

To cite: A Mahmoudi “‘Nothing to report on’: Revitalising resocialisation as an obligation in the African human rights system in the context of gender discrimination’ (2025) 25 *African Human Rights Law Journal* 85-113

<http://dx.doi.org/10.17159/1996-2096/2025/v25n1a4>

‘Nothing to report on’: Revitalising resocialisation as an obligation in the African human rights system in the context of gender discrimination

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Summary: *This article explores the relatively underutilised state resocialisation obligation contained in global and African regional human rights law. This obligation is critical because it requires states to address and modify the underlying socio-cultural norms and practices that form the root causes of gender inequality. Using the Convention on the Elimination of all forms of Discrimination against Women as its point of departure, this article compares article 5(a) of CEDAW with the resocialisation provisions contained in the African Charter on Human and Peoples’ Rights and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa. The purpose is to demonstrate the utility of resocialisation as an obligation, as well as the (in)adequate understanding of and engagement by states and the African Commission on Human and Peoples’ Rights with this obligation.*

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This analysis demonstrates the crucial role that resocialisation as an obligation plays in the realisation of the substantive rights of women. It draws on the African Charter and the African Women's Protocol to highlight several resocialisation provisions that give rise to state obligations, embedding resocialisation as a precursor to substantive gender equality within the African regional human rights law framework. A feminist lens is employed to consider the key resocialisation provisions contained in CEDAW, the African Charter and the African Women's Protocol, with the overall aim of delineating the obligations on states to modify the underlying socio-cultural determinants to gender inequality, violence and discrimination, as provided for by the various resocialisation provisions discussed. What is expected of states in terms of this obligation is then contrasted with existing practice to demonstrate the necessity of enhancing capacity to engage with resocialisation as an obligation. The underlying assumption of this article is that unless states implement resocialisation to address the root causes of gender inequality, the transformative potential of global and African regional human rights will not be realised.

Key words: *substantive gender equality; resocialisation; African Charter; African Women's Protocol; state obligations*

1 Introduction

The law plays a role in maintaining systemic gender inequality.¹ As Charlesworth and others note, feminist theory 'derives its theoretical force from immediate experience of the role of the legal system in creating and perpetuating the unequal position of women'.² To address global gender inequality, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)³ was enacted, followed by its African regional equivalents, the African Charter on Human and Peoples' Rights (African Charter)⁴ and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol).⁵

1 H Charlesworth, C Chinkin & S Wright 'Feminist approaches to international law' (1991) 85 *American Journal of International Law* 613.

2 As above.

3 UN Convention on the Elimination of All Forms of Discrimination against Women adopted 18 December 1979, entered into force 3 September 1981 1249 UNTS 13.

4 African Charter on Human and Peoples' Rights adopted 27 June 1981, entered into force 21 October 1986 1520 UNTS 217.

5 African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa adopted 11 July 2003, entered into force 25 November 2005 CAB/LEG/66.6.

Notwithstanding the important achievement that these instruments embody insofar as the recognition of women is concerned, the reach of its substantive provisions in improving women's lived realities remains limited by the existence of prevalent socio-cultural norms and practices. Such limitations necessarily impact the goal of accelerating gender equality both globally and on the African continent.⁶ Modifying gendered norms to reflect the equal humanity of women, as guaranteed by global and African regional human rights law, is necessary for these instruments to yield the desired results. In this regard, article 5(a) of CEDAW notes:

State Parties shall take all appropriate measures:

to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Gendered social norms are deeply embedded and internalised through socialisation.⁷ Resocialisation seeks to alter current patriarchal social undercurrents inhibiting the realisation of women's rights. As article 5(a) mandates, states must modify the conduct of women and men, ensuring that the focus remains on everyone. One important avenue for enabling resocialisation takes root in global and African regional human rights law, operating as an obligation, right and remedy.⁸ Resocialisation is a legal obligation crucial to realising the rights of women to gender equality.⁹

Resocialisation also operates as a right of women and may be utilised as a remedy to redress the harm caused by gendered discrimination. Before delving into resocialisation as a right and remedy, it is important to understand resocialisation as an obligation as the point of departure. It is for this reason that the sole focus of this article is on resocialisation as an obligation, viewed through

6 'UN chief: Legal equality for women could take 300 years as backlash rises against women's rights' 2024, <https://apnews.com/article/un-international-womens-day-equality-discrimination-rights-48283363821f80ad880f86e4f1ed9d48> (accessed 19 May 2024).

7 United Nations Development Programme 'Breaking down gender biases: Shifting social norms towards gender equality' June 2003 4, <https://hdr.undp.org/system/files/documents/hdp-document/gsni202303pdf.pdf> (accessed 19 May 2024).

8 A Mahmoudi & A Rudman 'A critical analysis of resocialisation as an obligation, right and remedy under the Maputo Protocol in the jurisprudence of the African Court on Human and Peoples' Rights and the ECOWAS Court of Justice' in A Fuentes & A Rudman (eds) *Human rights adjudication in Africa: Challenges and opportunities within the African Union and sub-regional human rights systems* (2024) 141.

9 Mahmoudi & Rudman (n 8) 143.

resocialisation provisions contained in global and African regional human rights law. The purpose of this article, then, is to elaborate and provide greater clarity on the state obligations that arise therefrom.¹⁰ It demonstrates the role of resocialisation as an obligation in realising the substantive rights of women and in achieving substantive equality for women under CEDAW, the African Charter and the African Women's Protocol. Viewed through a feminist legal theoretical framework,¹¹ the article demonstrates that because states are yet to adequately interpret and apply their resocialisation obligations, state compliance and engagement is limited, leaving the underlying determinants to gender inequality intact and hampering efforts towards the realisation of the substantive rights of women. Indeed, as the title indicates, states often have nothing to report on in the context of their resocialisation obligations. As the Committee on the Elimination of Discrimination against Women (CEDAW Committee) notes, the 'position of women will not be improved as long as the underlying causes of discrimination, and of their inequality, are not effectively addressed'.¹² With this in mind, the article analyses resocialisation as an obligation in international law, contrasting it with the obligations contained in the African Charter and the African Women's Protocol. In doing so, it demonstrates the embeddedness of resocialisation as obligation in international human rights law. The article also considers how resocialisation as an obligation is conceived of in practice through CEDAW Committee cases and general recommendations, contrasted on a continental level with the state party reports to the African Commission on Human and Peoples' Rights (African Commission) and the accompanying Concluding Observations.

Part 2 begins with a brief account on the concept of state obligations more generally before delving into an exploration of CEDAW's perspective on resocialisation as an obligation in part 3. Part 4 outlines the resocialisation provisions in the African Charter and African Women's Protocol, exploring obligations and the practical application of resocialisation by states and the African

10 For more on resocialisation as a right and remedy, see A Mahmoudi 'Resocialisation as an obligation, right and remedy under international and African regional human rights law in the fulfilment of African women's rights' LLD thesis, University of Stellenbosch, 2023, <https://scholar.sun.ac.za/items/25aa37ed-c8c5-4d2c-b27a-03545c0c9707>.

11 L Hodson 'A feminist approach to *Alyne da Silva Pimentel Teixeira (deceased) v Brazil*' in D Gonzalez-Salzberg & L Hodson (eds) *Research methods for international human rights law: Beyond the traditional paradigm* (2020) 42.

12 UN Committee on the Elimination of Discrimination against Women 'General Recommendation 25: Article 4, Paragraph 1 of the Convention (Temporary Special Measures)' 12 May 2004 UN Doc HRI/GEN/1/Rev.1 para 10.

Commission.¹³ Part 5 concludes by providing insight into state resocialisation obligations to fully realise women's rights and in facilitating substantive transformative gender equality.

2 State obligations

The act of states signing and ratifying human rights treaties gives rise to the state obligation to give effect to the provisions contained therein. Indeed, '[i]t is on states that most obligations rest and on whom the burden of compliance principally falls'.¹⁴ A breach of the obligations in CEDAW, the African Charter and the African Women's Protocol may give rise to state responsibility.¹⁵ To comply with their obligations, states are required to protect, fulfil and respect the rights of women.¹⁶ Notably in this context, the obligation on states to resocialise requires that states protect, fulfil and respect article 5(a) of CEDAW, as well as the relevant resocialisation provisions in the African Charter and African Women's Protocol, as noted below.

As the CEDAW Committee suggests, the obligation to respect requires that states refrain from promulgating laws and policies that undermine women's rights. This is a negative obligation on states. The obligation to fulfil mandates active state engagement by requiring the implementation of steps and measures aimed at achieving both *de jure* and *de facto* equality.¹⁷ Lastly, the obligation to protect calls on states to protect women from discrimination by private, non-state actors.¹⁸ The due diligence obligation, as discussed under part 3, therefore, surfaces in this regard.

The African Charter imposes similar resocialisation obligations on states, as discussed below under part 4. Furthermore, the African Women's Protocol emphasises the importance of substantive gender equality by placing positive obligations on states to give effect to the rights of women.¹⁹ The Women's Protocol rejects notions of

13 Reference to state practice and COs is made using a limited number of examples. For a more comprehensive demonstration, see Mahmoudi (n 10).

14 J Crawford & S Olleson 'The nature and forms of international responsibility' in MD Evans (ed) *International law* (2010) 442.

15 International Law Commission '2001 Articles on Responsibility of States for Internationally Wrongful Acts' UN Doc A/RES/56/83 (2001) art 12.

16 UN Committee on the Elimination of Discrimination against Women 'General Recommendation No 28 on the Core Obligations of State Parties under Article 2 of the Convention on the Elimination of Discrimination against Women' 16 December 2010 UN Doc CEDAW/C/GC/28 para 9.

17 General Recommendation 28 (n 16) para 9.

18 As above.

19 A Rudman 'Introduction' in A Rudman, CN Musembi & TM Makunya (eds) *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women: A commentary* (2023) 1.

equality as being purely formal in nature and espouses substantive, transformative gender equality.²⁰

The next part provides an analysis of resocialisation as an obligation within the broader international law framework of the obligation on states to protect, respect and fulfil the rights of women. The implementation of resocialisation as an obligation will ultimately realise three forms of equality, namely, formal, substantive and transformative equality, as discussed further below.

3 Resocialisation as an obligation under CEDAW

Article 1 of CEDAW defines discrimination against women, casting the net wide to include any distinction, exclusion or restriction based on sex, interpreted by the CEDAW Committee to include gender-based discrimination.²¹ This is crucial for resocialisation as women experience both gender and sex-based discrimination. Socially constructed differences and characteristics, often steeped in stereotypes and other socio-cultural norms, frequently result in discrimination against women over and above sex-based discrimination. This inclusion, therefore, is crucial to understanding where state obligations to resocialise lie. According to the CEDAW Committee, article 2 is significant as it outlines the general state party obligations to respect, fulfil and protect the rights of women.

The CEDAW Committee confirms resocialisation, rooted in article 5(a) of CEDAW, as integral to the general interpretative framework for all substantive rights in CEDAW, with three central obligations arising from a joint reading of articles 1 to 5.²² The first is to ensure formal or *de jure* equality; the second to ensure that the position of women is improved in real terms (substantive or *de facto* equality); and the third mandates addressing 'prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts but also in law, and legal and societal structures and institutions'.²³ This third obligation, that of transformative equality, 'aims at changing society in such a way that those features of existing culture and of legal, social and economic structures that obstruct the equality and human dignity of women are subjected to fundamental change'.²⁴

20 A Rudman (n 19) 2.

21 General Recommendation 28 (n 16) para 5.

22 General Recommendation 25 (n 12) para 6.

23 General Recommendation 25 (n 12) para 7.

24 R Holtmaat & J Naber *Women's human rights and culture: From deadlock to dialogue* (2011) 26.

What is required is a transformation of ‘opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns’.²⁵ The influence of socio-cultural norms on the denial of women’s rights is further acknowledged by the existence of the resocialisation provisions contained in the African Charter and the African Women’s Protocol, as discussed under part 4.

The following parts describe each of the obligations on states as they pertain to resocialisation; the obligation to respect, protect and fulfil to facilitate the acceleration of substantive transformative gender equality. The aim is to elucidate the resocialisation obligations on states in greater detail not only from a theoretical perspective, but from its application in practice by the CEDAW Committee.

3.1 Obligation to respect

General Recommendation 28 stipulates that the obligation to respect entails refraining from enacting laws, policies, regulations, programmes, and the like, which would directly or indirectly result in the denial of rights.²⁶ It further requires that states refrain ‘from performing, sponsoring or condoning any practice, policy or measure that violates the Convention’.²⁷ In the context of resocialisation, this obligates states to prevent the enactment of laws, policies and practices that directly or indirectly prioritise cultural rights over the rights of women, as well as those entrenching harmful attitudes, biases, assumptions and stereotypes as they relate to women and their role in society.

The CEDAW Committee addressed the obligation to respect in various cases. In *Vertido*²⁸ it discussed the obligation to refrain from entrenching harmful stereotypes in the context of the right to a fair trial, stating that

the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general.²⁹

25 General Recommendation 25 (n 12) para 10.

26 General Recommendation 28 (n 16) para 9.

27 General Recommendation 28 (n 16) para 37(a).

28 Communication 18/2008 *Vertido v Philippines* 22 September 2010 UN Doc CEDAW/C/46/D/18/2008 (2010).

29 *Vertido* (n 28) para 8.4.

Similarly, in *VK*,³⁰ *Carreño*³¹ and *RPB*³² the CEDAW Committee underscored that state responsibility may arise where judicial authorities base their decisions on the ‘inflexible standards’ placed on women’s behaviour in cases of rape or gender-based violence. Such ‘inflexible standards’ include stereotypical views about how a woman ought to behave in situations of rape³³ and the application of these ‘inflexible standards based on preconceived notions of what constitutes domestic violence’.³⁴ In response to this trend, the CEDAW Committee issued a General Recommendation on women’s access to justice³⁵ noting that

[o]ften, judges adopt rigid standards about what they consider to be appropriate behaviour for women and penalise those who do not conform to those stereotypes. Stereotyping also affects the credibility given to women’s voices, arguments and testimony as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws.³⁶

The CEDAW Committee recommends implementing resocialisation, termed capacity building in this instance, to address the rigid standards dictating what is deemed as appropriate behaviour of women alleging rights violations.³⁷ The inflexible standards mentioned in *Vertido* above is expanded on in General Recommendation 33 from those relating only to situations of rape to include the standards placed on women more generally in the context of access to justice.³⁸ As an example, General Recommendation 33 notes the obligation on states to

[r]eview rules of evidence and their implementation ... and adopt measures with due regard to the fair trial rights of victims and defendants in criminal proceedings, to ensure that the evidentiary requirements are not overly restrictive, inflexible or influenced by gender stereotypes.³⁹

30 Communication 20/2008 *VK v Bulgaria* 27 September 2011 UN Doc CEDAW/C/49/D/20/2008 (2011) para 9.11

31 Communication 47/2012 *Angela González Carreño v Spain* 15 August 2014 UN Doc CEDAW/C/58/D/47/2012 (2014) para 9.7.

32 Communication 34/2011 *RPB v The Philippines* 12 March 2014 UN Doc CEDAW/C/57/D/34/2011 (2014) para 8.8.

33 *Vertido* (n 28) para 8.4.

34 *Carreño* (n 31) para 9.7.

35 UN Committee on the Elimination of Discrimination against Women ‘General Recommendation 33 on Women’s Access to Justice’ 3 August 2015 UN Doc CEDAW/C/GC/33.

36 General Recommendation 33 (n 35) para 26. This is confirmed verbatim in Communication 148/2019 *AF v Italy* 18 July 2022 UN Doc CEDAW/C/82/D/148/2019 (2022) para 7.5.

37 General Recommendation 33 (n 35) para 29(c)(ii).

38 General Recommendation 33 (n 35) paras 8 & 26.

39 General Recommendation 33 (n 35) para 51(h).

Furthermore, the CEDAW Committee highlights the problematic nature of the judiciary subscribing to harmful stereotypes and penalising women who do not conform.⁴⁰ As the CEDAW Committee notes, this influences the probative value given to women's voices, which necessarily impacts the likelihood of criminal convictions, 'upholding a culture of impunity'.⁴¹ Indeed, the CEDAW Committee suggests that the obstacles women face in accessing justice 'occur in a structural context of discrimination owing to factors such as gender stereotyping'.⁴² This, again, highlights the importance of transformative gender equality, the primary aim of the resocialisation obligation.

In *ES and SC*⁴³ the CEDAW Committee highlighted the obligation to respect in the context of multiple legal systems, citing discriminatory inheritance laws as a violation of this obligation. Indeed, the trial court noted that 'it was impossible to effect customary change by judicial pronouncement and that doing so would be opening a Pandora's box'.⁴⁴ This reluctance to challenge harmful customary norms constitutes a breach of the resocialisation obligation, triggering state responsibility. The CEDAW Committee held that the legal framework unfairly distinguishing between widows and widowers in inheritance violated the state's resocialisation obligation, among others.⁴⁵ In *SFM*⁴⁶ the CEDAW Committee held that the administrative and judicial authorities applied stereotypical views in direct contravention of the resocialisation obligation when medical professionals opted for unnecessary obstetric interventions, without explanation or an opportunity for the complainant to give an opinion thereon.⁴⁷

The obligation to respect requires states to refrain from enacting laws, policies, practices, and the like, entrenching stereotypes, biases and other harmful socio-cultural norms and practices. The above cases and General Recommendations demonstrate the emphasis the CEDAW Committee places on negative obligations on states to respect the resocialisation obligation.

40 General Recommendation 33 (n 35) para 26.

41 General Recommendation 33 (n 35) para 26.

42 General Recommendation 33 (n 35) para 3.

43 Communication 48/2013 *ES and SC v United Republic of Tanzania* 13 April 2015 UN Doc CEDAW/C/60/D/48/2013 (2015).

44 *ES and SC* (n 43) para 7.7.

45 *ES and SC* (n 43) para 7.6.

46 Communication 138/2018 *SFM v Spain* 28 February 2020 UN Doc CEDAW/C/75/D/138/2018.

47 *SFM* (n 46) para 7.5. See Communication 154/2020 *MDCP v Spain* 9 March 2023 UN Doc CEDAW/C/84/D/154/2020 para 7.13; Communication 149/2019 *NAE v Spain* 13 July 2022 UN Doc CEDAW/C/82/D/149/2019 para 15.5.

3.2 Obligation to fulfil

The CEDAW Committee emphasises that the obligation to fulfil involves the implementation of 'a wide variety of steps to ensure that women and men enjoy equal rights *de jure* and *de facto*, including, where appropriate, the adoption of temporary special measures'.⁴⁸ For resocialisation, this means implementing resocialisation measures to address harmful socio-cultural norms, attitudes and practices, including stereotyping that leads to gendered discrimination.⁴⁹ Adhering to this obligation arguably facilitates transforming systems and processes to give effect to transformative gender equality.

In *NAE* the CEDAW Committee underscored the significance of resocialisation to address the 'patronising attitudes of doctors'⁵⁰ leading to obstetric violence. The CEDAW Committee further reiterated the obligation on states to adopt 'legal and policy measures to protect women during childbirth'.⁵¹ This was echoed by the Committee in *MDCP*.⁵²

The CEDAW Committee stressed the importance of states implementing measures, including resocialisation measures in *Belousova*, a case relating to sexual harassment in the workplace. Here the complainant claimed, among others, that the state failed to implement resocialisation as directed by article 5(a) of CEDAW.⁵³ The CEDAW Committee noted that article 5(a) requires states 'take steps to eliminate direct and indirect discrimination and improve the *de facto* position of women'.⁵⁴ The CEDAW Committee reminded the state of its obligation to 'modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and a consequence of discrimination against women'.⁵⁵ In this regard, the Committee recommended that the state 'provide regular, gender-sensitive training ... so as to ensure that stereotypical prejudices do not affect decision-making'.⁵⁶ In other words, the CEDAW Committee recommended that the state recognise its obligation to fulfil by implementing the above resocialisation measures.

48 General Recommendation 28 (n 16) para 9.

49 S Cusack 'The CEDAW as a legal framework for transnational discourses on gender stereotyping' in A Hellum & HS Aasen (eds) *Women's human rights: CEDAW in international, regional and national law* (2013) 130-131.

50 *NAE* (n 47) para 15.5.

51 As above.

52 *MDCP* (n 47) para 7.9.

53 Communication 45/2012 *Belousova v Kazakhstan* 25 August 2015 UN Doc CEDAW/C/61/D/45/2012 para 3.2.

54 *Belousova* (n 53) para 10.10.

55 As above. The CEDAW Committee confirms this in Communication 91/2015 *OG v Russia* 20 November 2017 UN Doc CEDAW/C/68/D/91/2015 para 7.2.

56 *Belousova* (n 53) para 11(b)(iv).

The obligation to fulfil, one inherently positive in nature, mandates the implementation of resocialisation measures to recognise the rights of women and to accelerate the structural transformation needed to realise substantive gender equality. Intimately connected to this is the obligation to protect women from the actions of private actors and to put in place and implement measures to give effect to this prong of resocialisation obligations, as discussed below.

3.3 Obligation to protect

The CEDAW Committee asserts that the obligation to protect necessitates states to safeguard women from acts of discrimination undertaken by private, non-state actors and to implement resocialisation measures within the broader population to ensure such protection.⁵⁷ General Recommendation 28 expands on this noting the state party obligation to take ‘steps to prevent, prohibit and punish violations of the Convention by third parties, including in the home and in the community, and to provide reparation to the victims of such violations’.⁵⁸

In *RPB* the CEDAW Committee noted the author’s allegation that ‘[t]he credibility of the complainant in a rape case is mostly based on a standard of behaviour that courts believe a rape victim should exhibit. Those who satisfy the stereotypes are considered credible, while the others are met with suspicion and disbelief, leading to the acquittal of the accused.’⁵⁹

Here the CEDAW Committee drew attention to the unreasonable behavioural expectations placed on the author leading the court to dismiss her complaint. The Committee confirmed that the prevalence of gender stereotyping utilised by the trial court amounted to sex and gender-based discrimination and a failure by the state to protect the author.⁶⁰

Carreño illustrates how stereotypes led authorities to question the credibility of the author and her daughter, who was ultimately killed.⁶¹ It highlights the devastating impact of stereotypes, biases, assumptions and other socio-cultural norms on women’s and girls’ lives. Here the author’s repeated requests that the state protect her and her daughter fell on deaf ears with the state permitting unsupervised

57 General Recommendation 28 (n 16) para 9.

58 General Recommendation 28 (n 16) para 37(b).

59 *RPB* (n 32) para 3.3.

60 *RPB* (n 32) para 8.9.

61 *Carreño* (n 31).

visitations with the violent father. Had the authorities not based their decisions on harmful gendered assumptions and biases, they would have understood the severity of the situation before them, taking the necessary steps to protect the author and her daughter from harm. The state failed in its obligation to protect.⁶²

As observed in *MDCP*, the obligation to protect surfaces in all contexts, including those involving obstetric violence, where this obligation to protect against discrimination during pregnancy is highlighted.⁶³ *RKB* demonstrates the state's failure to shield the complainant from wrongful stereotypes, leading to the termination of an employment contract without reasons.⁶⁴ *Belousova* similarly illustrates the state's failure to protect the rights of the complainant against sexual harassment in the workplace.⁶⁵ These cases highlight the states' neglect in implementing resocialisation measures to protect the rights of women from discrimination.

The due diligence obligation takes the state obligation to protect one step further by implicating the state for the actions of private, non-state actors who have violated women's rights, as noted above.⁶⁶ This due diligence obligation⁶⁷ is particularly significant in the context of women's rights violations and, notably, violence against women, because such violations often take place in the private sphere. As noted under part 3, the failure to respect, protect and fulfil women's rights triggers state responsibility when states fail in their due diligence. This is significant for the purposes of redressing harms already experienced by women and to prevent future failures at the hands of private, non-state actors.

In *HH, IH and YH* the CEDAW Committee reiterated that, in accordance with General Recommendation 28, states have a due diligence obligation to prevent acts of gender-based violence.⁶⁸ In this case, the authors claimed that the state relied on the behaviour of Ms Jeiranova – which involved falling in love with someone other than her husband – to accept 'the presumption of suicide and failed to exclude any causes despite evidence of her fear of being killed,

62 *Carreño* (n 31) para 9.7.

63 *MDCP* (n 47) para 8(b)(i).

64 Communication 28/2010 *RKB v Turkey* CEDAW Committee 13 April 2012 UN Doc CEDAW/C/51/D/28/2010.

65 *Belousova* (n 54) para 9.4.

66 *Holtmaat & Naber* (n 24) 16.

67 For due diligence in general, see *Velásquez Rodríguez v Honduras* (Merits) Inter-American Court of Human Rights Series C No 4 29 July 1988; DM Chirwa 'The doctrine of state responsibility as a potential means of holding private actors accountable for human rights' (2004) 5 *Melbourne Journal of International Law* 1.

68 Communication 140/2019 *HH, IH and YH v Georgia* 13 December 2021 UN Doc CEDAW/C/80/D/140/2019 para 7.3.

her vulnerability and the existence of an ‘honor’-based motive for a forced suicide or murder’.⁶⁹

Indeed, the honour killings prevalent in the state ought to have been the target of resocialisation given its embeddedness in harmful socio-cultural norms, practices, beliefs and assumptions about women and their inferiority.⁷⁰ The CEDAW Committee held that the attitudes of the authorities led to Ms Jeiranova’s mistreatment and the accompanying rights violations.⁷¹

Finally, in *Sandra* the CEDAW Committee noted that ‘impunity for [acts of violence] contributes significantly to the entrenchment of a culture of acceptance of the most extreme forms of gender-based violence against women in society, which feeds their continued commission’.⁷²

The Joint General Recommendation issued by the CEDAW Committee and the Committee on the Rights of the Child (CRC Committee) similarly confirms the obligation of states to prevent acts ‘that impair the recognition, enjoyment or exercise of rights by women and children and ensure that private actors do not engage in discrimination against women and girls’.⁷³

The due diligence obligation in the context of resocialisation, thus, is underscored. As Cusack notes, failure in their due diligence obligation to resocialise their populace makes states complicit in the harms women experience.⁷⁴ Indeed, the Committees confirm the nature of the due diligence obligation as comprising active measures to combat harmful practices, which includes resocialisation measures.⁷⁵

Part 3 demonstrated that resocialisation as an obligation – notably as an obligation to respect, fulfil and protect – plays a critical role in transforming systemic gender inequality pervading society. Article 5(a) provides an interpretative framework for all other rights contained in CEDAW. In respecting, fulfilling and protecting the

69 *HH, IH and YH* (n 68) para 3.5.

70 *HH, IH and YH* (n 68) para 9(a)(i)&(ii).

71 *HH, IH and YH* (n 68) para 7.7.

72 Communication 153/2020 *Sandra Luz Romàn James v Mexico* 22 November 2022 UN Doc CEDAW/C/83/D/152/2020 para 7.3.

73 CEDAW Committee and CRC Committee ‘Joint General Recommendation 31 of the Committee on the Elimination of Discrimination against Women and No 18 of the Committee on the Rights of the Child on harmful practices’ 8 May 2019 UN Doc CEDAW/C/GC/31/Rev.1=CRC/C/GC/18/Rev.1 para 11.

74 Cusack (n 49) 125.

75 Joint General Recommendation 31 (n 73) para 41.

rights of women, states not only facilitate the creation of formal equality, but also alter the position of women in real terms to give effect to substantive equality. Most significantly, the obligation to respect, fulfil and protect by way of resocialisation gives rise to transformative equality.

Part 4 looks to the African regional system and the resocialisation provisions contained in both the African Charter and the African Women's Protocol. The substantive transformative potential both instruments hold positions the African regional human rights system as uniquely armed to address the real and significant need for the modification of socio-cultural norms and practices underpinning gendered discrimination.

4 Resocialisation as an obligation in African regional human rights law

4.1 African Charter

At continental level, women's rights are protected in the African Charter and the African Women's Protocol. Significant in this regard is the obligation on the African Commission insofar as its mandate to promote and ensure the protection of human rights is concerned. The African Charter mandates the African Commission to 'draw inspiration from international law on human and peoples' rights'⁷⁶ and to 'take into consideration ... international conventions',⁷⁷ supporting CEDAW's applicability, notably its resocialisation provision, in the African context. Resocialisation, therefore, is present on the continent simply by virtue of the above two mandates.

While the African Charter lacks an explicit resocialisation provision as in CEDAW, it provides a framework to explore resocialisation through articles 2, 3, 18(3) and 25. This is significant because while 54 out of the 55 African Union (AU) states have ratified the African Charter, only 45 states have ratified the African Women's Protocol.⁷⁸ Examining the resocialisation obligations in the African Charter, therefore, not only provides insight into the obligations of states that have ratified the African Charter, but also serves to protect the rights

⁷⁶ Art 60 African Charter.

⁷⁷ Art 61 African Charter.

⁷⁸ Botswana recently deposited its ratification: <https://soawr.org/2023/12/01/botswana-has-ratified-the-maputo-protocol/> (accessed 19 May 2024).

of women in the states that have yet to ratify the African Women's Protocol.

The subsequent parts examine each of the resocialisation provisions contained in the African Charter, highlighting the state obligations, and elucidating the way in which states interpret and apply these through the reporting mechanism. This analysis demonstrates that despite the existence of resocialisation obligations, states have yet to adequately interpret and apply their obligations in a manner giving effect to substantive gender equality. The same is true of the African Commission, which is yet to utilise the potential of resocialisation as an obligation on the continent.

4.1.1 Articles 2 and 3

Article 2 provides a general non-discrimination clause, while article 3 promotes equality before the law. The right to non-discrimination remains a central feature of human rights. As Mugwanya suggests, the African Charter's commitment to non-discrimination is emphasised in article 3, which promotes equality before and equal protection of the law.⁷⁹ Article 2 implies a due diligence obligation on states to ensure women's substantive equality and requires implementing temporary special measures to that end. Article 3 is connected to article 2, both of which the African Commission characterises as non-derogable obligations. These articles are often cited together in the context of equality.⁸⁰ The African Commission notes that these obligations must be 'respected in all circumstances in order for anyone to enjoy all the other rights provided for under the African Charter'.⁸¹ Resocialisation as an obligation, thus, aids states to fulfil obligations to ensure non-discrimination and gender equality.

Botswana's 2015 report acknowledged that notwithstanding 'government's effort to promote equality before the law, especially gender equality, certain roles continue to be performed along gendered lines [therefore] [t]here are still challenges towards the absolute elimination of role stereotypes and negative cultural

79 GM Mugwanya *Human rights in Africa: Enhancing human rights through the African regional human rights system* (2014) 192.

80 R Murray *The African Charter on Human and Peoples' Rights: A commentary* (2019) 45.

81 *Purohit & Another v The Gambia* (2003) AHRLR 96 (ACHPR 2003) para 49. See also *Open Society Justice Initiative v Côte d'Ivoire* Communication 318/06 African Commission on Human and Peoples' Rights 17th extraordinary session 19-28 February 2015 (2016) para 155.

practices'.⁸² The African Commission, however, did not respond, but recommended awareness-raising to address gender-based violence, without reference to the above.⁸³

Lesotho's 2018 report noted that customary law often impedes gender equality since it is not subject to constitutional scrutiny.⁸⁴ The state attempted to address this through awareness-raising campaigns focused on modifying societal attitudes relating to women.⁸⁵ In its Concluding Observations, the Commission refers to the 'prevalence of deep-rooted cultural and religious practices some of which are recognised by the Constitution' as factors impeding the realisation of rights,⁸⁶ reiterating the persistent traditional and religious influences as hindering gender equality.⁸⁷

As noted, these provisions provide for resocialisation as an obligation. While the above examples demonstrate some understanding by the state and the African Commission, most state party reports relating to these articles simply report on the legislative and constitutional protections available, failing to adequately engage with resocialisation as a tool to realising women's rights to non-discrimination and equality before the law.

4.1.2 Article 18

Article 18(3) protects women's rights 'as stipulated in international declaration and conventions'. Thus, states are obligated to respect, protect and fulfil women's rights while cognisant of obligations in other international human rights law instruments, such as CEDAW. Since this provision is the only one in the African Charter relating to women, this reference to international law is significant.

82 Botswana Second and Third Report to the African Commission on Human and Peoples' Rights (ACHPR): Implementation of the African Charter on Human and Peoples' Rights (2015) 28.

83 Concluding Observations and Recommendations on the 2nd and 3rd Combined Periodic Report of the Republic of Botswana on the Implementation of the African Charter on Human and Peoples' Rights, African Commission on Human and Peoples' Rights, adopted at its 26th extraordinary session para 73.

84 The Kingdom of Lesotho Combined Second to Eighth 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 (April 2018) para 28.

85 Combined Report of the Kingdom of Lesotho (n 84) para 31.

86 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, African Commission on Human and Peoples' Rights, adopted at its 68th ordinary session para 33.

87 Concluding Observations Lesotho (n 86) para 51.

State party reports on article 18 suggest that states focus their efforts on modifying women's behaviours in society, narrowing the targets of resocialisation to women only. Placing the onus on women to alter the circumstances in which they find themselves represents a misunderstanding of the role that systemic inequality plays in producing environments that not only perpetuate all forms of discrimination, but which also exclude women. Similarly, it fails to ensure that behavioural modification is targeted at everyone. This, therefore, only partially gives effect to resocialisation as an obligation. For example, Rwanda's 2016 report establishes agencies to 'advocate for women's rights and sensitise women to take up leadership roles'.⁸⁸ The African Commission overlooked an opportunity to highlight this in its responding Concluding Observations to Rwanda.⁸⁹

Cameroon's 2018 report mentions sensitising girls on school enrolment and pregnancy risks. It does so while omitting boys' role in pregnancy or gender-based violence as a source of teenage pregnancy.⁹⁰ This places the burden of gender inequality on women and girls without acknowledging the contributions made by men and boys in maintaining systemic gender inequality. While underscoring the importance of women's rights under article 18, the state narrowly focuses its attention on girls, failing to fulfil its resocialisation obligation. While the African Commission notes, as a positive aspect, the steps taken to ensure the education of pregnant girls, it fails to identify this problematically narrow focus on girls.⁹¹

Similarly, in its Concluding Observations of 2021 to Lesotho's report, the African Commission recommends that the state provide incentives to women to take up leadership roles and contest for public office.⁹² It fails to mention any accompanying resocialisation required to facilitate the conditions conducive to women's effective functioning in such roles. This demonstrates the Commission's own limited understanding of resocialisation as an obligation targeted at everyone.

88 Republic of Rwanda 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: Period Covered by the Report 2009-2016 54.

89 Concluding Observations and Recommendations on the Combined 11th, 12th, and 13th Periodic Report of the Republic of Rwanda under the African Charter on Human and Peoples' Rights and Initial Report under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted at its 64th ordinary session.

90 Republic of Cameroon 3rd Periodic Report of Cameroon Within the Framework of the African Charter on Human and Peoples' Rights, April 2013 para 482.

91 Concluding Observations on the 3rd Periodic Report of Cameroon adopted at its 15th extraordinary session para 27.

92 Concluding Observations (n 86) para 71.

4.1.3 Article 25

Article 25 creates an obligation to promote and ensure respect for all rights and freedoms contained in the African Charter, including those of women in articles 2, 3 and 18(3). This implies active engagement in human rights education. The African Commission notes human rights education as ‘a prerequisite for the effective implementation of the [Charter] and other international human rights instruments’,⁹³ obligating states to provide it ‘at all levels of public and private education ... to law enforcement personnel, civil or military, as well as medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment’.⁹⁴

It is unclear why the African Commission opted to limit human rights education to the abovementioned targets only, excluding the broader population.

Nonetheless, article 25’s effective implementation could alter the human rights landscape and acceptance of rights by all. Together with article 27(2)’s limitations clause, it could promote greater respect for women’s rights and freedoms, as cultural relativism⁹⁵ may be less influential when

[i]ndividuals are asked to reflect on how the exercise of their rights in certain circumstances might adversely affect other individuals or the community. The duty is based on the presumption that the full development of the individual is only possible where individuals care about how their actions would impact on others. By rejecting the egotistical individual whose concern is fulfilling self, article 27(2) raises the level of care owed to neighbours and the community.⁹⁶

This level of care that is arguably raised is enhanced when article 25 is adequately implemented and when human rights are understood and accepted by all. Such a level of care comes about through resocialisation. Indeed, when a presumption is entrenched that individual development is contingent upon the way in which each

93 African Commission on Human and Peoples’ Rights Resolution on Human Rights Education (1993) African Charter/Res.6 (XIV) 93.

94 Resolution on Human Rights Education (n 93).

95 For more on the role of resocialisation in countering cultural relativism, see A Mahmoudi ‘Cultural relativism and the role of resocialisation in the realisation of African women’s rights to a positive cultural context (art 17)’ in A Fuentes & A Rudman (eds) *Women’s rights, gender inequality, and intersectional vulnerabilities: Exploring substantive transformative equality in the African continental and regional human rights systems 20 years after the adoption of the Maputo Protocol* (2025) 71.

96 MW Mutua ‘The Banjul Charter and the African cultural fingerprint: An evaluation of the language of duties’ (1995) 35 *Virginia Journal of International Law* 369.

engages with the other, the scope for cultural relativism to operate to undermine women, as an example, arguably becomes limited.

State party reports demonstrate poor engagement with article 25. Where states do engage, they do so from the promotional mandate perspective. Many make no reference to this provision, while others note awareness raising without detail.⁹⁷ Those that do engage often prioritise training magistrates, law enforcement and judges, while some include human rights education in school curricula, textbooks and law degree programmes at universities.⁹⁸

For instance, Gabon reports on article 25 in combination with article 17, noting an initiative undertaken to train women educators in early childhood development.⁹⁹ This illustrates a narrow view of article 25. In its Concluding Observations to Gabon, the African Commission recommends human rights education from primary to tertiary schools, through training of police and law enforcement and awareness raising for the entire population on their rights, legal procedures and remedies.¹⁰⁰ Although these recommendations are made without direct reference to article 25, the broadened view of the recipients of human rights education demonstrates the African Commission's progressive understanding of the resocialisation obligation. This is similarly evident in its Concluding Observations of 2017 to Burkina Faso, where the Commission highlights that a lack

97 Republic of Benin Combined Periodic Report from the 6th to 10th Periodic Reports on the Implementation of the Provisions of the African Charter on Human and Peoples' Rights. At 72 it notes: 'Nothing to report on'. The two most recent reports by the Republic of Cameroon are silent on this provision. See Cameroon Single Report Comprising the 4th, 5th and 6th Periodic Reports of Cameroon Relating to the African Charter on Human and Peoples' Rights and 1st Reports Relating to the Maputo Protocol and the Kampala Convention 3 January 2020 8; 3rd Periodic Report of Cameroon (n 90).

98 People's Democratic Republic of Algeria African Charter on Human and Peoples' Rights 5th and 6th Periodic Report 69. See Concluding Observations and Recommendations on the Combined Periodic Report of the Peoples' Democratic Republic of Algeria, adopted at its 42nd ordinary session; Republic of Burundi African Charter on Human and Peoples' Rights First Implementation Report; Central African Republic Initial and Cumulative Report of the Central African Republic on the African Charter on Human and Peoples' Rights; Democratic Republic of the Congo Eighth, Ninth and Tenth Periodic Reports to the African Commission on Human and Peoples' Rights; Republic of Mauritius Ninth to Tenth Combined Periodic Report of the Republic of Mauritius on the Implementation of the African Charter on Human and Peoples' Rights (January 2016-August 2019).

99 The Gabonese Republic Initial Report by Gabon on Implementation of the African Charter on Human and Peoples' Rights 1986-2012 82. See also People's Democratic Republic of Algeria African Charter on Human and Peoples' Rights Fifth and Sixth Periodic Report (n 98) para 420, 69.

100 Concluding Observations and Recommendations on the Initial and Combined Report of the Gabonese Republic on the Implementation of the African Charter on Human and Peoples' Rights (1986-2012), adopted at its 15th extraordinary session 10.

of human rights awareness across the generality of the population remains a factor impeding the enjoyment of rights.¹⁰¹

Even though the African Charter does not contain an explicit resocialisation provision, the above demonstrates that articles 2, 3, 18(3) and 25 operate as resocialisation provisions, providing obligations on states. State and Commission engagement, however, demonstrates that these provisions have yet to be fully understood, interpreted and applied.

The next part considers resocialisation as an obligation from the vantage point of the African Women's Protocol, demonstrating further the embeddedness of resocialisation as an obligation within the continent's legal framework.

4.2 African Women's Protocol

The transformative potential of several provisions in the African Women's Protocol strengthens arguments in favour of resocialisation as a precursor to gender equality. As noted, the third goal of article 5(a) of CEDAW is transformative equality. As Albertyn and Goldblatt suggest, this 'involves the eradication of systemic forms of domination and material disadvantage based on race, gender, class and other grounds of inequality'.¹⁰² The resocialisation provisions below give effect to the transformative equality goal that lies at the heart of CEDAW and the African Women's Protocol.¹⁰³

The African Women's Protocol is notable in its focus on women in Africa. As Rudman notes, '[t]o contribute to a more comprehensive protection of African women's rights, the Maputo Protocol was created as an African Charter-adjacent instrument under Article 66 of the latter'.¹⁰⁴ Murray suggests that the African Women's Protocol is an 'African CEDAW ... reflecting the specificities of women's rights

101 Concluding Observations and Recommendations on the Combined Periodic Report of Burkina Faso on the Implementation of the African Charter on Human and Peoples' Rights (2011-2013), adopted at its 21st extraordinary session paras 16-18.

102 C Albertyn & B Goldblatt 'Facing the challenge of transformation: Difficulties in the development of an indigenous jurisprudence of equality' (1998) 14 *South African Journal on Human Rights* 249.

103 As above. The practice is demonstrated through state reports and accompanying Concluding Observations. Where no mention of Concluding Observations is made, the Commission has yet to issue a Concluding Observations addressing resocialisation in the context of the provision concerned.

104 A Rudman 'A feminist reading of the emerging jurisprudence of the African and ECOWAS Courts evaluating their responsiveness to victims of sexual and gender-based violence' (2020) 31 *Stellenbosch Law Review* 428.

on the continent'.¹⁰⁵ Its incorporation of positive African values set it apart from its counterparts and, as Viljoen suggests, it 'speaks in a clearer voice about issues of particular concern to African women, [and] locates CEDAW in African reality'.¹⁰⁶ Several of the African Women's Protocol provisions give rise to resocialisation as an obligation.¹⁰⁷

4.2.1 Article 2(2)

Article 2(2) mandates states to, among others, ensure a change in the traditional roles of women *and* men in society; it prescribes the realisation of substantive, transformative equality. This is the primary resocialisation provision of the African Women's Protocol.

Article 2(2) expands on article 5(a) of CEDAW, guiding states on methods to modify harmful socio-cultural norms, including the use of public education, information and communication strategies. Broadly construed, the obligation extends beyond a focus on educational methods only to every aspect of societal functioning, including creating appropriate governance structures giving effect to the requisite implementation of obligations; appointing civil servants advancing this obligation; ensuring equal representation of women at all levels of government; implementing mechanisms for monitoring and evaluation of resocialisation measures; and gender mainstreaming. This complements other methods such as the use of the media, and the involvement of traditional leaders and women in devising strategies, among others. Article 2(2) also implies an obligation to refrain from all behaviours, practices and narratives that drive discrimination.

Few Concluding Observations refer to article 2 generally, and none to article 2(2) specifically.¹⁰⁸ However, states' failure to report

¹⁰⁵ Murray (n 80) 466.

¹⁰⁶ F Viljoen 'An introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 16 *Washington Lee Journal of Civil Rights and Social Justice* 21.

¹⁰⁷ These include arts 2(2), 5, 4(2)(d), 8, 12 and 17. This article does not delve into art 17 as this provision relates to the nuances of culture, cultural rights, and the rights of women to a positive cultural context. To avoid glossing over crucial issues relating to culture, a piece was written outlining the obligations on states in terms of art 17. For more on resocialisation in the context of article 17, see Mahmoudi (n 95).

¹⁰⁸ Concluding Observations and Recommendations on the Kingdom of Eswatini's Combined 1st to 9th Periodic Report on the Implementation of the African Charter on Human and Peoples' Rights, and Initial Report on the Protocol to the African Charter on the Rights of Women in Africa, adopted at its 70th ordinary session; 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

on article 2(2) does not necessarily imply a lack of understanding regarding the role and influence of socio-cultural practices and behaviours in driving gendered discrimination. For instance, South Africa's 2015 report acknowledges the impact of stereotyping on the rights of women stating that it is

cognisant that gender-based stereotyping and prejudice is rooted in the gender discourses of masculinity and femininity with concomitant prescribed behaviours, norms and attitudes that ultimately lead to discrimination and gender-based violence. It is an articulation of, or an enforcement of, power hierarchies and structural inequalities that are informed by belief systems, cultural norms and socialization processes.¹⁰⁹

Malawi's 2015 report notes challenges due to customs and cultural practices,¹¹⁰ while Seychelles' 2019 report recognises that '[g]ender discrimination and bias ... may be present in societal gender roles and attitudes, thus, making it harder to eradicate stereotypes made unintentionally'.¹¹¹ The African Commission's Concluding Observations of 2022 to Eswatini note the 'persistence of pervasive structural disparities and deep-rooted harmful gender stereotypes' as an area of concern.¹¹² However, this is noted without direct reference to article 2(2),¹¹³ recommending that Eswatini '[s]trengthen its efforts to combat deep-rooted harmful gender stereotypes'.¹¹⁴ The Commission's Concluding Observations of 2015 to Liberia documents the 'patriarchal attitudes and stereotypes relating to the role and responsibilities of men and women [which] exacerbate harmful traditional practices'.¹¹⁵ It recommends that Liberia '[s]trengthen its efforts to eliminate existing patriarchal and gender stereotypes on the roles and responsibilities of women and men in the family and society'.¹¹⁶ Although not directly mentioning

Report on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (2005-2013), adopted at its 70th ordinary session; African Commission Concluding Observations Rwanda (n 91).

109 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) para 128.

110 Republic of Malawi Report to the African Commission on Human and Peoples' Rights, Implementation of the African Charter on Human and Peoples' Rights (1995-2013) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (2005-2013) para 150.

111 Republic of Seychelles Country Report 2019: Protocol to the African Charter on Human and Peoples' Rights of Women in Africa 10.

112 African Commission Concluding Observations Eswatini (n 108) para 48.

113 This is noted 'Articles 2 and 3 – Equality and non-discrimination'.

114 African Commission Concluding Observations Eswatini (n 108) para 80.

115 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, adopted at its 17th extraordinary session para 24.

116 African Commission Concluding Observations Liberia (n 115) 11 para i.

article 2(2), it is one of only two Concluding Observations making use of the language contained in this provision, even if not *verbatim*.¹¹⁷

These examples demonstrate that while the resocialisation provisions do, indeed, exist, as well as indicators that states are cognisant of the influence that harmful socio-cultural norms and practices have on the rights of women, the systematic interpretation and application of article 2(2) remains an area in need of development.

4.2.2 Article 5

Article 5 requires states to prohibit and condemn all practices harmful to women. Prohibition implies legislative bans, accompanied by sanctions where they occur, with a view to eradicating all such practices, providing support to victims, and protecting women at risk of harmful practices. Condemnation involves the state's express, regular disapproval of harmful practices, itself a resocialisation method.

The CEDAW and CRC Committees note that harmful practices are 'deeply rooted in social attitudes according to which women and girls are regarded as inferior to men and boys based on stereotyped roles'.¹¹⁸ The role of resocialisation in discharging this obligation, thus, is underscored with the Committees stressing the obligation on states to 'challenge and change patriarchal ideologies and structures that constrain women and girls from fully exercising their human rights and freedoms'.¹¹⁹ Emphasised in the context of CEDAW, the principle similarly applies to article 5, as both aim to eliminate harmful practices and realise substantive and transformative gender equality.

Eswatini's 2019 report discusses harmful practices within its constitutional and legislative framework, suggesting that practices ought to be 'examined with the constitutional lens'¹²⁰ and that its legislative arrangements ensure that 'women are no longer forced to engage in cultural practices'.¹²¹ However, the existence of enabling

117 See also African Commission Concluding Observations Malawi (n 108) para 69.

118 Joint General Recommendation 31 (n 73) para 6.

119 Joint General Recommendation 31 (n 73) para 61; S Nabaneh 'Article 5: Elimination of harmful practices' in Rudman and others (n 19) 129.

120 Kingdom of Eswatini Formerly Known as the Kingdom of Swaziland 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 paras 406-410.

121 Combined Periodic Report of the Kingdom of Eswatini (n 120) para 407.

environments for women to exercise choice remains unclear. The Gambia's 2018 report recognises this, stating:¹²²

Despite the legislation enacted to prohibit these entrenched harmful practices, evidence has shown Legislation alone is not enough. Evidence ... indicates that people with entrenched beliefs will resort to other measures that will enable them to practice what they believe in. There is therefore a need for attitudinal change and beliefs and the need for sustained sensitisation, awareness creation and behaviour change communication for people to give up the practice.

South Africa's 2015 report demonstrates a misunderstanding of what constitutes harmful practices,¹²³ outlining efforts to eliminate certain practices while permitting virginity testing in girls over 16 with 'proper counselling'.¹²⁴ The existence of such legislation condones the harmful practice of virginity testing.

Only three Concluding Observations directly reference article 5, although several refer generally to the influence of harmful practices.¹²⁵ As an example, the African Commission's Concluding Observations of 2017 to Burkina Faso note concern regarding the practice of 'clandestine excision ...[and] the continuation of early marriages',¹²⁶ recommending steps to combat this practice and to penalise all involved.¹²⁷

4.2.3 Article 4(2)(d)

Article 4(2)(d) mandates states to 'actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women'.

This provision is closely connected to article 4(2)(c), which requires states to identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such. The former generates capacity to respond to the latter, while

¹²² The Republic of The Gambia Combined Report on the African Charter on Human and Peoples' Rights for the Period 1994 and 2018 and Initial Report under the Protocol to the African Charter on the Rights of Women in Africa 138.

¹²³ Combined Second Periodic Report of South Africa (n 109) paras 166-167.

¹²⁴ Sec 12(5) South African Children's Act 38 of 2005.

¹²⁵ Concluding Observations and Recommendations on the Combined Periodic Report of Burkina Faso on the Implementation of the African Charter on Human and Peoples' Rights (2011-2013), adopted at its 21st extraordinary session para 45; African Commission Concluding Observations Malawi (n 108) para 64; African Commission Concluding Observations Rwanda (n 89) para 69.

¹²⁶ African Commission Concluding Observations Burkina Faso (n 125) para 62.

¹²⁷ African Commission Concluding Observations Burkina Faso (n 125) para 69.

article 4(2)(d) builds on the latter by explicitly providing the means to prevent violence. It emphasises the utility of resocialisation in addressing the identified causes and consequences of violence against women by way of peace education.

The central goal of article 4(2)(d) is the eradication of elements in traditional and cultural beliefs, practices and stereotypes underlying violence against women, resocialising the populace to recognise women's rights and freedoms, including their right to be free from violence. The CEDAW Committee notes, in relation to the development of curricula, that the 'content should target stereotyped gender roles and promote the values of gender equality and non-discrimination',¹²⁸ emphasising the development of educational curricula and awareness-raising programmes, as in article 4(2)(d).¹²⁹

State practice places greater emphasis on article 4(2)(c) than article 4(2)(d). Angola's 2017 report communicates steps taken in furtherance of article 4(2) including the implementation of 'information, awareness-raising and education campaigns'.¹³⁰ Without reference to article 4(2)(c)'s second prong of the two-pronged obligation, the state notes steps taken to prevent and eliminate violence against women. Similarly, it does not refer to the active promotion of peace education as per article 4(2)(d). The 2015 report of the Democratic Republic of the Congo (DRC) notes under article 4(2)(c) studies contributing to revised national strategies to enable behavioural change,¹³¹ aimed at combating violence, considering 'stereotypes that are anchored in the mentality and behaviour of individuals within grassroots communities'.¹³² This gives effect to the first prong of article 4(2)(c), which requires identifying the causes and consequences of violence against women. The report specifies that the 'strategy focuses precisely on the fight against stereotypes and other sexist prejudices'.¹³³ What these strategies are and their resultant impact, however, is unclear. Nonetheless,

128 UN Committee on the Elimination of Discrimination against Women 'General Recommendation No 35 on Gender-based Violence against Women, Updating General Recommendation No 19' 26 July 2017 UN Doc CEDAW/C/GC/35 para 30(b)(i).

129 General Recommendation 35 (n 128) paras 30(b)(i) and (ii).

130 Republic of Angola 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 2011-2016 para 29 of Part C.

131 Democratic Republic of the Congo Report to 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 164.

132 Periodic Reports DRC (n 131) para 164.

133 As above.

the state report refers to resocialisation and the negative impact of socio-cultural attitudes and behaviours on the realisation of gender equality.¹³⁴

4.2.4 Article 8

Article 8(c) provides for the 'establishment of adequate educational and other appropriate structures with particular attention to women and to sensitise everyone to the rights of women'. It mandates resocialisation to eliminate harmful socio-cultural norms and practices impeding women's access to justice. Article 8(d) requires equipping law enforcement to effectively interpret and enforce gender equality rights, presupposing resocialisation to ensure that existing harmful conceptions and biases against women do not sway the work of those tasked with protecting the rights of women. Like article 8(c), the obligations to respect, protect and fulfil arise in article 8(d). Failure to equip or resocialise law enforcement may trigger state responsibility.

The DRC's 2015 report highlights measures to 'raise awareness and educate the population on the respect for women's rights'.¹³⁵ The state acknowledges that magistrates, lawyers, court clerks and prison personnel lack requisite knowledge of women's rights, which violates article 8(d), but omits reference to remedial measures.¹³⁶ Adequate implementation of resocialisation is key to discharging obligations in terms of articles 8(c) and (d).

Togo's 2017 report reiterates the principle of non-discrimination in the context of access to justice. Without directly noting article 8(c), it highlights the establishment of a legal unit aimed at training women, in collaboration with the police services, on access to justice.¹³⁷ The narrow focus on training women, however, falls foul of the goal of this provision. Further, it notes the training of various public servants, such as judicial assistants and security forces on gender and women's rights, although again without direct reference to article 8(d).¹³⁸

134 Periodic Reports DRC (n 131) para 174.

135 Periodic Reports DRC (n 131) para 121.

136 Periodic Reports DRC (n 131) para 126.

137 State of Togo 6th, 7th and 8th Periodic Reports of the State of Togo on the Implementation of the African Charter on Human and Peoples' Rights (August 2017) para 509.

138 Periodic Reports State of Togo (n (n 137) para 510.

4.2.5 Article 12

In the context of the right to education and training, article 12(1)(b) requires states to ‘eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination’. Article 12(1)(e) embeds resocialisation, mandating states to ‘integrate gender sensitisation and human rights education at all levels of education curricula including teacher training’. Article 12 arguably extends the obligations in articles 2(2) and article 8(c). As Viljoen notes, education ‘runs like a golden thread throughout the Protocol’.¹³⁹

Eliminating stereotypes in textbooks, syllabi and the media, as per article 12(b), ensures that states actively work towards preventing the reproduction of harmful socio-cultural norms, while article 12(e) recognises the role of individuals, such as teachers, in reproducing those harmful norms and mandating preventative state action. Prioritising the elimination of harmful socio-cultural norms and practices from textbooks, syllabi, school programmes, teaching methods and the like is crucial for successful resocialisation and will impact and accelerate the realisation of the other substantive rights of women and girls.¹⁴⁰

Cameroon’s 2019 report notes efforts to realise article 12 generally, including its ‘fight against cultural barriers within the framework of awareness raising among communities’¹⁴¹ and the implementation of campaigns aimed at behavioural changes for parents to ‘raise the young girl properly’.¹⁴² What ‘properly’ refers to is unclear. Similarly, the report does not elaborate on what constitutes cultural barriers and what the awareness-raising campaigns aimed to achieve. A civil society strategy noted in the report involved educating traditional leaders’ wives on protecting children’s rights and promoting girls’ education.¹⁴³ As noted above, article 12 generally addresses the rights of women to education and training through the elimination of stereotypes in textbooks, syllabuses and the media, as well as the integration of gender sensitisation and human rights education at all levels of education. Cameroon’s account of its endeavours demonstrates a lack of appreciation of the resocialisation objectives of article 12(b).

¹³⁹ Viljoen (n 106) 31.

¹⁴⁰ UN Committee on the Elimination of Discrimination against Women ‘General Recommendation No 36 (2017) on the Right of girls and Women to Education’ 27 November 2017 UN Doc CEDAW/C/GC/36 para 26.

¹⁴¹ Periodic Reports of the Republic of Cameroon (n 97) para 762.

¹⁴² Periodic Reports of the Republic of Cameroon (n 97) para 764.

¹⁴³ As above.

State party reports demonstrate a narrow focus on formal school settings, limiting the reach of article 12(2), which calls for gender sensitisation and human rights education at all levels.¹⁴⁴

5 Conclusion

In the words of the CEDAW Committee in *AF*,

without acknowledging that damaging stereotypes exist and taking determined actions to remedy unconscious bias, such efforts [initiatives on gender equality] cannot be relied upon to change the reality of women who are disproportionately victims of violence and abuse, which can leave scars (sometimes invisible) for life and intergenerationally.¹⁴⁵

This article demonstrates the crucial role of resocialisation as an obligation in global and African regional human rights law as a tool for realising women's substantive rights and accelerating gender equality. By analysing key resocialisation provisions in CEDAW, the African Charter and the African Women's Protocol through a feminist legal theoretical framework, it has elaborated on the obligations of states to respect, fulfil and protect women's rights through resocialisation.

The article shows that CEDAW affirms resocialisation as integral to the interpretative framework for all substantive rights, with obligations to ensure formal and substantive equality, and to address prevailing gender relations and stereotypes. The African Charter and the African Women's Protocol contain several resocialisation provisions. These provisions require states to modify harmful socio-cultural conduct in furtherance of the overall objective of eliminating all forms of discrimination against women.

The CEDAW Committee notes the importance of resocialisation in several individual complaints, as well as in its General Recommendations. On the continent, the analysis of state party reports and Concluding Observations reveals inadequate awareness and engagement with resocialisation obligations, limiting compliance and leaving underlying determinants of gender inequality intact. States often focus on legislative and constitutional protections without actively engaging resocialisation as a method to

144 Eg, Combined Periodic Report of South Africa (n 109) paras 95 and 308; Burkina Faso Periodic Report of Burkina Faso Within the Framework of the Implementation of Article 63 of the African Charter on Human and Peoples' Rights (January 2015) paras 95 & 339.

145 *AF* (n 36) para 7.18.

realise women's rights. Similarly, states regularly narrow the target audience for resocialisation and focus on women and girls, failing to acknowledge the systemic nature of gender inequality.

Unless resocialisation is given the requisite attention as an obligation, the substantive rights of women will remain a distant reality. States must prioritise resocialisation to eliminate discrimination and violence against women. Only by addressing the root causes can the transformative potential of global and African regional human rights instruments be realised, accelerating progress towards substantive gender equality.