zimbabwe, Angola, Burkina Faso, Togo, Eswatini, Namibia, the Democratic Republic of Congo (DRC), Rwanda, Zambia and South Africa.<sup>218</sup> These states are used as examples of how member states are implementing the obligations under article 22 of the Maputo Protocol. The section is organised in terms of specific obligations placed on states by article 22 of the Maputo Protocol: ensuring the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the obligation to take specific measures commensurate with elderly women's physical, economic and social needs as well as their access to employment and professional training.

## 2 The right of elderly women to freedom from violence, including sexual abuse

With the exception of South Africa, Rwanda, Eswatini, Zambia and DRC, most African states did not include in their reports measures adopted to realise article 22 of the Maputo Protocol.<sup>219</sup> A possible reason for the lack of reporting is that states do not understand the 'special protection' measures required to ensure full compliance of their obligations under article 22 of the Maputo Protocol.

South Africa reports on implementing article 22 of the Maputo Protocol through the enactment of the Older Person's Act 13 of 2006 which protects older persons from violence and abuse.<sup>220</sup> It further reports that the Older Person's Act criminalises any act of abuse against an older person.<sup>221</sup> Similarly, Rwanda reports on its Organic Law No 01/2012/OL of 02/05/2012 which specifically punishes the crime of rape and harassment committed on an elderly person as part of fulfilling the state obligation to protect elderly women from violence.<sup>222</sup> Zambia also reports that the 'National Social Protection Policy of 2014 protects vulnerable groups including elderly

218 Other state reports and concluding observations were not accessible on the African Commission website.

219 For instance, countries such as Zimbabwe, Eswatini, Burkina Faso, Malawi, Namibia, Lesotho and Angola.

220 Republic of South Africa, Combined Second 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, August 2015, paras 523-524.

221 Republic of South Africa (n 3) para 524.

222 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 (Maputo Protocol) (2009-2016), para 119.

women from all forms of abuse, violence, discrimination, denial and neglect'.<sup>223</sup> Further, Eswatini mentions that the Sexual Offences and Domestic Violence Act, 2018 makes provision for elderly persons to apply for protection orders in instances of abuse.<sup>224</sup> DRC alludes to enacting laws which protect elderly women from sexual abuse which include the Laws on Sexual Violence of 2006 and Law 11/008 of 9 July 2011.<sup>225</sup> Given that 'special protection' measures are required, legislative and policy measures alone are not sufficient to fulfil the obligations under article 22 of the Maputo Protocol.

Despite the inadequacy of measures adopted by states, the African Commission in its concluding observations to state party reports did not provide any guidance on the measures to ensure full compliance with the obligations

under article 22.<sup>226</sup> Although in other concluding observations the African Commission has raised concerns about attacks on older persons, including extrajudicial killings by burnings or beating and recommended that the State Party protect older persons from violence, it could certainly provide more guidance on the measures to ensure compliance with the obligations under article 22.<sup>227</sup>

### 3 Discrimination based on age

States have generally not adequately addressed discrimination against elderly women. Zambia reports on implementing the obligation to ensure the right of elderly women to freedom from discrimination based on age through policy measures. It states that

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223 First, Second, Third, Fourth, Fifth, Sixth and Seventh Periodic Report of the Republic of Zambia under the African Charter on Human and Peoples' Rights (2005-2019) and Initial Report under the Protocol to the African Charter on the Rights of Women in Africa, para 674.

224 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, Eswatini, para 631.

225 Report of the African Commission on Human and Peoples' Rights on the Implementation of the African Charter on Human and Peoples' Rights, from 2008 to 2015 (11th, 12th and 13th Periodic Reports) and of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, from 2005 to 2015 (Initial Report and 1st, 2nd and 3rd Periodic Reports), para 360.

226 See for instance, Concluding Observations and Recommendations on the Combined Second Periodic Report under the African Charter on Human and Peoples' Rights and the Initial Report under the Protocol to the African Charter on the Rights of Women in the Republic of South Africa; Concluding Observations on the Combined 1st to 7th Periodic Report of the Republic of Zambia under the African Charter on Human and Peoples' Rights and the Initial Report under the Maputo Protocol (2005-2019) and Concluding Observations and Recommendations on the Periodic and Combined Periodic Report of the Democratic Republic of Congo on the Implementation of the African Charter on Human and Peoples' Rights (2008-2015) and the Initial Report on the Maputo Protocol (2005-2015).

227 Concluding Observations and Recommendations on the Kingdom of Lesotho's Combined Second to Eighth Periodic Report under the African Charter on Human and Peoples' Rights and its Initial Report under the Protocol to the African Charter on the Rights of Women in Africa, 68th Ordinary Session of the African Commission on Human and Peoples' Rights (14 April to 4 May 2021) para 73 (v).



*[t]he National Ageing Policy of 2015, in a bid to realise the vision of ageing with dignity and security, provides policy guidance on the recognition of the fundamental rights of older persons and abolishment of all forms of discrimination based on age and gender<sup>228</sup>*

and that the National Social Protection Policy of 2014 protects vulnerable groups including elderly women from all forms discrimination.<sup>229</sup>

In Rwanda, constitutional measures exist to address discrimination. The state report indicates that '[t]he Rwanda Constitution

reinforces the principles of gender equality and elimination of all forms of discrimination against women and provides a very strong platform for gender mainstreaming in all sectors<sup>230</sup> and that the Constitution of the Republic of Rwanda, in its article 16 forbids in general all forms of discrimination 'as a core principle applicable even in some other laws'.<sup>231</sup> Furthermore, the state also provides housing facilities to older persons without any discrimination and considering the gender-specific needs.<sup>232</sup> Measures instituted by states to combat discrimination are necessary but insufficient to fulfil the obligations under article

228 Zambia (n 6) para 673.

229 Zambia (n 6) para 674.

230 Rwanda (n 5) para 118.

231 Rwanda (n 5) para 119.

232 Rwanda (n 5) para 118.

22 of the Maputo Protocol.

The African Commission has raised concern over the prevalence of discrimination against older women. In its Concluding Observations on Lesotho's State Party report, the African Commission expressed concern that discrimination based on age prevails in Lesotho.<sup>233</sup> Although the African Commission recommended that the State Party protect older persons from discrimination and violence, it did not provide any guidance on what is expected of states as they implement their obligations.<sup>234</sup> The impact or adequacy of measures in some cases is unclear due to lack of reporting. Some states, such as Zimbabwe, Angola, DRC, South Africa, Eswatini, Namibia, Togo and Burkina Faso did not include in their reports measures adopted to realise article 22 of the Maputo Protocol.

#### **4 The obligation to provide protection to elderly women and take specific measures commensurate with their physical, and social needs as well as their access to employment and professional training**

Article 22 of the Maputo Protocol mandates states parties to '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'. None of the states that has reported on

the Maputo Protocol has indicated the 'special protection' measures to ensure elderly women's access to employment and professional training.

States have also neglected to report on the other aspects that are covered under article 22 such as 'special protection' measures for elderly women in all spheres and the right of elderly women to be treated with dignity. It is therefore difficult to assess the impact of measures due to lack of reporting.

#### **5 Different understanding of basic obligations under Article 22**

Often, states seem not to accurately grasp the nature of measures they should adopt pursuant to article 22 of the Maputo Protocol. First a review of state reports suggests that states view the adoption of legislative and policy measures as sufficient to fulfil their obligations under article 22. For instance, the reports of South Africa, Rwanda, Eswatini, Zambia and DRC follow this trend. However, legislative and policy measures alone are not adequate to protect the rights of elderly women.

In addition, some states rarely make the connection between the measures adopted and their impact on elderly women. Eswatini and Burkina Faso, for example, only provide a general discussion on granting social protection to older persons in general without addressing the specific needs of elderly women, which is at the heart of

233 Concluding Observations and Recommendations on the Kingdom of Lesotho (n 10) para 52(ii).

234 Concluding Observations and Recommendations on the Kingdom of Lesotho (n 10) para 73(v).

article 22 of the Maputo Protocol. Eswatini, for example, reports that:

*The Kingdom of Eswatini provides special social protection mechanisms to older persons in the country. The Department of Social Welfare provides elderly grants to citizens of Eswatini or persons with a permanent residency on a monthly basis. The criteria for qualification for this grant is that a person must be 60 years and above, live in Eswatini and must not be in receipt of any other social grants.<sup>235</sup> The State Party developed the Social Development Policy 2010 to make available a policy framework for the provision of social-development services in the Kingdom. It protects the rights of elderly persons and provides the poor with the means to support themselves and any children in their care.<sup>236</sup>*

Similarly, Namibia reports that ‘the government of Namibia continues to provide monthly pension grants to the elderly’.<sup>237</sup> Burkina Faso also reports that ‘[c]oncerning older persons, many actions and measures have been taken to provide assistance, especially to the most

deprived’<sup>238</sup> and that ‘measures have been taken to improve the situation particularly for retired persons’.<sup>239</sup>

While such efforts are commendable, the reports are not clear on how these measures have specifically protected and catered for the rights of elderly women. States should always be mindful that article 22 focuses on elderly women. The best practice in future reports and actions would be to disaggregate the general statistics by gender to facilitate a clear distinction of measures states have put in place. A good example is Angola which reports that the Social Support Programme, as a social protection measure has supported through different projects 15 423 families headed by women and 37 391 elderly women in the community out of a total of 67 984 elderly.<sup>240</sup> 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.<sup>241</sup> South Africa has also been called to

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235 Eswatini (n 7) para 626.

236 Eswatini (n 7) para 627. See also Periodic Report of Burkina Faso within the Framework of the Implementation of art 62 of the African Charter on Human and Peoples’ Rights (January 2015) para 357-360.

237 7th Periodic Report (2015-2019) 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, The Republic of Namibia (2020) para 32.1.

238 Burkina Faso (n 19) para 357.

239 Burkina Faso (n 19) para 359.

240 Sixth and Seventh Report on the Implementation of the African Charter on Human and Peoples’ Rights and Initial Report on the Protocol on the Rights of Women in Africa, Angola (2011-2016) para 121.

241 Concluding Observations and Recommendations on the 2nd and 3rd Combined Periodic Report of the Republic of Malawi on the Implementation of the African Charter on Human and Peoples’ Rights (2015-2019); and Initial Report on the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2005-2013) paras 43 and 55.

provide adequate disaggregated data on age and gender due to lack of disaggregated data in its state report.<sup>242</sup>

There are several other problems in state reports concerning article 22. The report of Zambia, for instance, suggests that it did not understand what is expected of it regarding the implementation of article 22 of the Maputo Protocol. One passage of the report reads as follows: 'The State Party shall continue to ensure that elderly women have the right to their economic, social and cultural development with due regard to their freedom and identity'.<sup>243</sup>

The above passage is difficult to understand. It is not clear what measures the state has put in place to ensure that 'elderly women have the right to their economic, social and cultural development with due regard to their freedom and identity'. Similarly, Burkina Faso reports that:

*In October 2012, the national forum for older persons made some health, social, political, economic recommendations. Furthermore, sensitisation activities were organised by the Ministries of Women's Affairs and Gender, Human Rights and Civic Promotion, Social Welfare and National Solidarity as part of the fight against all forms of inequalities and inequities relating to gender. Cases of violence perpetrated during the socio-political crisis faced by Burkina Faso in 2011, were the subject of psychological, health,*

*financial care in collaboration with the Ministry of Finance and Economic Planning.*

This lack of clarity indicates the low quality of reporting on article 22 of the Maputo.

## 6 Conclusion

A review of state reports to the African Commission demonstrates that AU member states are not fully implementing the obligations under article 22 of the Maputo Protocol. Although some states have adopted laws and policies for the protection of the rights of elderly women, legislative and policy measures alone are not sufficient to fulfil the obligations under article 22. A possible explanation for the failure to adequately comply with their obligations is that states are not clear on the meaning of 'special protection' measures that are required to meet their obligations under article 22 of the Maputo Protocol.

The adequacy of measures in some states is unclear due to lack of reporting. Several states

242 South Africa (n 2) paras 39 and 55. See also Rwanda (n 5) paras 30-31.

243 Zambia (n 2) para 671.



To ensure better implementation of article 22 of the Maputo Protocol, the African Commission must adopt a General Comment to expound on all aspects of the obligations under article 22. This General Comment should clarify the concepts in article 22 so that states are clear about their obligations. There is a need for clarification to improve the understanding of article 22 of the Maputo Protocol through a General Comment as this will guide states to adequately protect and promote the rights of older women.

The African Commission must also give adequate attention to article 22 in Concluding Observations and provide recommendations and guidance to states for its implementation. The General Comment will also guide the African Commission to provide recommendations to states on legislative, policy and other appropriate measures to ensure compliance with the obligations under article 22 of the Maputo Protocol.

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