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Aligning SADC and Continental Strategies: To What Extent does Violence Against Women in South Africa Constitute an Event Seriously Disturbing Public Order?

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Abstract

The OAU Refugee Convention incorporates and expands upon the refugee definition outlined in the 1951 UN Convention; yet little is known about its implementation. This article critically analyses the OAU Refugee Convention, particularly the enumerated refugee-producing ground of “events seriously disturbing public order” (ESDPO). Despite the ambiguity of ESDPO caused by a lack of interpretive guidance, the ground is becoming increasingly significant in asylum applications. This article acknowledges that ESDPO encompasses a series of international or domestic instances of war, violence and climatic events that grossly violate the fundamental human rights of an indeterminable number of individuals within their country of origin. Violence

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perpetrated against women is a clear infringement upon the basic human rights of women worldwide, and South Africa in particular, is known as the femicide capital of the world.¹ Furthermore, the prevalence of violence against women in South Africa has reached epidemic proportions, posing a significant societal problem. Against this backdrop, this article examines the extent to which violence against women in South Africa constitutes ESDPO in terms of the OAU Refugee Convention.

Keywords: events seriously disturbing public order; OAU Refugee Convention; SADC; South Africa; violence against women

1 INTRODUCTION

The right to seek and enjoy asylum from persecution is a cornerstone of international refugee law.² The 1951 United Nations Convention and Protocol on the Status of Refugees (1951 UN Convention)³ refers to the term refugee as anyone

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.⁴

The above refugee definition defines refugee primarily in terms of individualised persecution. In contrast, the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969 (OAU Refugee Convention) expands this definition to include broader, non-persecutory grounds for flight, such as external aggression, foreign domination, occupation, or events seriously disturbing public order.⁵

The OAU Refugee Convention has often been praised for expanding the definition of refugee in the 1951 UN Convention by including broader, more generalised forms of harm, namely generalised violence, climatic events, and civil war.⁶ This wider definition reflects the realities of mass displacement in Africa. The expanded definition remains conceptually underdeveloped and underinterpreted. Of particular concern is the enumerated ground of ESDPO, which lacks

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- 1 The killing of females by males merely because they are females is known as femicide. Jaric “The UN-led Interventions to Prevent Femicide in Families and Intimate Partner Relationships in Serbia (2010-2014)” in Academic Council on the United Nations System (ACUNS), Vienna Liaison Office *Femicide: Targeting of Women in Conflict - a Global Issue that Demands Action* (2015) <https://www.unsavienna.org/sites/default/files/2020-09/Femicide%20III.pdf> (accessed 10-4-2022) 130; South African Medical Research Council (SAMRC) Gender and Health Research Unit <https://www.samrc.ac.za/press-releases/south-africas-femicide-crisis-persists-new-report-highlights-increase-intimate> (accessed 15-5-2025).
 - 2 Universal Declaration of Human Rights, 1948, Art 14; United Nations Convention and Protocol on Status of Refugees of 1951, 189 UNTS 150 (1951 UN Convention) Introductory Note by the Office of the United Nations High Commissioner for Refugees (UNHCR).
 - 3 South Africa ratified the Convention on 12 Jan 1996. UNHCR, United Nations High Commissioner for Refugees “States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol” <https://www.unhcr.org/sites/default/files/legacy-pdf/3b73b0d63.pdf> (accessed 25-11-2024) 4.
 - 4 1951 UN Convention, Art 1A(2).
 - 5 The OAU Refugee Convention was adopted on Sep 10, 1969. Scalabrini Institute of Human Mobility in Africa “The 1969 OAU Refugee Convention – A Vital Pillar for Human Dignity in Africa” <https://sihma.org.za/Blog-on-the-move/the-1969-oau-refugee-convention-a-vital-pillar-for-human-dignity-in-africa#:~:text=The%20result%20was%20the%20OAU,%2C%20in%20Addis%20Ababa%2C%20Ethiopia.> (accessed 25-11-2024); Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 UNTS 45, 1969 (OAU Refugee Convention, 1969) Art 1(2).
 - 6 Wood “The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa” in Juss (ed) *Research Handbook on IRL* (2019) 19.

definitional clarity, judicial interpretation and practical guidance.⁷ We suggest that an ESDPO refers to a country engulfed by turmoil to such a degree that law and order can no longer be maintained, leaving the inhabitants without protection, and that this event profoundly affects their daily lives. In the next section, we provide a careful examination of the precise meaning of ESDPO by illustrating the analysis that informs the definition as provided.⁸

The lived experiences or protection gaps faced by refugee women in South Africa are not assessed in this article. Instead, this article's primary concern is to explore the scope and interpretation of the refugee-producing ground of ESDPO. The widespread and systematic violence against women in South Africa is utilised as a case study to determine whether such a crisis could, in principle, qualify as ESDPO. This approach situates the analysis in conceptual legal reasoning, not empirical refugee claims.

In doing so, this article contributes to ongoing efforts to clarify the meaning and applicability of ESDPO. Using South African statistics on violence against women from 2016 to 2023, it asks whether such widespread gender-based violence, though often occurring in private settings, could constitute a breakdown of public order to such an extent that it qualifies as ESDPO under the OAU Refugee Convention.

This study is confined to the South African context regarding violence against women. In this study, the phrase "violence against women" is understood to encompass any acts or behaviours that cause physical, psychological or financial harm to individuals biologically identified as female, consistent with available statistical data in South Africa. While this article acknowledges that violence against women has many legal and social dimensions, its use here is strictly to determine the potential characterisation of such violence as an ESDPO.

The article proceeds as follows: Section 2 addresses the interpretative challenges of the OAU Refugee Convention; Section 3 develops the conceptual framework of ESDPO; Section 4 offers a practical guide for assessing ESDPO indicators; Section 5 presents the South African context of violence against women; Section 6 applies ESDPO indicators to the case of violence against women in South Africa; and Section 7 concludes.

2 THE INTERPRETATIVE CHALLENGES OF THE OAU REFUGEE CONVENTION

(a) Doctrinal ambiguity and lack of foundational guidance

The OAU Refugee Convention broadens the scope of international refugee protection by including individuals fleeing ESDPO. However, this enumerated ground remains conceptually vague. Mass displacement across Africa demands a unified approach to assist in interpreting the expanded refugee definition of the OAU Refugee Convention. The key interpretive challenges stem primarily from the absence of *travaux préparatoires*, which obscure the drafters' original intention.⁹ Following a Eurocentric approach to international refugee law and little focus on

7 *Ibid* 18.

8 Sharpe "The 1969 African Refugee Convention: Innovations, Misconceptions, and Omissions" 2012 *McGill LJ* 113.

9 Rutinwa "Relationship between the 1951 Refugee Convention and the 1969 OAU Convention on Refugees: A Historical Perspective" in Turk, Edwards and Wouters (eds) *In Flight from Conflict and Violence: UNHCR's Consultations on Refugee Status and Other Forms of International Protection* (2017) 96.

African regional law, the OAU Refugee Convention and its framework remain underdeveloped.¹⁰

This article offers a different approach to the interpretive challenges of the OAU Refugee Convention by highlighting the dynamics between the convention and the 1951 UN Convention. Until now, there has been an overreliance on the 1951 UN Convention to interpret the OAU Refugee Convention, thereby undermining any distinct African interpretation. Additionally, this reinforced a Eurocentric understanding that overshadows any potential Africanised approach.

(b) Radjabu: The sole judicial interpretation of Article I(2)

The matter of *Radjabu v the Chairperson of the Standing Committee for Refugee Affairs*¹¹ (*Radjabu* case) is currently the only judicial decision interpreting the expanded refugee definition set out in Article I(2) of the OAU Refugee Convention.¹² The Western Cape High Court in this case identified numerous procedural failures in the refugee status determination (RSD) process, namely superficial interviewing instead of an in-depth inquisitorial one, the absence of a proficient interpreter and the absence of substantiated reasoning to reject the applicant's asylum application by both the RSD officer and the Standing Committee.¹³ The court, therefore, held that the proceedings conducted by the RSDO and the standing committee were unlawful and thus their decision to reject the applicant's asylum application had to be set aside.¹⁴

Significantly, Binns-Ward J interpreted Article I(2), proposing a two-part test: first element is that the relevant authority must assess the objectively verifiable circumstances in the refugee's country of origin, and the second element considers whether an enumerated event is present in the country of origin, and determines if the event in question compelled the refugee to flee their habitual residence.¹⁵ Although the judgment did not fully elaborate on the refugee-producing round of ESDPO, it provides a foundational interpretive entry point.

(c) Consequences: Fragmentation and limited institutional guidance

The judicial and scholarly silence around ESDPO has profound practical implications. The failure of African courts to provide, or even attempt to provide, a judicial interpretation of the convention forces scholars and decision-makers to rely on the UN's interpretation of the African convention.¹⁶ This results in African states applying the convention inconsistently, which affects legal certainty, the legitimacy of domestic refugee regimes and fairness in the RSD process.

The absence of historical documentation, together with practical challenges, further compounds this interpretive issue. The practical difficulties are the lack of training and guidance for decision-makers involved in the RSD process. In the *Radjabu* case, Binns-Wards J stresses the importance of developing practical instructions to guide the application of the OAU Refugee

10 Sharpe *The Regional Law of Refugee Protection in Africa* (2018) 1; Pinduka "Refugeehood in Crisis and the Quest for a Decolonial Turn in Africa" 2023 *PAC* 128.

11 *Radjabu v The Chairperson of the Standing Committee for Refugee Affairs* [2015] 1 All SA 100 (WCC).

12 Binnes-Ward interpreted section 3(b) of the Refugees Act, 1998, which defines refugees as "...as a person [who] owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere." This provision incorporates Art I(2) of the OAU Refugee Convention with a slight modification. *Radjabu v The Chairperson* 6; UNHCR ESDPO Guide (2023) 22.

13 *Radjabu v The Chairperson* 10, 25 and 21: "Regulation 5 (3)(c) of the Refugee Regulations would suggest that a person closely identified with an applicant's interests should not be used for interpretation purposes."

14 *Ibid* 32 and 39–40.

15 *Ibid* 6.

16 UNHCR ESDPO Guide (2023) 21.

Convention, especially in the RSD process when assessing refugee applications.¹⁷ Further, the 2023 UNHCR guide on Article I(2) of the OAU Refugee Convention is the first detailed effort to clarify ESDPO, but it remains external to African judicial development.¹⁸ This UNHCR guide will be discussed in the following section. Without adequate interpretive tools, RSD officers lack the capacity to apply the expanded refugee definition consistently and lawfully, particularly the ground of ESDPO.

3 CONCEPTUAL FRAMEWORK OF THE DEVELOPMENT OF EVENTS SERIOUSLY DISTURBING PUBLIC ORDER

The OAU Refugee Convention was adopted on the 10th of September 1969 to address displacement unique to the African continent, expanding the scope of protection to include occupation, external aggression, foreign domination and ESDPO.¹⁹ Unlike the 1951 UN Convention, which centres on individual persecution, the OAU Refugee Convention reflects a communitarian approach as the convention protects groups fleeing instability, generalised violence and state failure.²⁰

The Convention provides a legal framework for protecting African refugees, yet the practical impact of its expanded refugee definition remains poorly understood.²¹ The refugee-producing ground of ESDPO remains undefined and has received little judicial attention. Interpretation should, therefore, rely on general principles of treaty interpretation outlined in Articles 31 to 33 of the Vienna Convention on the Law of Treaties of 1969²² (Vienna Convention) and be informed by the preamble of the OAU Refugee Convention, which calls for African solutions to African problems.²³ It is possible to infer that the creators of the OAU Refugee Convention intended the Convention to be understood not only in the African context but also by utilising African philosophical and/or legal methods to aid its interpretation and enhance its effectiveness in Africa. Therefore, any understanding of ESDPO should reflect the realities of conflict, human rights violations and governance breakdown in Africa.

There is a need to cautiously examine ESDPO to determine its meaning to reach an interpretive consensus.²⁴ The refugee-producing ground of ESDPO comprises three elements, “events”, “seriously disturbing”, and “public order”, each of which carries independent interpretive weight. The ordinary meaning of the word “events” refers to occurrences or happenings.²⁵ In its plural form, “events” indicate that it should be more than a single random incident; rather, it must imply a pattern of systematic or cumulative actions or behaviours that would be more

17 *Radjabu v The Chairperson* 40; *Rutinwa In Flight* (2017) 110.

18 UNHCR ESDPO Guide (2023).

19 Sharpe “Regional Refugee Regimes: Africa” in Costello, Foster and McAdam (eds) *The Oxford Handbook of International Refugee Law* (2021) 282–283; *Rutinwa In Flight* (2017) 101; AU “OAU Convention Governing the Specific Aspects of Refugee Problems in Africa” <https://au.int/en/treaties/oau-convention-governing-specific-aspects-refugee-problems-africa> (accessed 03-12-2023).

20 OAU Refugee Convention, 1969, preamble and Article I (2).

21 Wood “Expanding Protection in Africa: Case Studies of the Implementation of the 1969 African Refugee Convention’s Expanded Refugee Definition” 2014 *IJRL* 561.

22 Vienna Convention on the Law of Treaties, 1969.

23 Hathaway and Foster *The Law of Refugee Status* (2014) 5; Wood “The African War Refugee: Using IHR to Interpret the 1969 African Refugee Convention’s Expanded Refugee Definition”, in Cantor and Durieux (eds) *Refugee from Inhumanity? War Refugees and International Humanitarian Law* (2014) 185; Gardiner *Treaty Interpretation* (2015); Vienna Convention on the Law of Treaties, 1969, Art 31–32; OAU Refugee Convention, 1969, preamble.

24 Khan and Schreier *Refugee Law in South Africa* (2014) 80; Sharpe 2012 *McGill LJ* 113.

25 Adeola “Protecting ‘Climate Refugees’ under the OAU 1969 Refugee Convention” in *The Palgrave Handbook of Democracy, Governance and Justice in Africa* (2022) 368.

likely to justify protection.²⁶ For an occurrence or happening to be classified as an event, it must consist of a series or pattern of violent occurrences that significantly disturb the public order in either a specific part or the entire country of origin, impacting a significant number of individuals and violating one or more of their fundamental rights. In certain instances, natural disasters have been known to result in a state of emergency and/or the deprivation of rights, and as such could qualify as an “event”.²⁷

The second element of ESDPO is “seriously disturbing”, which provides an objective threshold of severity that must be met to classify an event as a disturbance to public order. The disturbance must be more than incidental or trivial; it must be prolonged and a significant disruption of societal peace and security. The use of “seriously” emphasises the gravity of the event and suggests that the harm involved should be more severe than emotional distress or inconvenience. A serious disturbance entails a measurable degree of harm, typically encompassing violations of fundamental human rights such as life, liberty, and security.²⁸ In *R v Lohnes*,²⁹ the Supreme Court of Canada interpreted “disturbance” as requiring an objective assessment, focusing on whether the event disrupts the tranquillity of a community rather than merely affecting individuals.³⁰ This means that the nature and intensity of the event should be weighed against the expected level of public order in any given context. This standard aligns with the interpretation advanced by scholars such as Rankin, who contend that a disturbance must reflect broader societal impact, with the scope and severity of violence or disruption affecting essential services, livelihoods, and, potentially, the displacement of people.³¹ Thus, an event deemed “seriously disturbing” must involve a series of significant occurrences that infringe on the rights of a considerable number of people, undermining the societal order.³²

Despite the term “public order” being commonly used in various legal instruments, there is difficulty ascribing a definition to the phrase.³³ The ordinary meaning of public order refers to the prevention of crime or disorder.³⁴ The phrase is equivalent to terms such as safety, public peace and tranquillity.³⁵ Public order is associated with law and order; a set of moral, political, and economic values or ideas deemed necessary for preserving a specific societal structure. It also refers to a basis for rejecting or limiting private agreements, for exerting police power, or for invalidating the application of foreign law.³⁶ In other words, public order can also be characterised by an absence of violence and a stable political environment that allows

26 Khan and Schreier *Refugee Law* 83.

27 Edwards “Refugee Status Determination in Africa” 2010 *AJICL* 217; Rankin “Extending the Limits or Narrowing the Scope? Deconstructing the OAU Refugee Definition Thirty Years on” 2005 *SAJHR* 414, 427-28; OAU Refugee Convention, 1969, Art 1(2); United Nations (UN), Promotion and Protection of Human Rights: *Fundamental Standards of Humanity*, 20 Dec 2001, E/CN.4/2002/103, para 2; UN Human Rights Committee, CCPR General Comment No. 29: Art 4: *Derogations during a State of Emergency*, 31 Aug 2001, CCPR/C/21/Rev.1/Add.11.

28 Adeola Palgrave *Handbook* 370; Rankin 2005 *SAJHR* 424; Schreier *A Critical Examination of South Africa’s Application of the Expanded OAU Refugee Definition: Is Adequate Protection being Offered within the Meaning of the 1969 OAU Refugee Convention?* (Unpublished LLM-thesis, University of Cape Town, 2008) 21.

29 *R v Lohnes* [1992] 1 S.C.R 167.

30 *Ibid* 167, para 7.

31 Rankin 2005 *SAJHR* 424.

32 Wood *Refugee from Inhumanity?* 198; Jayawickrama *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence* (2017) 477; Khan and Schreier *Refugee Law* 82–83; Edwards 2010 *AJICL* 220.

33 Khan and Schreier *Refugee Law* 81.

34 Jayawickrama *The Judicial Application* 159.

35 *Ibid* 477.

36 *Ibid* 159–160; Adeola Palgrave *Handbook* 369.

individuals to go about their daily lives.³⁷ Therefore, acts detrimental to a country's tranquillity and peace would be considered as acts disturbing public order.³⁸ The African Commission on Human and Peoples' Rights defines public order as conditions that ensure institutions operate normally and harmoniously based on an agreed set of principles and values.³⁹

Furthermore, the Declaration on Refugee Protection⁴⁰ by the Southern African Development Community⁴¹ (SADC Refugee Declaration) emphasises the importance of considering African values, hospitality, human rights and relevant humanitarian principles in addressing the needs of refugees and the challenges they experience.⁴² Further, it stipulates that the OAU Refugee Convention serves as the regional basis for protecting refugees and seeking solutions in Africa.⁴³ The SADC Refugee Declaration does not define "public order". Still, it stipulates that countries must commit to effectively addressing circumstances that could lead to a decline in security and law and order in the areas where refugees are hosted.⁴⁴ The Declaration, thus, does not define public order or elaborate on how disruptions to public order should be interpreted in the RSD process. This gap highlights the need for regional interpretive development that takes into account SADC's unique social, legal and political environment. Importantly, while the 1951 UN Convention refers to "public order" in respect of the expulsion of a refugee, under the OAU Refugee Convention - and by extension within SADC - the disturbance to public order is utilised as a foundation for granting refugee protection.⁴⁵ This distinction underscores the OAU Refugee Convention's inclusive, protection-oriented approach.

Considering the foregoing, what kind of events would constitute events that seriously disturb the public order? The refugee-producing ground of ESDPO provides a broad and adaptable framework for qualifying persons for refugee status. Grounds may include government-induced economic crises, such as those created by the Zimbabwean government.⁴⁶ Extreme poverty may constitute a ground for ESDPO due to its detrimental effects on human rights, including access to food, water, and healthcare.⁴⁷ Climatic events such as extreme weather that disrupt society politically, socially and economically would also qualify as an ESDPO.⁴⁸ These perspectives highlight the flexibility of the OAU Refugee Convention's expanded definition, which contrasts with the persecution-centred 1951 UN Convention. The OAU approach prioritises protecting communities when law and order collapse and the government fails to safeguard its citizens. The

37 Jayawickrama *The Judicial Application* 477.

38 Khan and Schreier *Refugee Law* 82.

39 *Scanlen v Zimbabwe* (Communication No. 297/2005) 26th ACHPR AAR Annex (Dec 2008 – May 2009) 109.

40 The Southern African Development Community (SADC) Declaration on Refugee Protection within Southern Africa, 1998 (SADC Declaration 1998).

41 SADC is a regional economic community (REC) consisting of 16 member States, namely Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia, and Zimbabwe. SADC's objective is to foster sustainable and fair economic growth and socio-economic progress through efficient and productive systems, enhanced cooperation and integration, good governance, and lasting peace and security. Southern African Development Community "Member States" <https://www.sadc.int/member-states#:~:text=The%20Southern%20African%20Development%20Community,of%20Tanzania%2C%20Zambia%20and%20Zimbabwe> (accessed 03-03-2024).

42 SADC Declaration 1998, para E (i) and (ii).

43 *Ibid.*

44 *Ibid.*, Art 7.

45 UNHCR ESDPO Guide (2023) 33; 1951 UN Convention, Article 32 "The Contracting States shall not expel a refugee lawfully in their territory save on the grounds of national security or public order...".

46 Schreier (Unpublished LLM-thesis, UCT, 2008) 55–58.

47 Mkwanzani *Conceptualising Poverty as a Ground for Refugee Status under the 1969 OAU Refugee Convention* (Unpublished LLM-thesis, University of Pretoria, 2018) 1–4, 28, 34.

48 Adeola *Palgrave Handbook* 370–371.

ESDPO ground covers a wide range of crises, underscoring the Convention's communitarian approach to asylum. This ESDPO ground is crucial in the context of evolving challenges faced by refugees in Africa and large-scale disruptions to public order that often involve violence, poverty and environmental crises.⁴⁹

Together, these three elements of ESDPO form a protective threshold; thus, the ground refers to the breakdown of societal functioning resulting from widespread or sustained events that seriously disturb public security and peace. Further, the inclusion of ESDPO within the OAU Refugee Convention allows member states, including those in SADC, to grant protection not only against individual persecution but also against situations in which the state fails to protect or prevent societal disorder or collapse. Such conditions may arise from climatic disasters, state failure, civil war, or potentially, gender-based violence.

Considering the above, this section proposes that ESDPO be accurately interpreted to better understand the ground in the context of African realities and the communitarian nature embedded in the OAU and SADC frameworks. The following section assesses whether South Africa's widespread violence against women can be classified as an ESDPO under the OAU Refugee Convention.

4 A PRACTICAL GUIDE TO DETERMINE EVENTS SERIOUSLY DISTURBING PUBLIC ORDER

The recent UNHCR guide offers a framework for assessing whether events, including climatic ones, seriously disturb public order under the OAU Refugee Convention.⁵⁰ Although tailored to climate-related disruptions, its principles apply to other scenarios, such as violence. By examining the guide's methodologies, this section provides a foundation for analysing violence against women within the ESDPO framework.

To qualify for refugee status under Article 1(2) of the OAU Refugee Convention, both the individual and collective components must be satisfied.⁵¹ The collective part requires an objective assessment known as the ESDPO indicia. This allows one to determine whether the events in the applicant's country constitute a refugee-producing ground. The ESDPO indicia is assessed in two steps. In the first step, factual indicators are evaluated to determine whether there is a disturbance of public order; the next step is to determine whether the disturbance is serious.⁵²

The individual component requires an individualised assessment to determine whether the risk to the applicant may pose serious harm and whether the state is willing or able to protect them. This decision, however, is left to the decision-makers, and little guidance is offered.⁵³ Decision-makers should use the provided list as a guide to exercise discretion and determine whether a disturbance of public order exists.⁵⁴ The nature, extent and duration of the indicators present in a particular case will demonstrate the degree of the disturbance of public order.⁵⁵ For

49 Rankin 2005 *SAJHR* 413; UN High Commissioner for Refugees (UNHCR) "Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")" June 2005, PPLA/2005/02 <https://www.unhcr.org/media/no-9-protection-mechanisms-outside-1951-convention-complementary-protection-ruma-mandal> (accessed 09-06-2022); Mkwanzani (Unpublished LLM-thesis, UP, 2018) 17.

50 UNHCR ESDPO Guide (2023).

51 *Ibid* 26.

52 *Ibid* 56.

53 *Ibid* 60.

54 *Ibid* 57.

55 *Ibid* 57.

ease of reference, the ESDPO indicators are presented here.⁵⁶ These ESDPO indicators will guide decision-makers in determining whether a disturbance of public order exists and whether an event amounts to an ESDPO.⁵⁷ The ESDPO indicators, as summarised from the UNHCR ESDPO Guide:

- **Government services** are failing to meet the basic needs of individuals in a society and therefore do not ensure that individuals are able to enjoy minimum core human rights.⁵⁸
- **Government institutions** are weak and function ineffectively.⁵⁹
- **Freedom from harm:** Individuals are unable to go about their daily lives with dignity and without fear for their lives, physical integrity or liberties, as a result of actions or omissions of the State, foreign States, non-State actors or other individuals.⁶⁰
- **Rule of law:** Judicial, security, and law enforcement bodies (including the courts, police, armed forces and other officials exercising public order powers) do not operate in accordance with the rule of law, and in a way that is fair, impartial, transparent and non-discriminatory.⁶¹
- **Management of public protests:** Authorities respond to public protests, strikes or demonstrations with coercive and repressive measures, contrary to human rights law and

56 ESDPO Indicators.

57 UNHCR ESDPO Guide (2023) 57–59.

58 This may be evidenced by: the closure of essential services such as hospitals and schools; or a lack of food, essential medical services and supplies, basic shelter and housing, and vital services such as water, electricity and sanitation that may threaten the right to life, physical integrity and liberty, and the capacity of people to live a life of dignity.

59 Relevant factors include: government services are delivered in an unequal, corrupt or discriminatory manner; inadequate laws, policies and practices for protecting civilians and restoring public infrastructure and services in response to emergency situations; the existence of paramilitary activity, active guerrilla forces or vigilante groups; intervention by foreign States, the United Nations and other actors; or other evidence of serious political, economic or social instability.

60 This may be evidenced by: indiscriminate and/or high levels of violence; riots or violent protests; the existence of an armed conflict as defined under international humanitarian law; the declaration of a State of emergency; a significant number of people killed, injured or displaced; significant human suffering, distress, tensions or fear within a community; large-scale displacement; State-sponsored violence; the occurrence of acts intended to spread terror within the society; individuals experiencing an unreasonable risk of injury, harassment, accidents, or other serious physical or mental harm; or widespread environmental degradation or destruction.

61 This may be evidenced by: the imposition of parallel or informal justice and administrative systems; widespread corruption, including bribery, forgery and the falsification of evidence; a failure to investigate and prosecute serious crimes; a failure to ensure due process; the unequal and discriminatory application of the law; a general lack of legal certainty; or a systemic or widespread failure to respect human rights generally.

the rule of law.⁶²

- **Civil conflict** is not effectively limited.⁶³
- **Government accountability** is limited.⁶⁴
- Other circumstances that result in a disturbance to general societal stability, public peace, public safety or public security.

The factual indicators present in the ESDPO indicators do not constitute an exhaustive list.⁶⁵ The greater the number of factual indicators present, the more compelling the argument becomes for determining that a disturbance of public order exists.⁶⁶ A single indicator, however, may be sufficient in some cases.⁶⁷ Therefore, if one or more of the factual indicators are identified, the decision-maker has exercised their discretion to determine that the public order of the applicant's country of origin has been disturbed.⁶⁸ Consequently, the decision-maker must proceed to the second step of the ESDPO indicia assessment, which involves assessing the seriousness of the disturbance.⁶⁹ The factors in the ESDPO indicia assessment:

- The disturbance to public order involves a threat to the rights to life, physical integrity and/or liberty of individuals within the society;
- The disturbance can be said to affect society at large, in a way that it creates a general sense of instability in the society by undermining the public peace, public safety or public security;⁷⁰ and
- The State is unable or unwilling to restore and ensure public order.⁷¹

All three criteria in the ESDPO indicia assessment must be met for the disturbance to be classified as a serious disturbance of public order. The severity of the disturbance should be evaluated based on the nature, extent and duration of the disturbance present.⁷² For a disturbance to be considered a serious disturbance to public order, it must pose a generalised or widespread threat to the basic rights of individuals in a society, such as their right to life, freedom and/

62 This may be evidenced by: arbitrary detention of individuals; the use of excessive force against protestors; intimidation and violence directed against the civilian population; or the unlawful imposition of restrictions on individuals' freedom of movement, expression and association.

63 As evidenced by: large scale and/or regular civil conflicts; limited or no opportunities for civilians to seek redress for grievances or harms; or the failure of authorities to take effective action to respond to civil conflicts promptly while respecting people's human rights.

64 Citizens having limited opportunities to participate in government, for example through direct citizen representation to government; limited or no checks on government powers; or a high level of media restrictions and government censorship.

65 UNHCR ESDPO Guide (2023) 57.

66 *Ibid* 57.

67 *Ibid* 57.

68 *Ibid* 57–59.

69 *Ibid* 59.

70 A disturbance affecting society at large can be widespread (affecting a proportionately large number of people within a society) and/or generalised (where there is a risk to an indeterminate number of people within a society). Serious disturbances need not affect the majority of individuals in a society, so long as enough individuals are affected

71 Note: Where the disturbance involves a threat to the rights to life, physical integrity and/or liberty of individuals and affects society at large, it can be presumed that the State in question is unable or unwilling to restore and ensure public order.

72 UNHCR ESDPO Guide (2023) 45, 59.

or physical integrity.⁷³ Additionally, this disturbance must have an impact on society at large, and the government of the country of origin in question must either be unwilling or unable to restore public order.⁷⁴ The focus of this stage of the ESDPO indicia assessment is on the State's willingness and its effective attempts to resolve severe disturbances.⁷⁵ In practice, however, if a disturbance to public order is present and affects society at large, it would demonstrate that a State is unwilling or unable to restore the country's public order.⁷⁶ Further, threats to the rights to life, freedom, and physical integrity are fundamental to determining whether public order has been disturbed.⁷⁷ These fundamental human rights are inherent in the principle of public order.⁷⁸ Further, the right to dignity is inherent in the right to life, and, as such, the right to life should not be narrowly interpreted.⁷⁹

It is evident, however, that this UNHCR guide suggests a purely objective assessment to determine whether an event in question seriously disturbs public order under the OAU Refugee Convention. This guide could help ensure uniformity in the interpretation and application of the expanded refugee definition in the RSD process across Africa. Although the ESDPO indicators are broad and only one indicator is required, the interpretive guide restricts undeserving applicants from protection under the OAU Refugee Convention. This is because a causal connection must be determined for the applicant to receive protection under the OAU Refugee Convention.

5 VIOLENCE AGAINST WOMEN: A SOUTH AFRICAN PERSPECTIVE

The 2022 SAPS Annual Crime Statistics report reveals a significant rise in all violent crime across South Africa. Contact crimes, which include offences against individuals, increased from 601 366 cases in 2017/2018 to 621 282 in 2019/2020. Although there was a temporary decline to 535 217 cases in 2020/2021, contact crimes surged again to 607 163 in 2021/2022. Notably, sexual offences, classified as contact crimes, encompass rape, sexual assault, attempted sexual offences, and contact sexual offences. This persistent upward trend highlights the growing threat to personal safety in South Africa, with sexual violence being a critical concern.⁸⁰

According to the SAPS Annual Crime Statistics report for 2022, there were 52 420 reported cases of sexual offences in South Africa, with 41 583 of those cases being reported as rape during the 2018/2019 financial year.⁸¹ Further, 42 289 cases of rape out of 53 293 cases of sexual offences were reported for the 2019/2020 financial year.⁸² In addition, 46 214 cases of sexual offences were reported for the 2020/2021 financial year, of which 36 330 cases involved rape.⁸³ Further, the SAPS report indicates that 52 694 cases of sexual offences and 41 739 cases

73 *Ibid* 59.

74 *Ibid* 46, 59.

75 *Ibid* 46.

76 *Ibid*.

77 *Ibid*.

78 *Ibid*.

79 *Ibid* 48.

80 South African Police Service *Annual Crime Statistics 2021/2022* https://www.saps.gov.za/services/older_crimestats.php (accessed 12-11-2023).

81 *Ibid*.

82 *Ibid*.

83 *Ibid*.

of rape were reported in the financial year 2021/2022.⁸⁴

Despite various international and domestic legal protections for women's rights, violence against women continues to escalate in South Africa.⁸⁵ Vasant highlighted in 2015 the severity of the crisis, revealing that nearly 50 per cent of women in the country are at risk of being raped, with 24 out of 25 accused men walking free. In 2016, the femicide rate reached a staggering 12.1 per 100 000 women — five times the global average.⁸⁶ That same year, 138 per 100 000 women were raped, marking South Africa as having the highest rape rate globally. These alarming statistics underscore the urgent need for effective intervention to combat this crisis.⁸⁷

Further, the SAPS Crime Statistics report of 2018 indicates that 50 108 sexual offence cases were reported during the financial year of 2017/2018, which is a 0.9 per cent increase from the previous year, and that femicide increased by 11 per cent over the last two years.⁸⁸ It has further been reported that, on average, a woman is killed by her intimate partner every eight hours in South Africa.⁸⁹ Moreover, for the 2021/2022 financial year, SAPS indicated that 16 017 cases of domestic-related crimes were reportedly perpetrated against women between April and June.⁹⁰ During the same year, between October and December, the SAPS reported 23 144 cases of domestic-related crimes against females.⁹¹ These statistics underscore the heightened vulnerability of women in South Africa, as incidents of violent crimes against women continue to escalate.

A recent report reveals further challenges for women in South Africa, particularly the removal of gender-based violence cases from the court roll due to police inefficiencies. To address this, the Department of Community Safety launched the Court Watching Brief initiative, which monitors cases being removed and highlights police failures.⁹² The unit conducts court visits in the Western Cape, reviewing charge sheets and documenting instances in which poor police performance, such as the late submission of case documents, has led to case removals.⁹³ Investigations that fail to secure witness statements or are not completed on time also contribute to the withdrawal of cases, underscoring the critical need for police accountability in handling

84 *Ibid.*

85 Ntlama “Gender-based Violence Ignites the Re-emergence of Public Opinion on the Exercise of Judicial Authority” 2020 *De Jure LJ* 287.

86 Vasant “‘He Said I Needed to Stop Being a Lesbian’ The Unpunished Crime of Corrective Rape in South Africa” in Academic Council on the United Nations System (ACUNS), Vienna Liaison Office *Femicide: Targeting of Women in Conflict - a Global Issue that Demands Action* (2015) 127; Department of Higher Education and Training *Policy Framework to Address Gender-based Violence in the Post-School Education and Training System* (2019) 1.

87 DHET 2019 2.

88 *Ibid* 1.

89 *Ibid* 2.

90 SAPS *Crime Statistics: Crime Situation in Republic of South Africa First (1) Quarter* (Apr to Jun 2021) 62.

91 SAPS *Crime Statistics: Crime Situation in Republic of South Africa Third (3) Quarter* (Oct to Dec 2021) 32.

92 The primary objective of the Court Watching Brief unit is to strengthen the Department's oversight of the Police, as mandated by s 206(3) of the Constitution. Western Cape Government, Department of Community Safety *Western Cape Police Oversight Report* (Review period: Apr 2020 to Mar 2021) 15–17.

93 *Ibid.* Upon identifying these inefficiencies, the unit compiles a comprehensive report. This report is subsequently referred to the Provincial Commissioner of the SAPS and the Portfolio Committee on Community Safety, who are then expected to respond to the Department of Community Safety. Western Cape Government “Court Watching Brief” <https://www.westerncape.gov.za/general-publication/court-watching-brief> (accessed 26-04-2024).

gender-based violence.⁹⁴

The Court Watching Brief has disclosed that between July and September 2022, 208 monitored cases were removed from the court roll due to inefficiencies within the SAPS.⁹⁵ Of these 208 cases, 64 were associated with gender-based violence.⁹⁶ Among these 64 cases, 32 were withdrawn because the court lacked the necessary dockets, while 29 were withdrawn due to incomplete investigations.⁹⁷ Additionally, from October 2022 to March 2023, a total of 283 cases were struck off the court roll due to SAPS inefficiencies.⁹⁸ Of these 283 cases, 77 were related to gender-based violence, while the remaining 206 cases involved offences such as assault with grievous bodily harm and murder.⁹⁹ Of the 77 gender-based violence cases, 22 were withdrawn due to the court's lack of required dockets, and 48 cases were withdrawn due to incomplete investigations.¹⁰⁰

The Minister of Police Oversight and Community Safety for the Western Cape, Reagen Allen, has stated that the aforementioned data presents a grim picture, underscoring the shortcomings of both the SAPS and the entire criminal justice system in adequately safeguarding and serving the South African population.¹⁰¹ Furthermore, Allen highlighted that these figures represent only the cases overseen by the Court Watching Brief unit, suggesting that courts may dismiss many similar incidents without oversight.¹⁰²

In the case of *S v Nobade*¹⁰³ the Western Cape High Court acknowledged the pervasive issue of violent crime in South Africa, particularly violent crimes against women.¹⁰⁴ The court further recognised that South Africa has become the femicide capital of the world, with intimate homicides comprising 57 per cent of all reported cases.¹⁰⁵ Consequently, the court noted that intimate femicide has reached epidemic proportions and represents a significant social problem.¹⁰⁶ The factors contributing to the diminished social status of women in South Africa include earning lower salaries than their male counterparts, facing unemployment, and their rights are often undermined by traditional or cultural practices.¹⁰⁷ The court, therefore, determined that the current epidemic of gender-based violence in South Africa stems from outdated patriarchal notions that women should be submissive or obedient to their male partners.¹⁰⁸ The brutal murders and assaults on women, often perpetrated by their partners in their homes, represent an attack on both humanity and the South African community.¹⁰⁹ These

94 *Ibid.*

95 South African Government “Western Cape Police Oversight and Community Safety on Gender-based Violence Cases in Court” <https://www.gov.za/speeches/77-gender-based-11-sep-2023-0000> (accessed 12-11-2023).

96 *Ibid.*

97 *Ibid.*

98 *Ibid.*

99 *Ibid.*

100 *Ibid.*

101 *Ibid.*

102 *Ibid.*

103 *S v Nobade* [2019] ZAWCHC 76.

104 *Ibid* 76, 21.

105 *Ibid.*

106 *Ibid.*

107 Mogale “Violence Against Women in South Africa: Policy Position and Recommendations” 2012 *VAW* 582.

108 *S v Nobade* [2019] ZAWCHC 76, 24.

109 *Ibid.*

acts violate the fundamental human rights of equality and dignity.¹¹⁰

6 APPLYING THE EVENTS SERIOUSLY DISTURBING PUBLIC ORDER INDICIA TO THE CASE OF VIOLENCE AGAINST WOMEN IN SOUTH AFRICA

To address the article's key objective, the following section will employ the ESDPO indicia assessment as outlined in the UNHCR interpretive guide.¹¹¹ However, the individual component, the second component of the ESDPO indicia, will not be utilised in this section as it requires a case-by-case assessment to determine whether a causal connection exists that compelled the applicant to flee their country of origin. Determining whether an individual qualifies for refugee status under Article I(2) of the OAU Refugee Convention falls outside the scope of this study. Hence, only the collective component of the ESDPO indicia and its two steps will be utilised to ascertain whether violence against women constitutes an ESDPO.

Violence against women is a type of gender-based violence.¹¹² It encompasses various forms of psychological, physical, or sexual violence and harm inflicted upon women, which can occur within the community, families, or with the endorsement or perpetration of the State.¹¹³ The range of violent acts against women includes domestic violence, sexual abuse, stalking, trafficking of women, verbal abuse, physical harm, harassment, psychological mistreatment, economic exploitation, femicide, coercion, threats of such acts, and the arbitrary deprivation of freedom.¹¹⁴

South Africa grapples with a surge in violence against women, affecting people of all demographics.¹¹⁵ The Western Cape High Court in *Nobade* labelled South Africa the world's femicide capital due to high levels of violent crimes against women.¹¹⁶ Women are ruthlessly killed, violating fundamental human rights like equality and dignity, and undermining the freedom and security of the person.¹¹⁷ The constitutional provisions, specifically sections 7(2), 11, 12, and 205(3), specify that the State is obligated to uphold, protect, advance, and fulfil the rights outlined in the Bill of Rights.¹¹⁸ These provisions encompass the right to life, liberty, and security of the person, including protection from all forms of violence, the right to physical and mental integrity, and the freedom from arbitrary deprivation of liberty.¹¹⁹ The Constitutional Court in *S v Makwanyane*¹²⁰ (*Makwanyane*) held that the rights to life and dignity are the source of all other rights.¹²¹ The Constitutional Court in this matter held that the rights to life and dignity are at the heart of the right to freedom and security of the person.¹²² Additionally, Justice

110 *Ibid.*

111 ESDPO Indicators.

112 Grosch *Violence Against Women in South Africa: An Event that Disturbs Public Order in Terms of the OAU Refugee Convention?* (Unpublished LLM-thesis, University of the Western Cape, 2024) 63.

113 UN Human Rights Office of the High Commissioner Declaration on Elimination of Violence Against Women, 1993, Art 1–2.

114 *Ibid.*

115 Grosch (Unpublished LLM-thesis, UWC, 2024) 64–69.

116 *S v Nobade* [2019] ZAWCHC 76, 21.

117 Grosch (Unpublished LLM-thesis, UWC, 2024) 64–69; United Nations Committee on the Elimination of Discrimination against Women (CEDAW) “CEDAW General Recommendation No. 19: Violence against Women, 1992” <https://www.refworld.org/docid/52d920c54.html> (accessed 25-08-2022).

118 Constitution of the Republic of South Africa, 1996, s 7 (2).

119 *Ibid.*, ss 11 and 12 (1)(a), (c) and (2).

120 *S v Makwanyane* 1995 (3) SA 391 (CC).

121 *Ibid* 84 and 144.

122 *Ibid* para 111.

Arthur Chaskalson opined that all other human rights cease if the rights to life and dignity are taken away.¹²³

The aforementioned is evidence that there are indiscriminate or high levels of violence occurring, resulting in a significant number of individuals being injured or killed, and a considerable amount of human suffering, tensions, distress, or fear existing within a community.¹²⁴ Additionally, many individuals are at an unreasonable risk of experiencing injury, harassment, or other severe mental or physical harm.¹²⁵ This demonstrates that indicator 3 of disturbance to public order: freedom from harm, is present.¹²⁶ This indicator implies that individuals are unable to lead “... their daily lives with dignity and without fear for their lives, physical integrity or ...” freedoms, due to the actions or omissions of the State, non-State actors, foreign States or other individuals.¹²⁷

The matter of *Carmichele v The Minister of Safety and Security*¹²⁸ (*Carmichele*) was heard before the Constitutional Court, which established that both the Interim Constitution and the Police Act impose positive obligations on the SAPS to safeguard women from violence.¹²⁹ In concurrence, the Constitutional Court in *AK v Minister of Police*¹³⁰ (*AK*) held that the SAPS must act promptly and expeditiously, and take all reasonable measures available to them in the circumstances.¹³¹ The Constitutional Court held that the SAPS failed to act diligently and expeditiously in the matter of *AK* and therefore the SAPS were the factual and legal cause of the harm sustained by *AK*.¹³² When a State fails to protect women from violence, their home and country become their prison, and the violence is the persecution.¹³³ The State’s failure to punish perpetrators of violence against women could be considered a human rights abuse.¹³⁴

Consequently, the CEDAW Committee found that the South African government has failed to implement sustainable measures to prevent domestic violence and to eradicate harmful practices by abolishing the discriminatory stereotypes and practices that contribute to violence against women.¹³⁵ The South African government has failed to criminalise all forms of domestic violence and femicide, as well as repeal provisions that permit, tolerate, or condone harmful practices that result in such violence.¹³⁶ Furthermore, the South African government has shown inconsistency in prosecuting rape and instances of violence against women.¹³⁷ There have been insufficient measures to ensure that questioning and evidence collection in cases of violence against women are free of discriminatory stereotypes and that the testimonies of victims receive due consideration.¹³⁸ Moreover, the CEDAW Committee found that the South African

123 *Ibid* para 84.

124 UNHCR ESDPO Guide (2023) 58.

125 *Ibid*.

126 ESDPO Indicators.

127 UNHCR ESDPO Guide (2023) 58.

128 *Carmichele v The Minister of Safety and Security* 2001 (4) SA 938 (CC).

129 *Ibid* 62.

130 *AK v Minister of Police* [2022] ZACC.

131 *Ibid* 14, 95.

132 *Ibid* para 96–97.

133 Ulrich “Confronting Gender-based Violence with International Instruments: Is a Solution to the Pandemic within Reach?” 2000 *Indiana JGLS* 636.

134 *Ibid*.

135 UN Convention on the Elimination of All Forms of Discrimination against Women *Inquiry Concerning South Africa Conducted under Art 8 of the Optional Protocol to the Convention* (2021) 102 a–e.

136 *Ibid*.

137 *Ibid*.

138 *Ibid*.

government has failed to fulfil its due diligence obligation to effectively investigate, prosecute, and punish violent crimes against women.¹³⁹

The South African government has failed in its obligations to thoroughly investigate and prosecute serious crimes, the equal and non-discriminatory enforcement of the law, to address widespread or systematic disregard for human rights, and to provide general legal certainty.¹⁴⁰ This showcases a second sign indicating a disturbance to public order, specifically indicator 4: rule of law.¹⁴¹ Indicator 4 suggests that the judiciary, law enforcement and security institutions, such as the police, courts and other officials, do not operate per the rule of law in a fair, transparent, impartial and non-discriminatory manner.¹⁴² Additionally, the above discussion depicts that government services are delivered in an unequal or discriminatory manner and that there exist inadequate procedures, policies, and laws to safeguard inhabitants.¹⁴³ This demonstrates the presence of a third indicator, specifically indicator 2: government institutions.¹⁴⁴ Indicator 2 implies that the government institutions are weak and operate inefficiently.¹⁴⁵

Therefore, three indicators of a disturbance to public order can be identified. These indicators are: indicator 2: government institutions; indicator 3: freedom from harm; and indicator 4: rule of law. Hence, it can be concluded that there exists a disturbance to public order in South Africa. Now that an evaluation of the disturbance to public order has been conducted, Step 2 can be initiated to determine whether the disturbance meets the criteria for a serious disturbance (as informed by the ESDPO indicia assessment).¹⁴⁶ For a disturbance to be classified as serious and consequently qualify as an event that seriously disturbs public order, it must satisfy all three criteria outlined in Step 2.¹⁴⁷

Based on the findings of the ESDPO indicators¹⁴⁸ violence against women can be regarded as a disturbance to public order in South Africa. This disturbance affects society at large due to its widespread nature, posing a risk to an unspecified number of individuals within a community. Furthermore, South Africa is currently facing elevated levels of violent crimes against an indeterminate number of women.

Hence, as the disturbance endangers the rights to life, physical integrity, and freedom of an indeterminate number of individuals, while also impacting society at large, it can be inferred that the State in question lacks the capacity or willingness to restore and uphold public order. Consequently, it can be asserted that acts of violence against women represent a serious disturbance of public order in South Africa, thereby classifying such incidents as ESDPO.

7 CONCLUSION

The OAU Refugee Convention has often been praised for incorporating and expanding the definition of a refugee stipulated in the 1951 UN Convention.¹⁴⁹ The expanded refugee definition outlined in the OAU Refugee Convention moves beyond persecution to offer a broader scope

139 *Ibid.*

140 UNHCR ESDPO Guide (2023) 58.

141 ESDPO Indicators.

142 *Ibid.*

143 *Ibid.*

144 *Ibid.*

145 *Ibid.*

146 ESDPO Indicia Assessment.

147 *Ibid.*

148 ESDPO Indicators

149 Grosch (Unpublished LLM-thesis, UWC, 2024) 43.

of protection, including ESDPO.¹⁵⁰ The OAU Refugee Convention, however, lacks interpretive guidance, and there is no consensus regarding the specific meaning of ESDPO.¹⁵¹ As the significance of ESDPO increases, it is imperative to reach an interpretive consensus.¹⁵²

This article critically examined the OAU Refugee Convention, with a particular focus on ESDPO, to contribute to the existing body of knowledge. It determined the extent to which violence against women in South Africa constitutes an event seriously disturbing public order. Prior to this determination, this article unpacks each component of the phrase ESDPO to identify the types of events that disrupt a country's public order. Given that ESDPO focuses on disturbances to public order arising from a series of events, this article undertook a comprehensive analysis of the meaning and scope of "public order." Despite its widespread use across various legal instruments, defining "public order" in an African context poses significant challenges.¹⁵³

This article finds no consensus among African countries on the interpretation and application of the OAU Refugee Convention, the expanded refugee definition, or the term "public order." It concludes that ESDPO refers to a country engulfed by such a degree of turmoil that law and order can no longer be maintained, leaving the inhabitants without protection and profoundly affecting their daily lives. Consequently, ESDPO encompasses occurrences of violence, gross violations of human rights, war and severe climatic conditions that compel large numbers of individuals to seek refuge outside their country of origin.

Despite international, regional and domestic legislation and legal obligations, violence against women in South Africa remains a prevalent issue that is increasing daily, to the extent that South Africa is often referred to as the femicide capital of the world. Such violence violates the fundamental rights and freedoms of women in South Africa. This article employs the UNCHR guidelines to determine whether violence against women in South Africa qualifies as an ESDPO. To demonstrate the significant vulnerabilities faced by women, statistical data from 2016 to 2022 highlights occurrences of violence against them in multiple forms, including domestic violence, sexual violence, assault, intimate partner violence, financial abuse, harassment, and threats. The South African government and the SAPS failed in their legal obligations to protect women from all forms of violence and to uphold the rights to human dignity, life, freedom and security of the person.

Based on the assessment utilising the UNHCR guide, this article concludes that three indicators are present, indicating that public order in South Africa has been seriously disturbed by violence against women. The indicators present are 2, 3 and 4.¹⁵⁴ Therefore, the crisis of violence against women represents a serious disturbance of public order in South Africa, thereby constituting ESDPO under the OAU Refugee Convention.

This article concludes that violence against women in South Africa constitutes an event that seriously disturbs public order, thereby warranting protection in terms of the OAU Refugee Convention.

150 *Ibid* 43–44.

151 *Ibid* 14.

152 *Ibid*.

153 *Ibid* 15–25.

154 ESDPO Indicators.