

Evaluating the (in)sufficiency of Africa's response towards economic and psychological violence against women

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ABSTRACT: Violence against women is a practice that persists in all societies across the globe. The range of actions and omissions that amount to violence has evolved over time, to recognise harmful practices that do not necessarily result in physical harm. Such actions or omissions include economic and psychological forms of violence. The evolving definition of violence is reflected in many global and regional human rights instruments. However, the approach to such recognition and measures proposed to address economic and psychological forms of violence vary considerably from one instrument to another. This article assesses the extent to which economic and psychological forms of violence are addressed in the norms and standards of the African Union. A systematic review of the applicable instruments and the jurisprudence of key human rights bodies reveals that the recognition of economic and psychological forms of violence rarely goes beyond the definition clause of the respective instruments. As a result, jurisprudential engagement on, and the framing of measures for response to these forms of violence is limited. The failure to adopt a consistent, robust and purposive approach to violence, which articulates measures necessary to address all the forms of violence, undercuts the protection available to women who suffer from economic and psychological forms of violence. This article makes the case that consistent recognition and specific articulation of economic and psychological forms of violence as distinct types of violence, as in the approach of the Istanbul Treaty, is necessary to fulfil the promise of protection from 'all forms of violence'. Such express recognition in multilateral instruments is important to influence domestic law to follow suit.

TITRE ET RÉSUMÉ EN FRANCAIS:

Évaluation de l'(in)suffisance de la réponse africaine à la violence économique et psychologique contre les femmes

RÉSUMÉ: La violence contre les femmes est une pratique qui persiste dans toutes les sociétés à travers le monde. La gamme d'actions et d'omissions qui équivalent à la violence a évolué au fil des ans, pour reconnaître les pratiques préjudiciables qui n'entraînent pas nécessairement des dommages physiques. Ces actions ou omissions incluent des formes de violence économique et psychologique. L'évolution de la définition de la violence se reflète dans de nombreux instruments universels et

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régionaux relatifs aux droits de l'homme. Toutefois, l'approche de cette reconnaissance et les mesures proposées pour lutter contre les formes économiques et psychologiques de violence varient considérablement d'un instrument à l'autre. Cet article évalue dans quelle mesure les formes économiques et psychologiques de la violence sont abordées dans les normes et standards de l'Union africaine. Un examen systématique des instruments applicables et de la jurisprudence des principaux organes des droits de l'homme révèle que la reconnaissance des formes économiques et psychologiques de violence va rarement au-delà de la clause de définition des instruments respectifs. Par conséquent, l'engagement jurisprudentiel sur ces formes de violence et l'élaboration de mesures pour y répondre sont limités. L'absence d'une approche cohérente, solide et intentionnelle de la violence, qui articule les mesures nécessaires pour répondre à toutes les formes de violence, affaiblit la protection offerte aux femmes qui souffrent de formes de violence économique et psychologique. Cet article défend l'idée qu'une reconnaissance cohérente et une articulation spécifique des formes de violence économique et psychologique en tant que types de violence distincts, comme dans l'approche du Traité d'Istanbul, est nécessaire pour tenir la promesse de protection contre "toutes les formes de violence". Une telle reconnaissance expresse dans les instruments multilatéraux est importante pour inciter le droit national à suivre le mouvement.

KEY WORDS: violence against women, economic violence, psychological violence, African Union, treaty

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1 INTRODUCTION¹

Gender based violence targeting women is a perverse and pervasive practice across the globe. COVID-19 has further exacerbated this phenomenon.² In the African region, violence against women is acknowledged as one of the priority issues that need to be addressed to guarantee women's equality. This is evident in the adoption of treaty and soft law standards that proscribe the practice. As the principal regional treaty on women's rights in the region, the Protocol to the

1 Parts of this article are adapted from a report co-drafted by the authors titled 'Legislative review towards an Africa free of laws that perpetuate violence against women' commissioned by the Irish Embassy in Pretoria through the Office of the Presidency of South Africa.

2 NJ Dlamini 'Gender-based violence, twin pandemic to Covid-19' (2021) 47 *Critical Sociology* 4-5 583; and M Nduna & SO Tshona 'Domesticated poly-violence against women during the 2020 Covid-19 lockdown in South Africa' (2021) 66 *Psychology Studies* 347.

African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is an important reference point in this regard. The commitment to address violence against women (VAW) is also expressed in other soft law and policy standards of the African Union (AU). These include AU Agenda 2063³ and related implementation frameworks, and the AU Strategy for Gender Equality and Women's Empowerment 2018-2028.⁴

According to the Maputo Protocol, VAW refers to 'all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat of such acts...'.⁵ This approach to VAW has been lauded for extending the traditional preoccupation with physical and sexual forms of violence by recognising economic and psychological dimensions.⁶ This characterisation notwithstanding, there is a tendency, both within the Maputo Protocol and in other soft law instruments and policy frameworks, to devote more attention and resources to addressing sexual and physical violence, and much less to psychological and economic forms of violence. There are also questions as to whether the mere recognition of the broad ambit of 'violence' suffices to ensure the protection of women from the incidence of all forms thereof, especially of the psychological and economic forms.

This article explores the extent to which the AU, through its various instruments, addresses economic and psychological violence. This is done by analysing primary instruments such as the Maputo Protocol and policies related to violence against women of the AU, specifically the AU Agenda 2063, and the AU Strategy on Gender Equality and Women's Empowerment (2018-2028). The article is structured in three main parts, with the first devoted to exploration of issues in the definitions of violence and the implications for enforcement, the second to review of normative approaches to economic and psychological violence, and the third to a critique of the normative approaches.

3 African Union Agenda 2063: The Africa We Want, <https://au.int/en/agenda2063/overview> (accessed 30 January 2022).

4 AU Strategy for Gender Equality and Women's Empowerment 2018-2028 https://au.int/sites/default/files/documents/36195-doc-au_strategy_for_gender_equality_womens_empowerment_2018-2028_report.pdf (accessed 6 February 2022).

5 Art 1(j) Maputo Protocol.

6 F Banda 'Blazing a trail: the African Protocol on Women's Rights comes into force' (2006) 50 *Journal of African Law* 1 79-80.

2 DEFINITION OF ECONOMIC AND PSYCHOLOGICAL VIOLENCE AGAINST WOMEN

2.1 Economic violence

Economic violence is not defined in any of the African human rights instruments, and has not yet been the subject of interpretative guidance from the African Commission on Human and Peoples' Rights (African Commission). The constituent elements thereof can however be gleaned from a variety of sources. For instance, the European Institute for Gender Equality defines economic violence to include the following:⁷

Any act or behaviour which causes economic harm to an individual. Economic violence can take the form of, for example, property damage, restricting access to financial resources, education or the labour market, or not complying with economic responsibilities, such as alimony.

Economic violence has also been considered to occur when women are prevented from going to work,⁸ when equal work is unequally remunerated; and when laws concerning 'inheritance, property rights, use of communal land and widowhood' discriminate against women.⁹ Economic violence may also occur when the abuser (typically a man in a domestic relationship) has complete control over a woman's economic activities, particularly where they

maintains control of the family finances, deciding without regard to women how the money is to be spent or saved, thereby reducing women to complete dependence for money to meet their personal needs. It may involve putting women on strict allowance or forcing them to beg for money.¹⁰

From the foregoing, the defining elements of economic violence can be deciphered as the deprivation of access to or control of financial and other material assets, tools, and opportunities to women, with the result or intention of harming them. The instrumentalisation of economic opportunities, tools and benefits for the purpose of violating women's rights and dignity distinguishes economic violence from general economic disempowerment that may be characteristic of particular contexts. For the economic disempowerment to amount to economic gender based violence, it would need to be based on socially ascribed (gender) differences between females and males.¹¹

7 European Institute for Gender Equality 'Glossary of Definitions of rape, femicide and intimate partner violence' (2017) 46 <https://eige.europa.eu/thesaurus/terms/1096> (accessed on 3 December 2020).

8 LC Casique & ARF Furegato 'Violence against women: theoretical reflections' (2006) 14 *Revista Latino-Americana de Enfermagem* 6 (unpaged).

9 L Heise, M Ellsberg & M Goheemoeller 'Ending violence against women' (1999) *Population Report Series* 1 at 11.

10 As quoted by OI Fawole 'Economic violence to women and girls: Is it receiving the necessary attention' *Trauma, Violence and Abuse* (2008) 168.

11 Gender Strategy, 62. This is also the yard stick prescribed by the CEDAW Committee in General Recommendation 19 para 6.

Nevertheless, to the extent that economic disempowerment predisposes individuals or societies to greater risks of violence, it is arguable that there is a correlation between economic disempowerment and economic violence.

It is also important to recognise that economic violence may be structural and systemic, as in the case of unequal pay and access to capital assets, or individualised as in cases where women are prevented from seeking gainful employment or where the use of their financial resources is controlled at an individual level. In both systemic and individual cases, the presence of personal laws that either allow, condone or endorse gender discrimination, exacerbate the practice.

2.2 Psychological violence

Similar to economic violence, psychological violence is not universally defined, and has not been the subject of extensive interpretive guidance. Some researchers have defined it to include practices such as verbal abuse, threats of harm, harassment or deprivation of resources, preventing victims from seeing family and friends, ongoing belittlement or humiliation, economic restrictions, violence or threats against cherished objects, and being locked out of homes.¹²

Cultural and contextual differences make it difficult to have consensus on what kind of actions constitutes psychological violence. Conduct that is normalised in some cultures, such as that related to control over women's movement, expression, or access to resources, may not be reported as abusive in such settings, yet it would meet the threshold for psychological violence in other contexts. It is possible, as in the case of community wide practices that are abusive to women as a social group, for such conduct to amount to psychological violence.¹³

2.3 Issues in the recognition of economic and psychological forms of violence

It is important to clarify that the various forms of violence are not completely distinct from each other. In most cases, a victim is likely to experience all or several forms of violence in the same instance. In practice, psychological and economic violence often occur as part of a continuum that culminates in physical or sexual violence. Nevertheless, recognising all the forms of violence widens the legal avenues for victims to enforce legal protection.

Despite the existence of violence against women throughout the history of humanity, universal condemnation of the practice is a

12 WHO 'Violence against women; a priority health issue' (1997); G Krantz & Garcia-Moreno 'Violence against women' (2005) *Journal of Epidemiology and Community Health* 819.

13 Declaration on Elimination of all Forms of Discrimination Against Women, (1993), art 2(b).

relatively recent development. For instance, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) does not have a specific provision on violence against women. Psychological and economic forms of violence are even more recently recognized as distinct forms of violence. In fact, the very reason why the Maputo Protocol was considered progressive is the wide ambit of forms of violence recognised.

The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) sought to remedy the omission of protection from violence in CEDAW by adopting General Recommendation 19, which reads violence against women into the non-discrimination article.¹⁴ The Recommendation defines violence as acts that are directed at a woman because she is a woman, and which may inflict 'physical, mental, or sexual harm or the threat of such acts, coercion, and other deprivations of liberty'.¹⁵ The recognition of the 'mental' dimension of violence became a precursor for further expansion of the recognised forms of violence, which the CEDAW Committee undertook 25 years later in General Recommendation 35.¹⁶

In the intervening period, several other documents progressively expanded the understanding of violence against women. These include the Declaration on the Elimination of Violence Against Women (DEVAW), which recognised that women face economic inequalities, but then focuses only on physical, sexual and psychological violence;¹⁷ the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against which recognised psychological violence as a form of violence against women;¹⁸ and the 2011 Treaty on Preventing and Combatting Violence Against Women and Domestic Violence (Istanbul Treaty), which not only recognises psychological violence as a distinct form of violence, but also devotes an article to this form of violence. The article provides that '[p]arties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalised'.¹⁹ This is by far the most emphatic provision on protection from psychological violence under international law.

Economic violence is recognised in only in a few of these instruments, particularly in the definition of violence.²⁰ Indeed, the approach taken to this form of violence in these instruments is that prioritising economic empowerment of women, especially through

14 CEDAW Committee, General Recommendation 19: Violence Against Women (1992)

15 As above, para 6.

16 CEDAW Committee, General Recommendation 35 on gender-based violence against women, updating General Recommendation 19 (2017).

17 Declaration on Elimination of all Forms of Discrimination Against Women, (1993), art 2.

18 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994) art 2.

19 Istanbul Treaty, art 31.

20 Istanbul Treaty, art 3; CEDAW General Recommendation 35, para 14.

measures to ensure equal access to opportunities. It is, in fact, quite telling that unlike the approach adopted in relation to psychological violence in the Istanbul Convention, economic violence is not elaborated upon in the substantive articles of the Convention. The failure of interpretative instruments such as the CEDAW General Recommendations to elaborate on the form of violence is an even more glaring omission. Economic violence is rather seen as a cause or consequence of violence against women with emphasis on economic empowerment for the eradication of violence against women. For instance, the African Development Forum has called on states to address 'underlying economic and social causes of vulnerability as women's weak legal rights to land, housing and property'.²¹ It recognises that '[w]eak economic power, subordinate social status and lack of voice define women's experience across the continent'.²² Economic conditions are thus considered as a contributor and consequence of violence against women without them being considered as a manifestation of violence against women.

As such, the prospect of accessing redress for victims of economic violence purely on the basis of this form of violation is considerably reduced. This approach is comparable to the recommendation of measures to address the psychological impact of violence in some of the instruments. For instance, the DEVAW calls for provision of psychological rehabilitation for victims of psychological violence.²³

The forms of violence that women experience may be influenced by the life stage at which the women find themselves. For instance, psychological violence in childhood may include restricting a child's movements, denigration, ridicule, threats and intimidation, discrimination, rejection and other non-physical forms of hostile treatment.²⁴ Girls in particular, as a result of entrenched patriarchal norms and roles, are more likely to experience such treatment within the family and the community. Exposure to such treatment, and its normalisation within the society, socialises girls and young women to consider the psychological burden of such treatment as the ordinary cause of being a woman in the society. This accounts for later tolerance to violence against women of a psychological nature in adulthood. Similarly, women in the reproductive age (19-49) are more likely to report intimate partner and obstetric forms of violence, which may include psychological violence. Women in this age bracket are also prone to economic violence, reinforced by patriarchal norms on marriage. Older women are more susceptible to economic violence, particularly in instances where they are widowed.

21 The African Development Forum 'Action on gender equality, women's empowerment and ending violence women in Africa: From commitment to delivery – Consensus Statement and Plan of Action' (19-21 November 2008) 4-5.

22 The African Development Forum (n 21) 2.

23 DEVAW, art 4(g).

24 WHO Factsheets 'Violence against children' <https://www.who.int/news-room/fact-sheets/detail/violence-against-children> (accessed 20 December 2020).

3 THE NORMATIVE APPROACH TO ECONOMIC AND PSYCHOLOGICAL VIOLENCE IN AFRICA

The section below reviews the manner in which selected norms and standards within the African region have approached economic and psychological forms of violence. The Maputo Protocol is an appropriate departure point in this regard because of its position as the specialist instrument on women's rights in the region, and hence its influence on the other instruments, and related jurisprudence.

3.1 The Maputo Protocol

The full definition of violence under the Maputo Protocol is:

... all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.²⁵

The Protocol further addresses protection from violence in the context of the right to dignity,²⁶ the right to life, integrity and security of the person,²⁷ during armed conflict,²⁸ and in the educational context.²⁹ In these provisions, the Protocol refers to 'all forms of violence, particularly sexual and verbal violence',³⁰ 'all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public',³¹ 'all forms of violence, rape and other forms of sexual exploitation',³² and 'all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices.'³³

From a reading of these provisions, it is evident that despite the reference to 'all forms of violence', there is an emphasis on protection from sexual violence in a manner that can be interpreted to mean that the 'all' in the general definition does not extend to sexual violence. In comparison, psychological violence only features in the definition article, and nowhere else in reference to violence. The Protocol also does not explicitly mention economic violence beyond the definition provision. However, some of its articles address issues that can be considered as anticipating the threat of economic violence, both at an

25 Maputo Protocol art 1(j).

26 Maputo Protocol art 3(4).

27 Maputo Protocol art 4(2).

28 Maputo Protocol art 11.

29 Maputo Protocol art 12.

30 Maputo Protocol art 3(4).

31 Maputo Protocol art 4(2)(a).

32 Maputo Protocol art 11(3).

33 Maputo Protocol art 12(1)(c).

individual and systemic level. For instance, in the context of marriage, the Protocol protects the right of women to 'acquire [their] own property and to administer and manage it freely'.³⁴ In cases of separation, divorce and annulment of marriages, the Protocol imposes an obligation on states parties to ensure that 'women and men ... have the right to an equitable sharing of the joint property deriving from the marriage'.³⁵ The emphasis on women's right to acquire their own property and to have an equitable share in instances of separation, divorce and annulment is a safeguard against divesting women of property on the basis of culturally or socially sanctioned practices in the context of marriage that are often reinforced by personal law regimes.

The Protocol also protects women's right to 'equal opportunities in work and career advancement and other economic opportunities' including equality of access to employment; equal remuneration; transparency in recruitment; supporting women's economic activities in the informal sector; recognising the economic value of the work of women in the home; providing paid maternity leave; and equal application of taxation laws.³⁶

The foregoing protections are reinforced with other tools of empowerment including the right to access equal education and training, the right to access means of food production,³⁷ and the right to benefit from new technologies in the context of healthy and sustainable environment so that they can use them for economic activities.³⁸ Women also have the right to sustainable development which includes access to and control over productive resources such as land, guarantees of the right to property, access to credit and training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among them.³⁹

From the foregoing, it is clear that protection from economic and psychological violence can be inferred from the different articles of the Maputo Protocol. Such protection would be even more efficient if a specific reference to these forms of violence, including examples of the elements thereof, would have been included in the substantive articles of the Protocol.

3.2 Agenda 2063 and the AU Gender Strategy

The African Union Agenda 2063 is Africa's blueprint to inclusive and sustainable development.⁴⁰ The Agenda gives expression to the aspirations of the African Union, including those related to the

34 Maputo Protocol art 6(j).

35 Maputo Protocol art 7(d).

36 Maputo Protocol art 13.

37 Maputo Protocol art 15.

38 Maputo Protocol art 18.

39 Maputo Protocol art 19.

40 <https://au.int/agenda2063/overview> (accessed 21 January 2022).

realization of human rights norms,⁴¹ as well as empowerment of women, youth and children, through amongst others goals, the attainment of full gender equality in all spheres of life by eliminating all forms of discrimination and violence against women and girls.⁴²

The Agenda does not elaborate on the forms of violence that need to be addressed. However, the commitment to giving effect to human rights norms and the rule of law would imply reference to the standards articulated in the AU's own human rights instruments, particularly the Maputo Protocol. The context of the reference to protection from violence within the Agenda is significant to the interpretation of the extent of protection, and by extension the forms of violence that may be prioritized therein. Aspiration 6 is geared towards inclusive economic development, with the elimination of violence against women as a means to inclusive development, as opposed to an end in itself.

In 2018, the AU adopted its Strategy for Gender Equality and Women's Empowerment for the period 2018-2028 (AU Gender Strategy) as a plan for the realization of Aspiration 6 of Agenda 2063.⁴³ The Strategy also re-centres the role of the Maputo Protocol in the realisation of Agenda 2063, by recognising its ratification and domestication as one of the pillars for attainment of full gender equality as anticipated under Agenda 2063.⁴⁴ While the Agenda refers to violence against women, the Strategy defines gender based violence as

an umbrella term for any harmful act that is perpetrated against a person's will and that is based on socially ascribed (gender) differences between females and males. The nature and extent of specific types of GBV vary across cultures, countries and regions. Examples include sexual violence, including sexual exploitation/abuse and forced prostitution; domestic violence; trafficking; forced/early marriage; harmful traditional practices such as female genital mutilation; honour killings; and widow inheritance. There are different kinds of violence, including (but not limited to) physical, verbal, sexual, psychological, and socioeconomic violence.⁴⁵

Evidently, the Strategy recognizes psychological and socio-economic forms of violence in much the same way as the Maputo Protocol. However, even a simple literal analysis of the definition, particularly the examples given, exposes the skewing of attention in favour of physical and sexual forms of violence. In fact, the terms 'psychological', 'socio-economic violence', or even 'verbal violence' each appears only once in the whole document – in the definition clause. In comparison, 'sexual violence' is specifically mentioned in a number of instances, especially in relation to situations of conflict, while the protection of women's physical integrity is similarly specifically highlighted. In a similar approach to that of the Maputo Protocol, the Strategy seems to reference 'violence and rape' as if to suggest that rape is distinct from 'violence' as conceptualized therein.⁴⁶

41 Agenda 2063 Aspiration 3.

42 As above, Aspiration 6.

43 Website of the African Union (https://au.int/sites/default/files/documents/36195-doc-52569_au_strategy_eng_high.pdf - accessed on 27 July 2021).

44 AU Gender Strategy, 17.

45 AU Gender Strategy, Annex B, 64.

46 AU Gender Strategy 35.

It is apparent from the analysis of the Maputo Protocol and Agenda 2063 that, while psychological and economic forms of violence are acknowledged, there is little in the form of specific measures to respond to their incidence.

3.3 Economic and psychological violence in the jurisprudence of regional human rights bodies

3.3.1 African Commission

Article 30 of the African Charter establishes the African Commission 'to promote human and peoples' rights and ensure their protection in Africa'. Article 32 of the Maputo Protocol provides that until the African Court is established, the African Commission 'shall be seized with matters of interpretation arising from the application and implementation of this Protocol'. While the Court has since been established, the competence of the Commission to interpret the Protocol has been reaffirmed in its jurisprudence, including through issuance of General Comments on the articles of the Protocol. Specifically, the Commission has stated that 'as a complementary legal instrument' to the African Charter, the Maputo Protocol 'by necessary implications falls within the Commission's interpretative scope'.⁴⁷

The jurisprudence of the Commission on the subject under discussion can be derived from the various aspects of its mandate: findings on communications, Concluding Observations on state reports and General Comments.

The African Commission has, through its communications procedure, developed a vast jurisprudence on women's rights,⁴⁸ a few of which have a bearing on violence against women. For instance, in *Egyptian Human Rights Initiative for Personal Rights and Interights v Egypt*,⁴⁹ a number of female journalists and protesters were assaulted during political demonstrations in Egypt. The violations alleged by the complainants were of a physical, psychological and sexual nature. The complainants further alleged that these were instances of violence against women because 'there was differential treatment between men and women during the riot and that the main reason why the victims were assaulted by the authorities is basically because they [were] women and journalists'.⁵⁰ The Commission concluded that the violence experienced by the women was indeed gender based and discriminatory, and hence in violation of the Charter.

47 African Commission, *General Comment 1 on Article 14(1)(d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, para 1.

48 E Durojaye & O Oluduro 'The African Commission on Human and Peoples' Rights and the woman question' (2016) 24 *Feminist Legal Studies* 325.

49 Communication 323/06 *Egyptian Human Rights Initiative for Personal Rights and Interights v Egypt* African Commission (2011).

50 Para 124.

In particular, the Commission noted the verbal abuse consisting of insults and threats of a sexual nature targeted at the women with the intention of humiliating and demeaning them.⁵¹ The Commission made a significant contribution in defining the elements of gender based psychological violence, such as verbal abuse and insults designed to demean a woman because of her gender, based on references to the definition of violence against women under article 1 of the Maputo Protocol. The Maputo Protocol was relied upon despite the fact that Egypt was not a state party to the Maputo Protocol, and the communication had therefore been filed on the basis of the African Charter.

Other cases such as *Equality Now and Ethiopian Women Lawyers Association v Ethiopia*⁵² and *Curtis Doebbler v Sudan* presented issues of violence against women to the Commission. In these cases, however, psychological aspects of violence only arose as a consequence of violation of other rights, and not in the first place as the subject matter under consideration. The engagement of the Commission on interpreting the forms of violence presented, or redressing it, is limited. Economic form of violence did not arise in any of the communications considered thus far.

In accordance with article 62 of the African Charter and 26(1) of the Maputo Protocol, states have to submit a state report to demonstrate legislative and other measures taken to give effect to the provisions of the Maputo Protocol. After considering the state reports, the African Commission formulates Concluding Observations which are 'recommendations to guide improvements' of a state's performance.⁵³ The African Commission adopted Guidelines on State Reporting under article 26(1) of the Maputo Protocol to guide states in the preparation of their reports.⁵⁴ With respect to reporting on violence, the Guidelines outline specific violations, that is, to provide information on

bodily integrity and dignity, including sexual violence, trafficking of women and medical and scientific experimentation (article 3 & 4); Practices harmful to women, including female genital mutilation (article 5); Female stereotypes (article 4(2)(c)); Sexual harassment; domestic violence (article 4(2)(a)); Support to victims of violence, including health services and psychological counselling (article 5(c)).⁵⁵

While this approach does not preclude reporting on psychological and economic forms of violence, it is consistent with the approach of the Maputo Protocol itself and other regional policy documents discussed earlier, in emphasising physical (bodily integrity) and sexual forms of violence in the articulation of elements of violence. The absence of a specific reference or requirement for information on psychological and

51 Para 153.

52 Communication 341/2007 *Equality Now and Ethiopian Women Lawyers Association v Ethiopia* African Commission (2016).

53 F Viljoen *International human rights law in Africa* 2nd edition (2012) 365.

54 African Commission, Guidelines for state reporting under the Protocol to the African Charter on Human and Peoples' Rights on the rights of women in Africa https://www.achpr.org/public/Document/file/English/Guidelines%20on%20State%20Reporting%20under%20the%20Maputo%20Protocol_2.pdf (accessed 22 July 2021).

55 Sec 2.6 of the Guidelines on State Reporting.

economic forms of violence accounts for the minimal engagement on the subject between the Commission and state parties to the Protocol. This is evident from the Concluding Observations of the African Commission related to the Maputo Protocol part of the report.⁵⁶

In most of the Concluding Observations, the African Commission notes the progress made on laws and policies that advance women's socio-economic conditions without making direct reference to economic violence against women.⁵⁷ In some cases, the Commission notes the lack of access to economic opportunities of women, as in the case of Liberia,⁵⁸ an approach that focuses on economic empowerment without interrogating the incidence of or addressing economic violence.

With respect to psychological violence, in response to the periodic report of Mauritania, the African Commission commended the state party's collection of data on violence that included psychological violence.⁵⁹ Despite this, the African Commission did not engage with the different aspects of psychological violence in the state report. The Commission has also recommended Malawi to take steps to protect children from all forms of mental violence.⁶⁰

Article 45(1)(b) of the African Charter mandates the African Commission to 'formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations'. As of July 2021, the African Commission has adopted seven general comments,⁶¹ four of which are related to the Maputo

56 <https://www.achpr.org/statereportsandconcludingobservations> (accessed 22 July 2021).

57 For example: African Commission Concluding Observations and Recommendations on the combined periodic report of Burkina Faso, 2011-2013 (2017); *Observations finales sur le rapport periodique initial et cumule de la Republique de Cote d'Ivoire* (2012); Concluding Observations and Recommendations on the 8th to 11th Periodic Report of the Republic of Kenya (2016); Concluding Observations and Recommendations on the Initial Periodic Report of the Republic of Liberia on the Implementation of the African Charter on Human and Peoples' Rights (2015); Concluding Observations and Recommendations on the Initial and Combined Periodic Report of the Republic of Malawi on the Implementation of the African Charter on Human and Peoples' Rights (1995-2013) (2015); Concluding Observations and Recommendations on the Periodic and Combined Report of the Islamic Republic of Mauritania on the Implementation of the African Charter on Human and Peoples' Rights (2006-2014) and the Initial Report on the Maputo Protocol (2018); Concluding Observations and Recommendations on Sixth Periodic Reports of the Republic of Namibia on the Implementation of the African Charter on Human and Peoples' Rights (2011-2013) (2016); 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 Africa of the Republic of South Africa (2016); Concluding Observations and Recommendations on the 5th Periodic State Report of the Republic of Uganda (2010-2012) (2015);

58 Concluding Observations for Liberia (n 57) para 19.

59 Concluding Observations for Mauritania (n 57) para 64.

60 Concluding Observations for Malawi (n 57) 115.

61 Website of the African Commission, <https://www.achpr.org/resources> (accessed 22 July 2021). The Joint General Comment on Child Marriage adopted together with the African Children's Committee in 2017 is missing from the list.

Protocol. Of these, the Joint General Comment on Ending Child Marriage adopted together with the African Children's Committee in 2017 (Joint General Comment)⁶² and General Comment 6 on matrimonial property⁶³ address aspects of violence against women.

The Joint General Comment characterises the consequences of child marriage as economic⁶⁴ and psychological,⁶⁵ but it does not elaborate on their particular presentation. The Joint General Comment also requires states to, among others, protect the child against all forms of violence including psychological protection,⁶⁶ but also does not elaborate what 'psychological' protection refers to.

General Comment 6 adopted on article 7(d) of the Maputo Protocol represents a missed opportunity of the African Commission to lay emphasis on the protection of women from economic violence. General Comment 6, which focuses on the right to property during separation, divorce or annulment of marriage, relates to a context in which economic violence is rampant. Although the General Comment acknowledges the gendered nature of disadvantage that women experience in this context, it does not characterise actual or potential violations in this context, such as widow disinheritance or unequal distribution of matrimonial wealth at the point of separation, as forms of violence.

3.3.2 The African Court

Article 1 of the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol) establishes an African Court. The jurisdiction of the African Court extends to 'interpretation and application' of the African Charter, the African Court Protocol and any other 'relevant human rights instrument ratified by the states concerned'.⁶⁷ Thus, read in line with article 27 of the Maputo Protocol, the African Court can receive cases under the Maputo Protocol, including on economic and psychological violence.

*Association Pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and Institute for Human Rights and Development in Africa (IHRDA) v Mali (APDF and others v Mali)*⁶⁸ is the only case in which the Court has so far considered alleged violations of the

62 African Commission & African Committee, *Joint General Comment of the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on Ending Child Marriage* (2017).

63 African Commission, *General Comment 6 on the right to Property during Separation, divorce, or annulment of marriage* (2020).

64 Paras 8, 10 & 12 of the Joint General Comment.

65 Paras 8 & 12 of the Joint General Comment.

66 Para 58 of the Joint General Comment.

67 Art 3 of the African Court Protocol.

68 *Association Pour le Progrès et la Défense Des Droits Des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v Mali* African Court (2018).

Maputo Protocol. The case concerns the Persons and Family Code of Mali, which, as the applicants argued, violated the protection of the minimum age of marriage for girls by allowing marriage from the age of 15, the right to consent to marriage, the right to equal inheritance, and the elimination of traditional practices and conduct harmful to the rights of women and children.⁶⁹ The case did not expressly frame the issues as either constituting or resulting in violence. However, the nature of concerns raised do, in fact, relate to protection from violence in all its forms. For instance, child marriage is accepted as a form of violence against children,⁷⁰ particularly of a sexual and psychological nature, while vitiating the women and girl's consent to marriage is tantamount to psychological violence (coercion). The unequal inheritance laws create conditions conducive to economic violence against women through disinheritance.

3.3.3 The African Committee of Experts on the Rights and Welfare of the Child

As an instrument concerned with the rights and welfare of children, the relevance of the African Charter on the Rights and Welfare of the Child (African Children's Charter) to the present discussion lies in the protection of girls from violence. The child rights sector has had significant engagement on the subject of violence against children, given the susceptibility of children to violence as a result of their young age and dependency. Indeed, a significant number of the provisions of the African Children's Charter seek to protect children from various forms of violence, some of which are of a psychological and economic nature. Examples are the protection of a child's 'honor or reputation',⁷¹ the protection from dehumanising or humiliating parental or school punishment,⁷² and protection from harmful social and cultural practices, particularly those discriminatory to the child on the basis of sex.⁷³ These protections exist despite the fact that the Charter does not expressly use the term 'violence'. Furthermore, save for article 21, the protection from violence in these provisions does not necessarily take into account the gendered nature of the violence.

The absence of a specific provision notwithstanding, the jurisprudence of the African Committee of Experts on the Rights and Welfare of the Child (Committee)⁷⁴ has advanced the issue of protection from violence, seemingly adopting the wide definition and recognising the gendered nature thereof. For instance, Aspiration 7 of the Africa's Agenda for Children 2040 (Agenda 2040)⁷⁵ envisions that 'every child is protected from violence, exploitation, neglect and

69 As above, para 9.

70 CEDAW General Recommendation 35, para 31(a).

71 African Children's Charter, art 10.

72 African Children's Charter, art 11(5).

73 African Children's Charter, art 21.

74 Established under art 32 of the African Children's Charter.

abuse'.⁷⁶ The Agenda enumerates practices which constitute violence, including

corporal punishment in various settings, both public and private; forced and harmful labour practices and trafficking for forced labour; harmful practices such as female genital mutilation, child marriage, virginity testing, breast ironing and child witch killings; gender-based violence; sexual violence; sexual exploitation; pornography; and sexual trafficking.

These are not classified in the same language as the forms of violence under the Maputo Protocol. However, the specific practices listed correspond to the physical, and sexual typology. Evidently, the Agenda does not specify psychological or economic violence as distinct forms of violence, but rather as consequences of violence.

It is also significant that the Committee has adopted the definition of violence articulated by the CRC Committee in General Comment 13 of the Convention on the Rights of the Child. In its General Comment on article 27 of the African Children's Charter, the Committee references the CRC's General Comment,⁷⁷ and thereby imports the interpretation of the CRC Committee into the ambit of protection under the Charter. This is significant because the CRC General Comment defines violence as 'all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse' and recognizes that violence is gendered, with girls being more prone to particular forms of violence, especially those of a sexual nature.⁷⁸ An assumption can be made that 'mental' violence as used here equates to psychological violence, there is certainly no reference to economic violence under the definition.

3.4 Economic and psychological violence in the sub-regions

3.4.1 The SADC Gender Protocol

The SADC Protocol on Gender and Development⁷⁹ defines gender based violence as

75 African Union, 'Africa's Agenda for Children 2040: Fostering an Africa fit for Children' (2015) https://www.acerwc.africa/wp-content/uploads/2018/06/Agenda_2040_for_Children_Rights_in_Africa_15x24.pdf (accessed 20 January 2022).

76 As above, 37.

77 African Children's Committee, *General Comment No 7 on article 27 of the ACRWC: Sexual exploitation*, paras 6 & 18.

78 UN CRC General Comment 13 on the right of the child to be free from all forms of violence (2011) para 4 & 72 respectively. The African Children's Committee also uses the language of 'all forms of violence' in its General Comment 5 on 'State party obligations under the African Charter on the Rights and Welfare of the Child (article 1) and Systems Strengthening for Child Protection', <https://www.acerwc.africa/wp-content/uploads/2019/09/ACERWC%20General%20Comment%20on%20General%20Measures%20of%20Implementation%20African%20Children's%20Charter.pdf> (accessed 20 January 2022).

79 SADC Protocol on Gender and Development.

all acts perpetrated against women, men, girls and boys on the basis of their sex which cause or could cause them physical, sexual, psychological, emotional or economic harm, including the threat to undertake such acts, or to undertake arbitrary restrictions on or deprivation of fundamental freedoms in private or public in peace time and during situations of armed or other forms of conflict.⁸⁰

With the exception of the expanded application to men and boys, this definition is similar to the Maputo Protocol.⁸¹ In the substantive provisions, the Protocol calls for domestic legislation to eliminate gender based violence,⁸² and protection of girls from 'all forms of violence, including sexual violence'.⁸³ The Protocol further calls for measures to safeguard the equal rights of women in the context of marriage, widowhood, and access to property and resources.⁸⁴ These latter provisions are not couched expressly as related to violence, but certainly foreclose on avenues in which psychological and economic violence tends to be rife.

3.4.2 The ECOWAS Community Court of Justice

Within the Economic Community of West African States (ECOWAS), violence against women has mostly been addressed through cases in the ECOWAS Community Court of Justice.⁸⁵ The Court has the jurisdiction to determine cases alleging violation of human rights in member state.⁸⁶ The *Dorothy Njemanze & 3 Others v Nigeria* case⁸⁷ is one such matter. The plaintiffs in this case alleged the violation of article 4(2) on protection from all forms of violence against women. The plaintiffs had been arrested and accused of being prostitutes since they were found in the streets of Abuja at night. They had endured extensive verbal and physical violence while in the custody of state agents, including the use of derogatory words to describe them in a manner intended to demean them. This fact notwithstanding, neither the plaintiffs, nor the Court invoked the fact that the conduct of the Nigerian state agents was tantamount to psychological violence as defined under the Maputo Protocol, despite listing article 4 as one of the violated articles. Instead, the Court found the verbal abuse was a violation of article 5 of the African Charter, which deals with the protection of dignity.

3.4.3 The East Africa Community Gender Bill

The East Africa Community Gender Bill adopts the definition of violence against women similar to that set out in the Maputo Protocol.⁸⁸ As such, it is arguable that the Bill recognizes psychological

80 Art 2, SADC Protocol on Gender and Development.

81 As above.

82 Art 6(d), SADC Protocol on Gender and Development.

83 Art 11(1)(d).

84 Art 8, 10 & 18.

85 Art 15 of the ECOWAS Treaty.

86 Art 9 of the ECOWAS Court Protocol.

87 *Dorothy Njemanze & 3 Others v Nigeria*, ECW/CCJ/APP/17/14 (2014).

and economic forms of violence. However, the substantive article addressing violence against women adopts the terminology of 'sexual and gender based' violence,⁸⁹ and the specific examples of violence listed are within the scope of physical and sexual violence. They include female genital mutilation, early and forced marriages, child sacrifice, and widow inheritance.⁹⁰ The subsequent EAC Gender Policy adopts a similar approach, with a few instances of recognition of 'all forms' of violence.⁹¹

4 CRITIQUE OF THE APPROACH TO ADDRESSING ECONOMIC AND PSYCHOLOGICAL VIOLENCE AT THE AFRICAN LEVEL

The review of instruments and corresponding jurisprudence in the foregoing section raises a number of issues that impact on the protection of women from economic and psychological forms of violence. The legacy of the understanding of violence in terms of physical violence is apparent in the analysis. As the CRC Committee has noted, 'in common parlance, the term violence is often understood to mean only physical harm and/or intentional harm.'⁹² With very few exceptions, there is a pattern of recognition of 'all' forms of violence in the definition clause, in much the same way as in the Maputo Protocol, and a subsequent concentration on physical and sexual violence to the exclusion of economic and psychological forms of violence in the substantive provisions of the respective instrument. As a result, measures taken or prescribed to states parties to address violence against women tend to follow the same pattern. As a result, while an analysis of national laws is beyond the scope of this article, it can be reasonably concluded that even at the national level, legislative measures tend to adopt measures to redress the physical and sexual violence, to the exclusion of economic and psychological violence.

There is also a tendency in the reviewed instruments and jurisprudence to highlight the psychological and economic impact of violence against women, without concomitantly recognising them as actual forms of violence, in and of themselves. As a result, when psychological and economic violence occurs, the response may be targeted at redressing its consequences while failing to address the actual source of the violation. For instance, women who experience economic violence are likely to experience psychological effects, or be more susceptible to physical and sexual violence as a consequence of

88 East Africa Community Gender Bill (2016), art 2.

89 As above, art 9.

90 As above, art 6(3)(a).

91 EAC Gender Policy 2018, <http://fawe.org/girlsadvocacy/wp-content/uploads/2018/12/EAC-Gender-Policy.pdf> (accessed 22 January 2022).

92 UNCRC Committee General Comment 13: the right of the child to be free from all forms of violence, para 4.

the economic violence. In such cases, if psychological and economic violence are not proscribed in national law, it becomes difficult to access remedies. This approach also accounts for the call for measures to provide psychosocial support to survivors of violence, which, while important, does not suffice to redress the impact of psychological violence.

The approach to economic violence is particularly problematic in most of the instruments considered. These instruments focus on facilitating economic empowerment of women, without explicitly highlighting conduct that would amount to economic violence. By adopting this approach, the instruments leave only the option of redressing economic violence as a structural and systemic violation, and much more difficult to enforce at an individual level.

Specification of all forms of violence is important because, as is evident from the analysis of norms and jurisprudence in the preceding section, not only does it facilitate access to remedy, it also provides a basis for engagement on the subject matter by the respective interpretative and enforcement body. This is important for standard setting, because it becomes makes it possible to progressively elaborate the standards necessary to ensure optimum protection of women in respect of each form of violence. Also, whereas some of conduct constituting psychological or economic violence may be punishable under other laws at the national level, the gendered nature of the conduct ought to be a factor in the determination of appropriate responses, with the wider goal of furthering the equality of men and women in society. In this way, failure to recognise these as distinct forms of violence takes away from advancing the cause of equality.

Failure to specify economic and psychological violence as distinct forms is also at odds with the life-cycle approach to understanding violence. If indeed certain forms of violence are more prevalent at certain life stages of women, failure to provide a pathway for their enforcement excludes specific groups of women in that age group from the remedies most relevant to their experience.

In 2020, the AU began exploring the prospect of a new treaty to address violence against women and girls. The proposed treaty, dubbed the 'African Treaty on Violence Against Women and Girls' (Draft Treaty),⁹³ responds to the concern that despite the provisions of the Maputo Protocol and other instruments, violence against women continues to plague the continent.⁹⁴ The Draft Treaty seeks to substantiate measures necessary for meaningful implementation of protection from violence, and to elaborate accountability measures to enhance the prospect of accessing redress for affected women. While it would be premature to evaluate the draft since it is in the very early

93 N Farisè & TR Jeewa 'Yet another treaty aims to protect African Women. But how will it be enforced?' *Mail and Guardian* (9 December 2020). The draft treaty is neither final nor public. A copy of the draft treaty is on file with the authors.

94 See generally R Manjoo & R Nekura 'Does Africa need a regional treaty on violence against women? A comparative analysis of normative standards in three regional human rights systems' (2020) *Acta Juridica* 197-226.

stages of development and is likely to evolve significantly through the course of negotiations, it is nevertheless important to note that the approach taken so far mirrors the approach of most of the instruments evaluated in this article. The Draft Treaty does not yet have specific provisions prohibiting economic or psychological violence.

5 CONCLUSION

This article set out to assess the extent to which economic and psychological forms of violence are addressed in the norms and standards of the AU. From the systematic review of the applicable instruments, as well as the jurisprudence of key human rights bodies, it is apparent that the recognition of economic and psychological forms of violence rarely goes beyond the definition clause of the respective instruments. This is characterized by over-concentration of references to and responses to physical and sexual violence, and none or little on economic and psychological forms of violence. This approach undercuts the protection available to women from these forms of violence, by limiting the prospects of enforcement by individual women affected, or limiting the nature of remedies available to women who seek redress.

This article makes the case that consistent recognition and specific articulation of economic and psychological forms of violence as distinct types of violence, as in the approach of the Istanbul Treaty, is necessary to fulfil the promise of protection from 'all forms of violence'. Such express recognition in multilateral instruments is important to influence domestic law to follow suit. To the extent that domestication of these instruments is especially important in the context of ongoing discussions on the proposed African Treaty on Violence against Women and Girls.