Challenges and Prospects of Litigating Sexual and Reproductive Health and Rights of Women in Nigeria: Lessons from Comparative Foreign Jurisprudence

Akinola E. Akintayo
https://orcid.org/0000-0001-5319-3879
University of Lagos
The Centre for Human Rights, University of Pretoria
akinat2002@yahoo.com

Abstract

Available statistics revealed vulnerable and fragile conditions for women in Africa, including Nigeria. This is due to the persistent violation of their sexual and reproductive health and rights (SRHR), maternal heath rights, choice of spouse and right to determine whether or not to have children and the numbers of children to have, access to contraceptives, etc. These rights are violated due to cultural norms, medical negligence, lack of access to social and economic resources, etc. If this condition is left to fester, Nigerian women may never attain their full potential and capabilities to develop because of the links that exist between sexual and reproductive health and rights and equality, empowerment, economic growth and development. There is, therefore, a need to strengthen this fragile condition through the effective implementation and enforcement of international, regional and national laws relating to SRHR. Rights litigation strategy is an acknowledged tool of empowerment and transformation in this regard. Consequently, this article examines SRHR of women in Nigeria, highlighting the challenges with litigating cases involving SRHR. Also, the article considers the prospects for litigation through a comparative study of selected jurisdictions in order to explore how they have engaged with similar situations and challenges of litigating SRHR and to identify lessons for Nigerian courts.

Keywords: Sexual and reproductive health and rights of women; litigation, challenges and prospects; Nigeria; comparative foreign jurisprudence

UNISA university of south africa PRESS
Comparative and International Law Journal of Southern Africa https://doi.org/10.25159/2522-3062/7662
https://unisapressjournals.co.za/index.php/CILSA ISSN 2522-3062 (Online), ISSN 0010-4051 (Print)
#7662 | 39 pages

Introduction

Elements of sexual and reproductive health and rights (SRHR) of women can be found in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). These instruments together constitute the international bills of rights. The constellation of rights that is today recognised as SRHR of women was, however, first explicitly recognised in 1994 at the International Conference on Population and Development (ICPD) in Cairo, where reproductive health was defined as:

> [a] state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health, therefore, implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so.[1]

Following this is the explicit elaboration of SRHR by the Committee on Economic, Social and Cultural Rights (Committee on ESCR) in its General Comment No. 22 in 2016. The General Comment specifically mentions and reflects universal access to sexual and reproductive health care services as one of the 2030 Agenda for Sustainable Development goals adopted by UN member states in 2015.[2]

In formulating the content and scope of SRHR in General Comment 22, the Committee on ESCR pointed out that SRHR is an integral part of the right to health in article 12 of the ESCR and other human rights treaties.[3] The Committee emphasised that although closely linked, sexual health and reproductive health are quite distinct from each other.[4] In defining sexual health, the Committee adopted the definition of the World Health Organisation (WHO), which defined the term as 'state of physical, emotional, mental and social well-being in relation to sexuality.' In contrast, reproductive health is defined as 'the capability to reproduce and the freedom to make informed, free and responsible decisions.'[5] Reproductive health is also said to include information, facilities, goods and services that will facilitate and empower individuals to make free and informed decisions about their reproductive behaviours.[6]

1 Lucía Pizzarossa, 'Here to Stay: The Evolution of Sexual and Reproductive Health and Rights in *International Human Rights Law*' <www.mdpi.com/journal/laws> accessed 13 June 2018.

2 Goal No 3 of the Sustainable Development Goals.

3 Committee on ESCR General Comment 22 para 1. The linkages and connection between SHRH and the right to health has been well explained by the Committee earlier in its General Comment No.14

4 General Comment 22 (ibid) para 6.

5 ibid.

6 ibid.

The Committee also explained that just like the right to health, SRHR extends beyond sexual and reproductive health care to include access to what the Committee referred to as the underlying determinants of sexual and reproductive health. These include 'safe and potable water, adequate sanitation, adequate food and nutrition, adequate housing, safe and healthy working conditions and environment', as well as relevant education and information, protection from all forms of violence, torture and discrimination and other human rights violations detrimental to the right to sexual and reproductive health.[7] According to the Committee, conditions of poverty and inequality, systemic discrimination and marginalisation, among other social determinants, also affect the scope and effective enjoyment of SRHR.[8] SRHR are also not stand-alone rights. They reinforce and are reinforced by other rights; they are indivisible and interdependent with other human rights.[9]

As explained by the Committee, SRHR has four major elements or components:[10] (i) availability—goods, services, personnel and facilities necessary to further SRHR must be available in sufficient quantity; (ii) accessibility—SRHR related goods, services and facilities must be physically accessible and near enough for people who require them; they must also be affordable and within the financial reach of those requiring them; while related information must be available and accessible to those requiring them; (iii) acceptability—SRHR related goods, services and facilities must be respectful of the cultural mores and sensitive to the status and living condition of the users; (iv) quality—SRHR related goods, services and facilities must be of good quality, they must be 'scientifically and medically appropriate and up-to-date'.[11] The end-users can enjoy the goods, services, and facilities on equal footing and without discrimination on any ground prohibited by international human rights norms.[12]

In mapping the parameters and scope of SRHR under International Law, the UN Convention on the Elimination of All Forms of Discrimination against Women of 1998 (CEDAW) is vital. CEDAW is the only human rights treaty that expressly affirms SRHR at the international level. The combined reading of Articles 12 and 16 of CEDAW constitutes the bedrock of SRHR under CEDAW. Article 12 obliges state parties to the Convention to take appropriate measures to eliminate discrimination against women in access to sexual and reproductive health care services on the basis of equality of men and women. Article 16 obliges state parties to take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. Thus, the two Articles together jointly speak to and engage the two pillars upon which the amplitude of SRHR of women rest.

7 ibid para 7.
8 ibid para 8.
9 ibid paras 9 and 10.
10 ibid paras 11–21.
11 ibid para 21.
12 ibid paras 22–32.

In Africa, including Nigeria, SRHR of women has rightly been identified as one of the weakest human rights protection areas.[13] Many factors have been identified as responsible for this in Nigeria in particular. They include child marriage which renders the girl child vulnerable to inadequate access to medical services and predisposes them to serious diseases and disability;[14] the gender dimension of HIV/AIDS in Nigeria;[15] genital cutting; maternal mortality; denial/lack of access to medical services relating to abortion, pregnancy, HIV/AIDS; and, socio-economic factors, among others.[16]

Routine violations of SRHR of women continue to worsen the fragile conditions of Nigerian women and continue to make them unable to attain their full developmental capabilities and potential. To worsen matters, Nigeria has not lived up to her obligations to put appropriate laws and other mechanisms in place to foster or enable the realisation of the SRHR of women in the country. There is, therefore, need to interrogate and explore unique or workable mechanisms and approaches to abate the vulnerable conditions of women and unleash their developmental potential to contribute to the continent's growth and development.

While there are several strategies that can be deployed to realise SRHR of women,[17] the litigation/judicial strategy is acknowledged in the literature to possess important advantages over other strategies. One, litigation calls societal attention to the violations and vulnerabilities inherent in SRHR; two, litigation helps in developing and clarifying SRHR norms; three, litigation creates avenues for dialogue over the meaning and content of SRHR, among others. Pieterse summarised these benefits thus: 'Provided that courts are accessible, the adjudication process provides virtually the only space within

13 Gladys Mirugi–Mukundi, 'A Human Rights-based Approach to Realising Access to Sexual and Reproductive Health Rights in sub-Saharan Africa' in Ebenezer Durojaye (ed), *Litigating the Right to Health in Africa: Challenges and Prospects* (Ashgate Publishing 2016) 43.

14 Iyabode Ogunniran, 'Combating Child Marriage in Nigeria' (2011) 2 Nnamidi Azikwe University Journal of International Law and Jurisprudence 95; Ayodele Atsenuwa, 'Promoting Sexual and Reproductive Rights through Legislative Interventions: A Case Study of Child Rights Legislation and Early Marriage in Nigeria and Ethiopia' in Charles Ngwena and Ebenezer Durojaye (eds), *Strengthening the Protection of Sexual and Reproductive Health and Rights in the African Region through Human Rights* (PULP 2014) 279. The negative impact of this practice on SRHR of women is summarised by Otoo-Oyortey and Pobi thus: 'Why are women disproportionately poor? Part of the answer lies in marriage practices which deny women choice, hamper them from realising their capabilities, and compromise their human rights.' Naana Otoo-Oyortey and Sonita Pobi, 'Early Marriage and Poverty: Exploring Links and Key Policy Issues' (2003) 11 Gender and Development 42.

15 Nkoli Aniekwu, 'Gender and Human Rights Dimensions of HIV/AIDS in Nigeria' (2002) 6(3) African Journal of Reproductive Health 30; Nkoli Ezumah, 'Gender Issues in the Prevention and Control of STIs and HIV/AIDS: Lessons from Awka and Agulu, Anambra State, Nigeria' (2003) 7(2) African Journal of Reproductive Health 89.

16 See also Mirugi–Mukundi (n 13) 52–61.

17 These include administrative, quasi-judicial and judicial and political. See Onyema Afulukwe-Eruchalu, 'Accountability for Maternal Healthcare Services in Nigeria' (2017) 137 International Journal of Gynaecology and Obstetrics 220 at 223–224.

which all, or most of, the other contributory voices to the dialogue over the meaning of socio-economic rights can simultaneously be present and heard.'[18] This observation applies equally to the litigation of SRHR, which is a category of socio-economic rights.

Consequently, the article examines the challenges and possibilities of litigating SRHR of women in Nigeria through a comparative study and analysis of jurisprudence from especially other African countries that share similar legal frameworks and challenges. This is in order to identify lessons for Nigeria and the possibilities of applying those lessons in advancing the litigation of SRHR of women in the country.

To achieve the above objectives, the article is divided into six sections. This introduction is section one. Section two examines and analyses the legal frameworks for SRHR of women in Nigeria and the scope they offer for the litigation of SRHR of women in the country. Section three discusses the theoretical foundation for human rights litigation and critiquing the routine over-reliance on the courts to address legislative predicaments of women's rights in Nigeria. Section four interrogates comparative foreign jurisprudence to identify how courts in other jurisdictions have engaged with the challenges of litigating SRHR in their respective jurisdictions in order to draw lessons that can be learned from their approaches. In the light of the approaches identified in section four, section five discusses the possibilities of litigating SRHR of women under Nigeria's existing frameworks. Section six concludes the article with necessary recommendations.

Legal Frameworks for Sexual and Reproductive Health and Rights of Women and the Scope for Litigation in Nigeria

Nigeria is a party to the ICESCR,[19] CEDAW,[20] the African Charter (which it domesticated)[21] and the Maputo Protocol.[22] By ratifying the ICESCR, Nigeria is obliged to take appropriate steps to the maximum of its available resources to progressively achieve the realisation and enjoyment of economic, social and cultural rights within its jurisdiction without discrimination of any kind, including on the ground of sex

18 Marius Pieterse, 'On "Dialogue", "Translation" and "Voice": A Reply to Sandra Liebenberg" in Stu Woolman and Michael Bishop (eds), *Constitutional Conversations* (PULP 2008) 331 at 336.

19 Nigeria ratified the ICESCR on 29 July 1993. See OHCHR 'Status of ratification by treaty and by country' <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=E> accessed 18 June 2019.

20 Nigeria signed the CEDAW on 28 April 1984 and ratified it on 13 June 1985. See UN 'Status of treaties' <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en> accessed 14 July 2019.

21 Nigeria ratified and domesticated the African Charter in 1983 via the African Charter (Ratification and Enforcement) Act Cap A9 LFN 2004.

22 Nigeria signed the Maputo Protocol on 16 December 2003 and ratified the Protocol on 16 December 2004. See African Commission on Human and Peoples' Rights 'Ratification Table: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' <http://www.achpr.org/instruments/women-protocol/ratification/> accessed 18 June 2019

(gender).[23] By subscribing to CEDAW, Nigeria undertakes to take appropriate steps to eliminate all kinds of discrimination against women and ensure the enjoyment of all human rights on the basis of the equality of the sexes.[24] By ratifying and domesticating the African Charter, Nigeria promises to recognise the rights in the Charter and to undertake legislative and other measures to give effect to them without discrimination of any kind.[25] The Maputo Protocol obliges state parties to take appropriate legal, institutional and other measures to combat discrimination against women and commit to modifying harmful social and cultural patterns of conduct against women, etc.[26] Nigeria assumes these obligations by subscribing to the Maputo Protocol. These four instruments are important sources of SRHR of women and form part of the legally binding frameworks for the protection of the SRHR of women in Nigeria.

On a strictly domestic level, SRHR of women is underpinned by section 17(3)(d) of the Constitution of the Federal Republic of Nigeria, 1999, as amended (the Nigerian Constitution). Section 17(3)(d) obliges the state to direct its policy towards 'ensuring adequate medical and health facilities for all persons.' In other words, the state should endeavour to provide access to medical and health facilities for all persons, including women.

Although not expressed in the language of rights, the provision Section 17(3)(d) of the Nigerian Constitution is generally understood to guarantee some aspects of the right to health.[27] The provision is complemented by sections 42(1) and (2) of the Nigerian Constitution. Section 42(1)(a) outlaws the discrimination of citizens of Nigeria on the grounds of ethnic affiliation, place of origin, sex, religious or political opinion. Section 42(1)(b) forbids the conferment of advantage or privilege not conferred on any other citizens on the grounds of membership of a particular ethnic group(s), place of origin, sex, religious or political opinion. Section 42(2) prohibits the subjection of citizens of Nigeria to any disability or deprivation by reason of the circumstances of their birth. Thus, discrimination on the ground of sex is one of the prohibited grounds of discrimination in the Nigerian Constitution.

This reading of section 42 of the Nigerian Constitution above is supported by judicial decisions and scholarly writings. In *Women Empowerment and Legal Aid v Attorney-General of the Federation*,[28] the Federal High Court held section 124 of the Police Act unconstitutional because it subjected female police officers to disability which male police officers are not subjected to. Section 124 of the Police Act required female police

23 Article 2 (1) of the ICESCR.
24 Article 2 of CEDAW
25 Articles 1 and 2 of the African Charter
26 Articles 1 and 2 of the Maputo Protocol.
27 Akinola Akintayo, 'Planning Law versus the Right of the Poor to Adequate Housing: A Progressive Assessment of the Lagos State of Nigeria's Urban and Regional Planning and Development Law of 2010' (2014) 4 African Human Rights Law Journal 562–563.
28 (2015) 1 NHRLR 39.

officers who intend to marry to obtain permission in writing from the Commissioner of Police in charge of the state command where the concerned officer is serving. In *Mrs Lois Chituru Ukeje & Anor v Mrs Gladys Ada Ukeje*,[29] the Supreme Court of Nigeria held Igbo customary law and practice that prevented female children from sharing in the estates of their deceased fathers a violation of section 42(1) and (2) of the Nigerian Constitution. The impact and influence of section 42 of the Constitution on the expansion of the rights of women in Nigeria have also been ably discussed by Ekhator[30] and Okongwu,[31] among others.

Article 16 of the African Charter (Ratification and Enforcement) Act[32] explicitly guarantees the right of every individual to enjoy the best attainable state of physical and mental health as well as receive medical attention when he or she is sick, further complements and strengthens the above frameworks. Thus, the ICESCR, the CEDAW, the Maputo Protocol, the African Charter and Nigerian Constitution together constitute the bedrock of SRHR of women in Nigeria. However, apart from the provisions of section 42(1) and (2) of the Nigerian Constitution, it will be problematic to base the litigation of SRHR of women in Nigeria upon any of the other frameworks. First, Nigeria is a dualist state which means ratified treaties do not have the force of Law until such a treaty has been enacted or domesticated into domestic Law. Accordingly, in terms of section 12 of the Nigerian Constitution; no treaty ratified by Nigeria will have the force of law in the country unless such treaty is enacted into domestic Law by the National Assembly.[33] Section 12 authorises the National Assembly to domesticate a treaty with subject-matter(s) outside of the Exclusive Legislative List in Part 1 of the Second Schedule to the Constitution, which will apply throughout the territory of Nigeria.[34] However, when exercising this power to domesticate a treaty outside the Exclusive Legislative List, such a treaty must be ratified by the majority of the House of Assembly of the States of the Federation before it will have effect throughout the territory of Nigeria.[35] If a treaty is enacted into domestic Law without following the processes and procedures in section 12 of the Constitution, such a law will only be

29 SC. 224/2004

30 Eghosa Ekhator, 'The Impact of the African Charter on Human and Peoples' Rights on Domestic Law: a Case Study of Nigeria (2015) 41(2) Commonwealth Law Bulletin 253.

31 Onyeka Okongwu, 'Are Laws the Appropriate Solution: The need to adopt non-policy measures in aid of the Implementation of Sex Discrimination Laws in Nigeria' (2021) 21(1) International Journal of Discrimination and the Law 26.

32 Cap A9 LFN 2004.

33 Section 12(1) of the Nigerian Constitution: 'No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.'

34 Section 12(2) of the Nigerian Constitution: 'The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the he Exclusive Legislative List for the purpose of implementing a treaty.'

35 Section 12(3) of the Nigerian Constitution: 'A Bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the Federation.'

applicable or enforceable in the Federal Capital Territory, Abuja (FCT) alone. This is the problem with the application of the Nigerian Child Rights Act, 2003, which domesticated the United Nations Convention on the Rights of the Child, 1989 (UNCRC), which is only applicable in the FCT. States desirous of having the Act apply in their jurisdictions must have the State House of Assembly pass it into Law in the State.[36] As at 15 June 2020, eleven states in the northern part of the country out of Nigeria's thirty-six component states have not adopted the CRA.[37]

As rightly observed by Ogunniran, children issues are residual matters within the purview of legislative powers of the states who have the prerogative of whether or not to adopt the Act into state laws.[38] Nwauche has argued, however, that failure to localise or adopt the CRA in the states does not leave children without relevant human rights protection because the Nigerian Bill of Rights applies throughout Nigeria.[39] Thus, laws, policies or practices outlawed by the CRA may still be struck down as unconstitutional in states not adopting the CRA if laws, policies or practices violate fundamental rights of children protected under the Bill of Rights, the absence of the CRA notwithstanding.[40] The argument has also been advanced that some provisions of the UNCRC have become part and parcel of Customary International Law with the implication that provisions of the UNCRC that have become part of Customary International Law is binding on states without the need to pass or adopt the CRA.[41]

As a result of the above, the ICESCR, CEDAW and the Maputo Protocol are international treaties required to be domesticated by virtue of section 12 of the Nigerian Constitution before they can have legal effect in the country. Women's rights, the subject matter of the treaties, are also something outside of the Exclusive Legislative List of the National Assembly and must therefore be ratified by the majority of the House of Assembly of the States. Thus, SRHR of women contained in the above-

36 The Conversation, 'Why the Child's Rights Act still doesn't apply throughout Nigeria' (24 September 2020) <https://theconversation.com/why-the-childs-rights-act-still-doesnt-apply-throughout-nigeria-145345> accessed 28 July 2021.

37 The eleven states that have not adopted the CRA are: Sokoto, Kebbi, Katsina, Jigawa, Yobe, Borno, Zamfara, Kano, Bauchi, Gombe, and Adamawa. Aderemi Ojekunle, 'It is Not Freedom for Women in Nigeria as 23 States Hold Back Signing on the Violence Against Persons (Prohibition) Act' (15 June 2020) <https://www.dataphyte.com/development/gender-development/its-not-freedom-for-women-in-nigeria-as-23-states-hold-back-signing-on-the-violence-against-persons-prohibition-act/> accessed 31 July 2021.

38 Iyabode Ogunniran, 'Forward Looking or Backward Stepping: Evaluating Child Protection from Sexual Exploitation in Nigeria' (2017) Journal of Human Trafficking 1 at 4.

39 Enyinna Nwauche, 'Child Marriage in Nigeria: (Il)legal and (Un)constitutional?' (2015) 15 African Human Rights Law Journal 421 at 423–427.

40 ibid.

41 House of Commons Library Briefing Paper, 'UN Convention on the Rights of the Child: a Brief Guide' (29 November 2016) <https://researchbriefings.files.parliament.uk/documents/CBP-7721/CBP-7721.pdf> accessed 20 July 2021.

mentioned international treaties cannot, as yet form the basis of litigation of SRHR of women before Nigerian courts.

Notwithstanding the foregoing, however, the ICESCR, the CEDAW and the Maputo Protocol are not wholly useless in Nigeria. Although not directly incorporated, the three instruments have influenced old and new laws through a process of legislative transformation. A case in point is the Violence Against Persons (Prohibition) Act, 2015 (VAPP Act).[42] The Act, tabled before the National Assembly in 2013 and passed into Law in May 2015, has been acknowledged as a veritable instrument of social engineering and reform in Nigeria.[43] The Act addresses and prohibits major forms of known and hitherto unknown or unaddressed forms of violence against persons in Nigeria. The radical features of the VAPP Act capable of revolutionising SRHR in Nigeria have been identified by Ekhator; they include prohibition of direct-indirect spousal violence and abuse; availability of protection orders against abusive spouses and partners; prohibition of harmful practices, abandonment, etc.; making rape a gender-neutral offence; recognition of different types of violence peculiarly suffered by women, eg emotional, psychological and economic abuses, etc.; creation of frameworks to implement the Act; the extension of the elements of the offence of rape beyond penile-vaginal penetration to include penetration of the orifices with anything else; among others.[44] There are, however, still gaps in the Act. It applies only in the Federal Capital Territory, Abuja, because crime outside the Legislative Lists is a residual matter which leaves the states with the discretion to adopt or localise the Act. As of 15 June 2020, 13 States and the FCT out of Nigeria's 36 States have adopted the VAPP Act.[45] The Act also fails to clearly outlaw marital rape, etc.[46] Notwithstanding its defects, however, the Act is a radical intervention that is poised to have a profound effect upon the protection of SRHR of women in Nigeria.

Another example is the Gender and Equal Opportunities Bill, 2016 (Gender Equality Bill). The evident influence of the CEDAW and the Maputo Protocol on the conception and crafting of the Bill is made clear in the Bill's Long Title. The Long Title of the Bill proclaims the domestication of the CEDAW, the Maputo Protocol and the Nigerian National Gender Policy as its aim. The Bill made wide-ranging provisions for the eradication of discrimination and inequality against women in areas such as education, politics, employment, family life and prohibition of gender-based violence, among

42 Oluwasina Ayeni, 'The Impact of The African Charter and the Maputo Protocol in Nigeria' in Oluwasina Ayeni (ed), *The Impact of the African Charter and the Maputo Protocol in Selected African States* (PULP 2016) 183 at 187.

43 Eghosa Ekhator, 'Protection and Promotion of Women's Rights in Nigeria: Constraints and Prospects' in Michael Addaney (ed), *Women and Minority Rights Law: African Approaches and Perspectives to Inclusive Development* (Eleven International Publishing 2019) 17 at 20.

44 ibid 22–23.

45 The thirteen States and the FCT that have adopted the VAPP Act are: Oyo, Ogun, Lagos, Osun, Ekiti, Edo, Anambra, Enugu, Ebonyi, Benue, Cross River, Kaduna, FCT, and Plateau. Aderemi Ojekunle (n 37).

46 Ekhator (n 43) 22–24.

others. The Bill was first presented to Nigerian parliament and rejected on the grounds of religious laws and beliefs in 2016.[47] A reworked version of the Bill is currently pending before the Nigerian Senate.[48]

Some scholars have also argued that the rights of women and children under international human rights instruments can be enforced in states like Nigeria that has domesticated the African Charter on Human and Peoples' Rights through Article 18(3) of the Charter.[49] Article 18(3) of the African Charter obliges state parties to the Charter to ensure the elimination of every discrimination and protection of the rights of the woman and the child as provided for under international declarations and conventions. While this argument is plausible, Article 18(3) will still have to surmount the supremacy of the constitutional challenge that is often levelled against the enforcement of the provisions of the Charter that are not expressly provided for under Chapter IV fundamental human rights provisions of the Nigerian Constitution. This is elaborated upon further below. The operationalisation of Article 18(3) of the African Charter in Nigeria will also require an activist judiciary which also appears to be lacking in the country. To buttress this point, Ekhator has correctly argued that the provisions of the Charter can be used to advance the rights of women in Africa.[50] In fact, Nigerian courts have, in a plethora of cases, relied on the provisions of the African Charter to vindicate the rights of women in Nigeria.[51]

Second, section 17(3)(d) of the Nigerian Constitution, apart from its very general and open-ended provisions, cannot also form the basis of the litigation of SRHR of women. The provisions are not justiciable by virtue of section 6(6)(c) of the Nigerian Constitution.[52] Although the scope and impact of section 6(6)(c) of the Nigerian Constitution on Chapter II generally and on section 17(3)(d) specifically have been adequately dealt with elsewhere,[53] it suffices it to state here that section 6(6)(c) of the Constitution effectively debarred Nigerian courts from entertaining any matter relating

47 Yomi Kazeem, 'Nigerian Lawmakers Voted down a Women Equality Bill Citing the Bible and Sharia Law' (*Quartz Africa*, 15 March 2016) <https://qz.com/africa/639763/nigerian-lawmakers-voted-down-a-women-equality-bill-citing-the-bible-and-sharia-law/> accessed 21 March 2020.

48 Queen Iroanusi, 'Senator reintroduces Gender Equality Bill' (*Premium Times*, 26 November 2019) <https://www.premiumtimesng.com/news/top-news/365263-Senator-reintroduces-Gender-Equality-Bill.html> accessed 21 March 2020.

49 Ayeni (n 42) 188.

50 Ekhator (n 30) 13–21.

51 See for instance, *Mojekwu v Ejikeme* (2000) 5 NWLR 402; *Mojekwu v Iwuchukwu* (2004) 11 NWLR (Pt. 883) 196, among others.

52 Section 6(6)(c) of the Nigerian Constitution provides that: 'The judicial powers vested in accordance with the foregoing provisions of this section – (c) shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.'

53 Akintayo (n 27) 562–567; Jumoke Oduwole and Akinola Akintayo, 'The Rights to Life, Health and Development: The Ebola Virus and Nigeria' (2017) 17(1) African Human Rights Law Journal 194 at 204–205.

to the enforcement of the provisions of Chapter II of the Constitution of which section 17(3)(d) is part. The potency of section 6(6)(c) of the Nigerian Constitution in debarring the courts from entertaining the provisions of Chapter II of the Constitution has been given judicial backing in many cases. One of the first in the long line of cases is *Archbishop Okogie v The Attorney-General of Lagos State* where the Nigerian Court of Appeal held that the provisions of Chapter II of the Nigerian Constitution are not justiciable as a result of the provisions of section 6(6)(c) of the Constitution.[54] This position of the Law was reiterated by the Supreme Court of Nigeria in the subsequent case of *Adebisi Olafisoye v Federal Republic of Nigeria*, where the Court held that Chapter II of the Nigerian Constitution as presently constituted is not justiciable pursuant to the provisions of section 6(6)(c) of the Constitution.[55]

Third, although Nigeria has domesticated the African Charter, which makes its provisions part and parcel of Nigeria's domestic Law, there is still controversy regarding whether or not the socio-economic rights provisions of the African Charter have thereby become justiciable in the country.[56] The Fundamental Rights Enforcement Procedure Rules, 2009 (FREP Rules, 2009) will appear to strengthen the argument for the justiciability of socio-economic rights in Nigeria through the African Charter. This is because the FREP Rules, 2009 mandates Nigerian courts to respect municipal, regional and international bills of rights brought to the attention of the courts, including the African Charter.[57] The provisions of the FREP Rules that included the rights in the African Charter as parts of the rights that can be enforced via the FREP Rules have, however, been declared unconstitutional in the case of *Registered Trustees of the Socio-Economic Rights and Accountability Project and Others v Attorney-General of the Federation and Another.*[58] The Court held in that case that the intention of the drafters of section 46(1) of the Nigerian Constitution, which empowered the Chief Justice of Nigeria to make rules for the practice and procedure of the High Court is restricted to the enforcement of fundamental human rights contained in Chapter IV of the Constitution alone and does not extend to any other human rights law(s) or instrument(s) in Nigeria. There is no evidence that the plaintiff, in this case, appealed the judgement of the Court or what became of the appeal. Thus, apart from the rather general and non-specific nature of its provisions, the African Charter will appear not to be a very sure footing upon which to hinge the litigation of SRHR of women in Nigeria. Sanni appears to have had a presentiment of the decision of the Court in this case when he argued in 2011 that some of the provisions of the FREP Rules 2009 are inconsistent with the provisions of the Constitution of Nigeria, 1999 and predicted that these provisions might be declared unconstitutional in adversarial proceedings for inconsistency with the

54 [1981] 2 NCLR 337.

55 (2004) 4 NWLR (Pt. 864) 581.

56 See Akintayo (n 27) 565–567 for a more detailed discussion of the controversy.

57 Paragraph 3(b) of the Preamble to the Preamble to the FREP Rules 2009.

58 *Registered Trustees of the Socio-Economic Rights and Accountability Project and Others v Attorney-General of the Federation and Another* Suit No. FHC/ABJ/CS/640/2010, decision of the Federal High Court Abuja, delivered on 29 November 2012.

Constitution.[59] Nwauche has, however, argued that the FREP Rules 2009 might be a suitable response to the problem and challenges of human rights enforcement in Nigeria if the courts recognise the utmost flexibility that must be inherent in its application.[60] Notwithstanding the many criticisms and gaps in the Rules, however, it remains one of the recognised procedures for the enforcement of fundamental human rights in Nigeria.

Thus, while there are frameworks from which SRHR of women can be derived in Nigeria, such frameworks are of the doubtful pedestal upon which litigations of that specie of rights can ordinarily be based. The section below discusses the theoretical foundation for human rights litigation and critiques the routine over-reliance on the judiciary as a means of addressing legislative predicaments.

Theoretical Foundation for Human Rights Litigation and Critique of Routine Over-Reliance on the Judiciary to Address Legislative Predicaments

Theoretical Foundation for Human Rights Litigation

Litigation is a concept that has been approached from different theories and approaches. This article discusses the theories of litigation relevant to the present discourse from two different perspectives—the theories of civil litigation in general and the theories underpinning human rights litigation in particular.

At a more general level, three popular theories underpin civil litigation. They are the Economic Theory of Suit and Settlement; the Framing Theory of Litigation; and the Risk Aversion Theory of Litigation Behaviour.[61] The Economic Theory of Suit and Settlement posits that human beings are economically rational beings who consider and weigh the benefits and losses appertaining to decisions to litigate or settle a case out of court.[62] Following the utility theory of decision-making, litigants will generally choose the most cost-effective and beneficial outcome.[63] The Framing Theory of Litigation explains that litigants do not make choices based simply on utility but based on a reference point of gains or losses. According to the Framing Theory, litigants who are operating from the standpoint of gains are likely to make risk-averse decisions when considering or evaluating options open to them, while litigants operating from the

59 Abiola Sanni, 'Fundamental Rights Enforcement Procedure Rules, 2009 as a Tool for the Enforcement of the African Charter on Human and Peoples' Rights in Nigeria: The Need for Far-reaching Reform' (2011) 11(2) African Human Rights Law Journal 511.

60 Enyinna Nwauche, 'The Nigerian Fundamental Rights (Enforcement) Procedure Rules 2009: A Fitting Response to Problems in the Enforcement of Human Rights in Nigeria?' (2010) 10 (2) African Human Rights Law Journal 502.

61 Chris Guthrie, 'Better Settle Than Sorry: The Regret Aversion Theory of Litigation Behaviour' (1999) 1999 University of Illinois Law Review 43.

62 ibid 47–54.

63 ibid.

standpoint of losses like defendants are likely to make risk-seeking choices.[64] As pointed out by Gutherie, however, both the Economic Theory of Suit and Settlement and the Framing Theory is deficient in that both present a one-dimensional view of human beings as rational and calculating beings without taking human emotions and feelings into consideration.[65] Gutherie, therefore, proposes the Regret Aversion Theory, which uses the human emotion of regret to explain litigants' litigation behaviour to complement and fill the emotional vacuum left by the two earlier theories. The Regret Aversion Theory posits that 'litigants seek to make litigation decisions that minimise the likelihood they will experience postlitigation regret.'[66] Thus, 'litigants will choose settlement over a trial to avoid feelings of regret associated with learning after a trial that they should have settled.'[67] In other words, litigants will not litigate where the likelihood of postlitigation regret is high.

The three theories together may explain the unwillingness and paucity of litigation by poor and vulnerable individuals and groups to assert legal entitlements. Standing in the place of vulnerability and unsure of the success, poor and vulnerable individuals and groups make rational calculations about litigation's immediate gains and losses. The desire to avoid postlitigation regrets may also explain the unpreparedness and general apathy of the poor in pushing for better conditions of living even in a jurisdiction where the provision of basic necessities of life are constitutional entitlements. This may explain why litigation and activism are left to public-spirited civil society organisations even in the latter jurisdictions.

With regard to human rights litigation specifically, law and litigation are viewed as veritable instruments of politics and strategy of power.[68] Litigation and the courts are, therefore, acknowledged as providing vulnerable groups and individuals' access to centres of power denied them by mainstream political institutions.[69] Litigation can also invigorate the struggles against vulnerability and create platforms around which activists can organise.[70] The human rights litigation theories discussed below illustrates the features of the human rights approach to litigation and indicate how such litigation can be made more effective.

One of the popular theories of litigation discussed here is Galanter's 'one shotters versus repeat players' theory.[71] According to this theory, litigators who repeatedly litigate in the same area(s) or issue(s) acquire expertise and economies of scale over time with

64 ibid 55–59.
65 ibid 60.
66 ibid 72.
67 ibid 73.
68 Joseph Raz, 'Rights and Politics' (1995) 71 Indiana Law Journal 27.
69 ibid 43.
70 Jackie Dugard, 'Urban Basic Services: Rights, Reality, and Resistance' in Malcolm Langford and others (eds), *Socio-economic Rights in South Africa: Symbols or Substance*? (CUP 2014) 275.
71 Marc Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change' (1974) 9(1) Law and Society Review 95.

respect to both start-up time and cost of litigation over one shotters who litigate sparingly or litigate over a wide range of issues or areas.[72] Related to this theory of Galanter is the 'focussed case' strategy of Bellow.[73] According to Bellow, explicitly politically focused litigation against particular institutions that affect the poor is essential to changing illegal and exploitative practices against the poor and the vulnerable.[74] Bellow surmises that institutions and systems that oppose the poor's access to services and legal entitlements are politically organised and will require a politically focused case strategy to efficiently engage or dislodge them.

Lastly, the destabilisation rights litigation theory of Sabel and Simon is another relevant litigation theory discussed here.[75] The theory is defined as 'claims to unsettle and open up public institutions that have chronically failed to meet their obligations and that are substantially insulated from the normal processes of political accountability.'[76] The objective of the theory is to 'disentrench or unsettle' public institutions that are not operating according to minimum standards and are immune from conventional or mainstream political correction mechanisms.[77] The theory argues that a concession or finding of liability of public institution(s) should bring about court-supervised negotiation or deliberation between the parties and stakeholders to resolve the issues and problems identified.[78] The theory has six potential effects at the individual, institutional and social levels. The six effects are: (i) the veil effects—it removes parties' veil of ignorance and self-interests by opening them up to alternative positions and possibilities; (ii) the *status quo* effect—it condemns the *status quo* and releases institutions from the grip of conservative ways things are hitherto done and forces them to consider alternatives; (iii) the deliberation effect—the theory forces openness between the parties and fosters deliberation and dialogue between them; (iv) the publicity effect—where the plaintiff(s) is vindicated, it helps to publicise the adjudicated vulnerability and put pressure on public officials to implement remedial actions; (v) the stakeholders' effect—finding of liability shifts the balance of power between the plaintiff(s) and defendant(s); (vi) the web effect—the finding of liability have spillover effects on other institutions and practices thereby compelling necessary remedial action and reforms. The above discussion explains the different theoretical approaches to human rights litigation and indicate possible litigation strategies for more effective human rights litigation practices.

72 ibid.
73 Gary Bellow, 'Turning Solutions into Problems: The Legal Aid Experience' (1977) 34 NLADA Briefcase 106.
74 ibid.
75 Charles Sabel and William Simon, 'Destabilization Rights: How Public Law Litigation Succeeds' (2004) 117 Harvard Law Review 1016.
76 ibid 1020.
77 ibid 1062.
78 ibid.

As rightly noted by Cummings and Rhode, a survey of literature and research around human rights litigation throw up a number of lessons.[79] The first is that litigation is a necessary strategy for social change, it is by no means adequate or sufficient on its own, it needs other mobilisation efforts to work effectively. The second is that there is a strong connection between the amount of money available to prosecute human rights litigation and the expected social impact. Third, a reflective evaluation of litigation is essential for the full realisation of its potential.

In light of this, the section below critiques or highlights the challenges inherent in over-reliance on litigation and the courts as a strategy for addressing legislative predicaments and social change with particular respect to the SRHR of women.

Critique of over-Reliance on the Judiciary to Address Legislative Predicaments or Problems of Social Change

Many challenges stand in the way of litigating SRHR of women in Nigeria. Those highlighted are the issue of the non-justiciability of this category of rights either because they are contained in international treaties which have been ratified but yet to be fully domesticated according to the requirements of the Constitution; or are contained in the unenforceable part of the Constitution as discussed above. This renders SRHR of women not cognisable before Nigerian courts.

From a socio-legal perspective, it is apparent that religious and cultural barriers are some of the biggest stumbling blocks responsible for the reluctance of the Nigerian legislature to domesticate instruments relating to the SRHR of women in Nigeria. The overbearing influence of religious and cultural barriers on the Nigerian legal-political sphere is clearly evident from at least two legislative initiatives aimed at advancing the rights of children (predominantly female children) and women in Nigeria. The first is the Child Rights Act, 2003, which seeks to domesticate the UNCRC. The second is the Gender and Equal Opportunities Bill, 2016 (GEO Bill), which seeks to domesticate the relevant provisions of the CEDAW in the country. With respect to the Child Rights Act, the Act failed to garner the constitutionally required two-thirds majority ratification of the Houses of Assembly of the States for the Act to have nationwide application. States desirous of having the Act apply in their jurisdiction have to localise the Act. So far, 25 of the 36 states in the country have localised the Act. All the 11 states yet to localise the Act are in the northern part of the country with little prospect that they will localise the Act any time soon.[80] The reasons that have been given for the disapproval of the Act by legislators and stakeholders from the northern part of Nigeria are that the Act is anti-culture, anti-tradition and anti-religion.[81] The GEO Bill was also voted down by Nigeria's Upper Chamber (the Senate) on 15 March 2015 on the ground that it will

79 Scott Cummings and Deborah Rhode, 'Public Interest Litigation: Insights from Theory and Practice' (2009) 36(4) Fordham Urban Law Journal 603 at 605.

80 The Conversation (n 36).

81 ibid.

violate the religious and cultural laws and beliefs of a section of the country.[82] The above examples show clearly the overbearing influence of religion and culture on the Nigerian legal-political sphere.

There is also the issue of the conservative legal culture of Nigerian courts, which is a feature of the common law tradition Nigeria inherited from England. This has been confirmed and illustrated in various studies.[83] The effect of this is to hamper necessary activism and pro-activeness of the courts in enforcing and realising SRHR of women in the country. Although not commonplace, Nigerian courts have sometimes displayed judicial activism, which entailed bold and ingenious interpretation of the provisions of the laws and Constitution to surmount impediments to substantive justice. Two examples are discussed here. The first is *Chief Gani Fawehinmi v Akilu and Togun*,[84] where the Supreme Court of Nigeria formulated the principle of citizens being their brother's keeper. The Court validated in the case the right of a private prosecutor to prosecute a government official who the government of the day was unwilling to prosecute for murder. The second example is *Bamidele Aturu v Minister of Petroleum Resources and Others*,[85] where a Nigerian Federal High Court struck down the government's deregulation of the downstream sector of the petroleum industry as unconstitutional on the ground that the policy violates the socio-economic objectives of the Nigerian Constitution. This decision is against the clear letters and provisions of the Constitution, which provides that the fundamental objectives and directive principles of state policies in the Constitution are not justiciable. There is no record or evidence that the independence of Nigerian courts has either been compromised or has any harm come to them as a result of the occasional activism. Analysis of comparative foreign jurisprudence in the next section highlights and buttresses the importance and need for an activist and pro-active judiciary in realising SRHR of women in the country.

In addition, there is an undue delay in the trial of cases in Nigerian courts. Reports indicate that as of March 2017, the Supreme Court of Nigeria just started hearing appeals filed in 2004.[86] This is a huge challenge in the litigation of cases, much more so SRHR of women cases in Nigeria. Litigation of human rights cases are ordinarily time-bound and cost-intensive. The mere potential or possibilities that these cases will drag

82 Library of Congress, 'Nigeria: Gender Equality Bill Fails in the Senate' (28 March 2016) <https://www.loc.gov/item/global-legal-monitor/2016-03-28/nigeria-gender-equality-bill-fails-in-the-senate/> accessed 28 July 2021.

83 See for instance, Tunde Ogowewo, 'Self-inflicted Constraints on Judicial Government in Nigeria' (2005) 49 Journal of African Law 39; Omoleye Oluwakayode and Eniola Oluwakemi, 'Administration of Justice in Nigeria: Analysing the Dominant Legal Ideology' (2018) 10(1) Journal of Law and Conflict Resolution 1.

84 (1987) 4 NWLR797.

85 (Suit No: FHC/ABJ/CS/591/09).

86 See for instance, John Abayomi, 'Supreme Court Laments Workload, Adjourns Atuche Appeal for One Year' (Punch, 5 March 2017) <http://punchng.com/supreme-court-laments-workload-adjourns-atuche-appeal-for-one-year/> accessed 5 March 2017.

on for 15 or more years before final resolution and the cost associated therewith in time and resources is a serious disincentive for embarking upon litigation in the first place.

The paucity of medical negligence experts is another major challenge to the litigation of SRHR of women in Nigeria. For instance, many of the violations that take place in the area of maternal health rights are often as a result of medical negligence. This is confirmed by available studies, which indicate that negligence plays an important role in many maternal mortality cases occurring in Nigerian medical institutions and establishments.[87] This also is the case with many other health-related SRHR of women. The absence of robust medical negligence experts will constitute an almost insurmountable obstacle to the prosecution of many of these cases in Nigeria.

The relative absence of public interest litigation in this area of the law is also a huge challenge. Literature indicates that public interest litigation of socio-economic rights in South Africa is largely responsible for the relatively more robust socio-economic rights jurisprudence and the positive effects that such adjudication has had upon South African society.[88] The relative absence of public interest litigation with reference to SRHR of women in Nigeria will result in the tardy development of that category of rights.

Illiteracy and ignorance, which together constitute the bane of women equality and human rights in much of contemporary African countries, is another huge challenge. Available studies also indicate, for instance, that informed consent practice of patients is proportional to their educational level and status.[89] The case of SRHR of women generally is not different in this regard. Many Nigerian are illiterate or ignorant of the existence of SRHR of women and are often unwilling to enforce such rights even when they have been informed of its existence. In this kind of situation, it becomes a herculean task to enforce these species of rights when they are violated.

The extreme level of poverty in the country is another huge stumbling block. Nigeria has recently been rated the poverty capital of the world.[90] 87 million of about 180 million Nigerians are reported to be living below the poverty line,[91] with the likely

87 Centre for Health Ethics Law and Development, 'Engaging Lawyers in the Fight Against Maternal Mortality in Nigeria' <https://cheld.org/engaging-lawyers-in-the-fight-against-maternal-mortality-in-nigeria/> accessed 31 March 2020.

88 See for instance, Steven Budlender, Gilbert Marcus and Nick Ferreira, *Public Interest Litigation and Social Change in South Africa: Strategies, Tactics and Lessons* (The Atlantic Philanthropies 2014) especially at 25–94.

89 Kenneth Agu, Ikechukwu Obi, Boniface Eze and Wilfred Okenwa, 'Attitude Towards Informed Consent Practice in a Developing Country: A Community-based Assessment of the Role of Educational Status' (2014) 15 BMC Medical Ethics 77.

90 The Brookings Institution, 'The Start of a New Poverty Narrative' <https://www.brookings.edu/blog/future-development/2018/06/19/the-start-of-a-new-poverty-narrative/> accessed 31 March 2020.

91 ibid.

prospect that the poverty level in the country will worsen in the years ahead.[92] It is going to be very difficult in a clime of generalised and extreme poverty, such as the one in Nigeria, for any sustained human rights litigation to take place. As pointed out above, litigation in Nigeria is very costly and time-consuming. Thus, even when aware of their rights and are willing to enforce them, sustaining the litigation of SRHR of women by people disempowered by lack of requisite resources will pose a serious challenge.

Lastly, the doctrine of *locus standi* is also a huge impediment to litigation of SRHR of women in Nigeria. The Law of *locus standi* in Nigeria is somewhat complex and very problematic.[93] 'The term *locus standi* (or standing) denotes the legal capacity to institute proceedings in a Court of law.'[94] In *Senator Adesanya v President of Nigeria*,[95] the Supreme Court of Nigeria held that unless the civil rights and obligations of a litigant are directly in issue, the litigant is not entitled to approach the court for relief. The Supreme Court affirmed this rule of standing in *Owodunni v Reg. Trustees of CCC*,[96] where the Court held that in public law litigation, the litigant must surmount the civil rights and obligations hurdle of section 6(6)(b) of the Constitution, which requires that litigant's interest must directly be in issue to have standing before the courts. This rule will affect public interest litigation to promote SRHR of women because such litigator(s) must show how their interests are directly affected. It has, however, been argued that paragraph 3(e) of the Preamble to the Fundamental Rights Enforcement Procedure Rules, 2009 envisages a broadening of *locus standi* with respect to public interest litigation of human rights in Nigeria.[97] Another workable strategy to improve access of women to justice in Nigeria is political action in the form of protests.[98]

Interestingly, recent development in the Law of *locus-standi* in Nigeria suggests a broadening of the rule. In *Centre for Oil Pollution Watch* (COPW) *v Nigerian National Petroleum Corporation*,[99] the Supreme Court of Nigeria expanded the scope of *locus standi* in environmental matters. The Court held that in matters relating to the protection of the environment, NGOs have the requisite *standi* to bring and maintain public interest litigation in the interest and benefit of the general public. In addition, contrary to the general belief that the provisions of Chapter II of the Nigerian Constitution are not

92 Taiwo Ojoye, 'Ex-minister Predicts Increased Poverty' (*Punch*, 28 November 2018) <https://punchng.com/ex-minister-predicts-increased-poverty/> accessed 28 January 2019.

93 JO Akande, 'The Problem of *Locus Standi* in Judicial Review' (1982) 3 Nigerian Current Law Review 42.

94 *Owodunni v Reg. Trustees of CCC* (2000) 10 NWLR (Pt. 675) 315 at 338.

95 [1981] 2 NCLR 358

96 (2000) 10 NWLR (Pt. 675) 315.

97 Eghosa Ekhator, 'Improving Access to Environmental Justice Under the African Charter on Human and Peoples' Rights: The Roles of NGOs in Nigeria' (2014) 22 (1) African Journal of International and Comparative Law 63 at 77.

98 Eghosa Ekhator, 'Women and Access to Environmental Justice in Nigeria' <https://www.africanwomeninlaw.com/post/women-and-access-to-environmental-justice-in-nigeria> accessed 2 August 2021.

99 (2019) 5 NWLR [Pt.1666] 518.

justiciable, the Court held that section 20 of the Constitution environmental protection provision is justiciable if the provision is read together with other provisions of the Constitution and existing environmental protection legislation.

Scholars are already noting the implication of COPW for the enforceability of socio-economic rights in Nigeria. For Ekhator, COPW 'can serve as a launchpad to further develop the evolving jurisprudence around economic and social rights (ESR) in Nigeria.'[100] For Etemire, the recognition by the Supreme Court of the general enforceability of the African Charter in the case may have laid to rest the controversy surrounding the application and enforceability of the socio-economic rights provisions in the African Charter in the country.[101] These observations apply equally to the scope and opportunity for the litigation and enforcement of SRHR of women in the Nigerian Constitution and the African Charter.

The above are some of the challenges confronting the litigation of SRHR of women in Nigeria. The next section examines comparative foreign jurisprudence to interrogate how courts in other jurisdictions have coped or engaged with similar challenges of litigating SRHR of women. This is in order to tease out learning points for Nigeria.

Comparative Foreign Jurisprudence and SRHR Litigation

The main objective of this section is to examine and identify the approaches of other courts, especially in Africa, in surmounting challenges bedevilling the operationalisation of SRHR of women in their jurisdictions through the analysis of selected cases. Analysis in this section is divided into three broad focus areas. The first leg of the analysis illustrates approaches of foreign courts in surmounting the non-justiciability challenges of litigating SRHR of women. The second leg focuses on how courts have eased access to legal and judicial remedies for vulnerable groups and individuals for the effective vindication of rights. The third leg of the analysis discusses how foreign courts have handled the enforcement of some specific aspects of SRHR of women.

With regard to the first leg of analysis, insight is drawn from the approaches of Ugandan courts in two cases. The first is *Centre for Health Human Rights and Development and 3 Ors v Attorney General.*[102] In this case, the petitioners filed a constitutional petition against the Ugandan government before the Ugandan Constitutional Court in relation to the unacceptable level of maternal mortality in the country caused by the failure of the government to put necessary maternal health facilities and resources in place. The petitioners alleged the violations of sundry rights of women, including the rights to life

100 Eghosa Ekhator, 'Sustainable Development and the African Union Legal Order' in Olufemi Amao, Michele Olivier and Konstantinos Magliveras (eds), *The Emergent African Union Law: Conceptualization, Delimitation, and Application* (Oxford University Press 2021) 1 at 21.

101 Uzuazo Etemire, 'The Future of Climate Change Litigation in Nigeria: *COPW v NNPC in the Spotlight*' (2021) 2 Carbon & Climate Law Review 158 at 168–169.

102 Constitutional Petition No. 16 of 2011.

and health in the Ugandan Constitution. While the right to life is a fundamental right and in the enforceable part of the Constitution, the right to maternal health is in the National Objectives and Directive Principles of State Policy part of the Ugandan Constitution.[103] Upon these facts, the Ugandan Constitutional Court held that issues raised in the petition relate to the allocation of resources for the provision of maternal health care. This, the Court held, is beyond the competence of the Court to adjudicate as it raises a political question that is within the competence of the political organs of government. The petition was struck out, and the petitioner appealed to the Supreme Court of Uganda.

The case proceeded to the Supreme Court of Uganda as *Centre for Health Human Rights and Development and 3 Ors v Attorney General*.[104] Before the Supreme Court, similar arguments as were made before the Constitutional Court were also made by the parties. The Supreme Court, however, took a different approach from that taken by the Constitutional Court. The Supreme Court took a constitutional democratic or constitutional supremacist approach to the issue of the competence of courts to review executive and legislative acts and omissions. The Supreme Court held that the Constitutional Court erred in striking out the petition on the ground that the petitioners had in their pleadings set out the specific provisions of the Constitution alleged to have been violated by the respondents' acts and omissions. The Court further held that section 137(1) of the Ugandan Constitution vested the courts with authority to interpret the Constitution while section 137(3)(b) of the Constitution conferred right on any citizen of Uganda who alleges a breach of the Constitution to approach the courts for relief. The Court pronounced thus:

> … the Constitutional Court not only has the jurisdiction, but also the responsibility to construe such provisions, [provisions alleged to have been breached] with a view to determining whether the acts or omissions complained of are inconsistent with or contravenes the provision(s) in question.[105]

The Supreme Court emphasised that if the contention of the respondent that the political question doctrine debarred the court from inquiring into whether the acts and omissions of the government alleged to have violated the Constitution is to be upheld, then 'all the acts and omissions of the Executive will be beyond judicial scrutiny. The Constitutional Court may end up dealing with only constitutional violations of private actors.'[106] This, the Court said, will be against the clear provisions of the Ugandan Constitution, which are intended to ensure that all arms of government and every authority and person

103 Objectives XIV(b) XXVIII(b) of the Ugandan Constitution.
104 Constitutional Appeal No 01 of 2013.
105 ibid 28–29.
106 ibid 29–30.

uphold the Constitution.[107] The petition was remitted back to the Constitutional Court for re-hearing.

Centre for Health Human Rights and Development and 4 Ors v Nakaseke District Local Administration[108] is the second case from Uganda. The case was about the negligence of a doctor in the employment of the defendant local administration. The doctor had neglected to attend to a pregnant woman eight hours after she was brought to the hospital. The woman thereafter developed complications at the point of delivering the baby as a result of the neglect and died. The surviving members of the deceased's family and the first plaintiff NGO sued on her behalf and on behalf of the children she left behind. The plaintiffs alleged that the failure of the defendant's employee to attend to the deceased on time was a violation of her rights to life, health, freedom from inhuman and degrading treatment and the right to equality of the deceased and her children. In upholding the plaintiffs' claims, the High Court, in this case, held that the doctor's negligence violated article 33(3) of the Ugandan Constitution, which obliges the state to protect women and their rights with due regard to their unique status and natural maternal functions. The Court also held that the doctor's negligence violated article 34(1) of the Ugandan Constitution, which conferred a right on children to know and be cared for by their parents or those entitled by law to bring them up. In sum, the Court held that the doctor's negligent conduct violated the '… human and maternal rights of the deceased and the rights of the children and spouse, arising under the constitution …'[109] The defendant District Local Administration was held vicariously liable for the doctor's negligent conduct, and 35 million Ugandan shillings was awarded against it by the Court.

As explained earlier, the second leg of analysis deals with how courts have eased access to legal and judicial remedies for vulnerable groups and individuals for the effective vindication of their rights. The Indian Supreme Court rules and practice is used here as an example of best practice. The Court's rules and practice achieved this feat through five main mechanisms.

The first mechanism is through the evolution of public interest litigation (PIL) by virtue of which the traditional requirements of *locus standi* was liberalised.[110] As observed by Deeva, PIL serves four important functions: it provides a launching pad for those at the periphery of the society to reach for and access justice; it provides a mechanism to enforce diffused rights where it is either difficult to identify victims or where the victims are unwilling to assert their rights; it serves as tools to hold government accountable and ensure good governance; and, it enables civil society to influence and participate in

107 ibid.

108 Civil Suit No. 111 of 2012.

109 ibid.

110 Shylashri Shankar, 'Descriptive Overview of the Indian Constitution and the Supreme Court of India' in Oscar Vilhena and others (eds), *Transformative Constitutionalism: Comparing the Apex Courts of Brazil, India and South Africa* (PULP 2013) 105 at 126.

public decision-making processes through human rights litigation.[111] The importance of the mechanism of PIL on the ability of the poor and vulnerable to assert their rights lies in the fact that the traditional rule of standing was fashioned to operate in circumstances of equality of arms of parties while effectively barring access to the judicial process to the vulnerable on account of their ignorance and/or poverty.[112] Thus, the Supreme Court of India, through the mechanism of PIL allow any member of the public acting on behalf of a person(s) or a determinate class of persons in a socially or economically disadvantaged position to petition the High Court or the Supreme Court for the vindication of the right(s) of the vulnerable person(s) or group in question.[113]

The second mechanism is through the evolvement of the Court's epistolary jurisdiction. Here, the Court encourages member(s) of the public who is so minded, through a simple letter, to petition the Court on behalf of the vulnerable member(s) of the society.[114] Thus, a simple letter written by any member of the public who is acting on behalf of the poor and vulnerable members of the society is deemed sufficient to invoke the jurisdiction of the court. The epistolary jurisdiction of the Indian Supreme Court is, however, not at large. It can only be invoked in circumstances where the person(s) on behalf of whom the letter is written is or are in custody, or where the complaints relate to violations of the legal or constitutional rights of the vulnerable or disadvantaged person(s) in the society or in order to end injustice or exploitation and not merely to redress private wrongs.[115]

The third mechanism is the Supreme Court of India's investigative and evidence-gathering mechanism. Here, the Court *suo moto* can order an investigation and gather evidence in furtherance of the resolution of any PIL matter before it.[116] The reports of such investigation or evidence gathering by the Court are often shared with parties to enable them to confirm or dispute it and are ordinarily regarded by the Court as prima facie evidence of fact(s) in issue. The evolution of this mechanism by the Court is necessitated by the fact that PIL practitioners and their underprivileged clients may not have the financial or technical wherewithal to gather the necessary evidence to prove their cases.[117]

The fourth mechanism is the distributive justice focussed remedies of the Court. According to Bhagwati, the Court is cognisant of the fact that remedies fashioned for normal violations of rights may not be adequate or serve the interest of justice in PIL

111 Surya Deva, 'Public Interest Litigation in India: A Critical Review' (2009) 28(1) Civil Justice Quarterly 19 at 40.
112 Prafullachandra Bhagwati, 'Judicial Activism and Public Interest Litigation' (1985) 23 Columbia Journal of Transnational Law 561 at 570–571.
113 ibid.
114 Deva (n 111) 24.
115 Bhagwati (n 112) 573.
116 ibid 574–575.
117 ibid 575.

cases.[118] The Court, therefore, crafted new and unorthodox remedies to fit the peculiarities of each case and serve the ends of distributive justice. The Supreme Court has therefore made orders requiring payment of minimum wages, provision of potable water, provision of medical assistance and school facilities, among others.[119]

The last mechanism examined here is the appointment of monitors to oversee the enforcement of the Court's judgement. The rationale behind this mechanism is aptly captured by Bhagwati thus:

> The orders made by the Court are obviously not self-executing. They have to be enforced through State agencies; if the State agencies are not enthusiastic in enforcing the Court orders and do not actively cooperate in that task, the object and purpose of the public interest litigation would remain unfulfilled. The consequence of the failure of the State machinery to secure enforcement of the Court orders would not only be to deny effective justice to the disadvantaged groups on whose behalf the particular public interest litigation is brought, but it also would have a demoralising effect, and people would lose faith in the capacity of public interest litigation to deliver justice.[120]

To ensure that PIL efforts do not go to waste, therefore, the Court evolved a methodology of monitoring the execution and enforcement of its decisions.

The third leg of the analysis below examines how courts have handled the enforcement of some specific aspects of SRHR in comparative foreign jurisprudence. One case from South Africa, one from Uganda and two from Kenya are used to illustrate the approaches of foreign courts here.

Nvumeleni Jezile v The State[121] is from South Africa. The case deals with the issue of child and forced marriage in the Eastern Cape of South Africa. In the case, the appellant was convicted in the regional court on charges of human trafficking, rape and assaults on accounts of a young girl of 14 years that himself, his family and the girl's family had forced into marriage under an aberrant form of *ukuthwala,* a customary form of forced marriages in the Eastern Cape.[122] The appellant took the young girl to Cape Town against her will. The girl escaped from him in Cape Town a few days later and reported to the police. He was charged before the regional court for the aforementioned offences. Before the regional court, he had sought to take refuge under the customary practice of *ukuthwala*. The Court declined this defence and held that the custom will not avail him in the particular circumstances of the case. Upon his appeal to the High Court of Cape Town, the High Court also rejected his reliance on the *ukuthwala* custom as a defence or justification for the criminal offences. What is, however, interesting for the purpose

118 ibid 575–576.
119 ibid.
120 ibid 576–577.
121 High Court Case No: A 127/2014.
122 The customary practice of *ukuthwala* entails the abduction and forceful marriage of young girls by interested suitors often with the consent of the male elders of the victims' families.

of this article is that, in addition to relevant domestic norms relied upon, the Court expressly referred to and relied upon relevant provisions of international human rights instruments like the UDHR, CEDAW, the CRC and the Maputo Protocol, among others, as a basis for the decision.[123]

Of course, the approach of the Court in *Nvumeleni Jezile* is made possible by the progressive provisions of the 1996 Constitution of the Republic of South Africa (the South African Constitution). The South African Constitution mandates the courts, when interpreting the South African Bill of Rights to consider international law (including international human rights treaties)[124] and may consider foreign law.[125] The Constitution also directs the courts when interpreting any legislation to prefer the legislative interpretation consistent with international Law over interpretation that is inconsistent with international Law.[126] The above provisions of the Constitution undoubtedly place South African courts in good stead to draw inspiration and influence from international human rights instruments as was done by the court in *Nvumeleni Jezile*. The extent to which the approach of the court in *Nvumeleni Jezile* is transposable into Nigeria is examined in the next section of this article.

The *Law and Advocacy for Women in Uganda*[127] is from Uganda. The case deals with the practice of genital mutilation in Uganda. The petitioner had approached the Ugandan Constitutional Court alleging that the practice of genital cutting practised by some tribes in Uganda violates various human rights of women, including the rights to life; dignity; privacy; the right against torture, inhuman and degrading treatment; among others. Evidence of the harmful effects of the practice was also presented by the petitioner. In finding for the petitioner, the Constitutional Court held that the practice of genital cutting is a violation of the fundamental rights of women and therefore violates article 2(1) and (2) of the Ugandan Constitution, which entrenches the supremacy of the Constitution and provides that any law or custom that is inconsistent with the provisions of the Constitution shall be void. Here again, the Court took a constitutional democratic approach where the Constitution reigns supreme.

C.K.(A CHILD) through Ripples International as her guardian and Next friend) and 11 Ors v The Commissioner of Police and 2 Ors[128] is from Kenya and deals with sexual abuse of and violence against minors. The first petitioner NGO represented the 11 petitioners who were minors. The petitioners alleged that they were subjected to various forms of sexual abuse, exploitation and rape by different suspects. They further alleged that they had lodged reports of the sexual abuses and violence against them to the appropriate authorities in Kenya, who all refused or omitted to bring the culprits to book.

123 *Nvumeleni Jezile* (n 121) para 68.
124 Section 39 (1)(b) of the South African Constitution.
125 Section 39 (1)(c) of the South African Constitution
126 Section 233 of the South African Constitution.
127 Constitutional Petition No 8 of 2007.
128 Petition 8 of 2012.

The petitioners further alleged that these refusals/omissions of Kenyan law enforcement personnel violate their rights to freedom and security of their persons, equality and dignity, among others. The High Court of Kenya, in their finding for the petitioners, held that the refusal/omission of the police authorities to investigate or duly prosecute alleged culprits violates the petitioners' rights to non-discrimination and equal protection of the Law. The refusal to prosecute was also held to violate access to justice and similar rights in the Kenyan Constitution and relevant treaties ratified by the country.

Finally, *J O O (also known as J M) v Attorney General & 6 Ors*[129] is also from Kenya. There, the petitioner alleged violation of her maternal health care and other sundry rights by the neglect and abuse she suffered in the respondents' hospital while delivering her baby. The High Court of Kenya held that inadequate maternal health care personnel and facilities, the negligent and abusive treatment that the petitioner was subjected to while in attendance at the hospital, among others, are a violation of her maternal health care and rights expressly guaranteed in article 43(1)(a) of the Constitution of Kenya, 2010 (the Kenyan Constitution).[130] In arriving at its decision, the Court drew inspiration from and relied on international human rights instruments like the ICESCR and the African Charter to bolster its reasoning. It should be mentioned here also that, just like in the case of South Africa, the Kenyan Constitution also contains provisions enabling the courts to rely on and draw inspiration from international human rights instruments. Section 2(5) and (6) of the Kenyan Constitution are to the effects that the general rules of international Law, treaties and conventions ratified by Kenya forms part of the Law of Kenya.

From the foregoing, several approaches of foreign courts can be deduced. There is the constitutional democratic or constitutional supremacist approach of Ugandan courts that privileges constitutional supremacy and assert the courts' competence to interpret the provisions of the constitution. Under this approach, other arms of government are held accountable to the provisions of the Constitution without judicial deference or the application of the political question doctrines. This approach is noticeable in the Ugandan Supreme Court decision in *Centre for Health Human Rights and Development and 3 Ors*, the Ugandan High Court decision in *Centre for Health Human Rights and Development and 4 Ors v Nakaseke District Local Administration* and the Constitutional Court of Uganda decision in *Law and Advocacy for Women in Uganda*.

There is also the approach where courts craft or evolves unorthodox or non-traditional and novel rules and remedies that are tailored towards ensuring substantive and distributive justice. This is most noticeable in the practice and procedure of the Supreme Court of India. There is also the approach where courts situate SRHR violations within

129 [2018] eKLR 1

130 Article 43(1)(a) of the Constitution of Kenya, 2010 provides that: 'Every person has the right to the highest attenable [sic] standard of health, which includes the right to health care services, including reproductive health care.'

recognised fundamental human rights existing in the jurisdiction concerned. This is noticeable in the High Court of Kenya's decision in *C.K.(A CHILD) through Ripples International as her guardian and Next friend) and 11 Ors*. Finally, there is the approach where the courts draw inspiration from and use international human rights instruments as basis for decisions. This is present in the High Court of Cape Town decision in *Nvumeleni Jezile v The State* and the High Court of Kenya's decision in *J O O (also known as J M) v Attorney General & 6 Ors*.

Having identified the different approaches of foreign courts above, the next section below interrogates the possibilities and prospects of these approaches under Nigeria's existing frameworks. This is examined alongside other possibilities that exist for the litigation of SRHR of women within the contexts of existing laws in Nigeria.

Prospects and Possibilities of Litigating SRHR in Nigeria

Four different approaches of foreign courts are identified in the previous section. The possibilities and application of the approaches as well as others present within the Nigerian jurisdiction, are examined here.

The constitutional democratic or constitutional supremacist approach of Ugandan courts to surmount the justiciability challenge of SRHR of women illustrated in: *Centre for Health Human Rights and Development and 3 Ors*, the Ugandan High Court decision in *Centre for Health Human Rights and Development and 4 Ors v Nakaseke District Local Administration* (*supra*) and the Constitutional Court of Uganda decision in *Law and Advocacy for Women in Uganda* is particularly unique and potentially useful for Nigeria. The approach differs from the Indian courts' approach of reading civil, political, and socio-economic rights together to find violations of socio-economic rights. The advantage(s) of the Ugandan courts approach is that once a violation of the provision(s) of the Constitution is found, it does not matter what part of the Constitution the provision(s) is domiciled, whether the fundamental rights part or the directive principles part; the courts assume the authority and competence to adjudicate and make declarations as necessary. This avoids the judicial deference and resource constraints pitfalls in the adjudication of socio-economic rights, including SRHR of women. The approach is also particularly useful in Nigeria where the application of the Africa Charter is potentially open to constitutional supremacy objection. If the constitutional democratic or supremacist approach is adopted in Nigeria, SRHR litigants and the courts will not have to start looking for civil and political rights or a statute of doubtful import to hang the litigation or adjudication of the SRHR of women upon in the country.

In addition, the Ugandan courts in the above-named cases asserted their competence to hold other arms of government to constitutional account based on the provisions of section 137(1) and (3)(b) of the Ugandan Constitution, which vested the courts and Ugandan citizens with authority to interpret the Constitution and seek relief for breaches of the constitution respectively. Similar authority is conferred on Nigerian courts by section 6(6)(a) and (b) of the Nigerian Constitution. According to section 6(6)(a) and

(b) of the Constitution, the judicial powers vested in the courts by the Constitution includes 'all inherent powers and sanctions of a court of law' and extends to the adjudication of all matters between persons or between government or authority and any person and cover all actions and proceedings in the determination of any question relating to the civil rights and obligations of any person. Thus, even though not phrased in the same terms, I argue here that sections 137(1) and (3) of the Ugandan Constitution and sections 6(6)(a) and (b) of the Nigerian Constitution are to the same effect. Nigerian courts are therefore also imbued with the requisite constitutional authority and power to utilise the constitutional democratic or supremacist approach to hold other arms of government to their constitutional obligations and duties.

Furthermore, Nigerian courts are not even strangers to the constitutional supremacist approach in judicial decision-making processes. The approach has been utilised in other spheres outside the confines of human rights. Notably in election petition resolution cases and the impeachment of political office holders.[131] In the recent case of *All Progressive Congress (APC) and Anor v Senator Kabiru Garba Marafa and Ors* decided by the Supreme Court on 24 May 2019,[132] the Supreme Court of Nigeria utilised the constitutional supremacist approach to nullify the appellant party entire electoral victory in Zamfara State in Northwest Nigeria for not complying with the dictates of the Nigerian and the party's Constitutions. Thus, the constitutional democratic approach is feasible in Nigeria and, if adopted, has the potential to surmount the non-justiciability challenge of SRHR in Nigeria.

As pointed out in section three of this article, some of the challenges confronting the litigation of SRHR in Nigeria include the absence of PIL, paucity of medical negligence experts, undue delay in the trial of cases, illiteracy and ignorance of much of the populace, among others. The adoption and utilisation of the practice and procedure of the Indian Supreme Court in the form of its PIL, epistolary jurisdiction, investigative and evidence gathering, judicial monitoring and distributive orders by Nigerian courts will go a long way in easing the challenge of access, timely trial and disposition of SRHR cases and evidence gathering challenges that are likely to hamper the litigation and adjudication of SRHR of women in Nigeria. Nigerian courts have in this regard been enabled by section 46(2) of the Nigerian Constitution, which authorises the courts to 'make such orders, issue such writs and give such directions as it may consider appropriate for the purpose' of enforcing or securing the enforcement of fundamental human rights in any place in Nigeria. I am, in fact, of the view that the Nigerian Constitution has given the courts a blank check in this regard to writing in what they will.

131 See generally, Enyinna Nwauche, 'Is the End Near for the Political Question Doctrine in Nigeria?' in Charles Fombad and Christina Murray (eds), *Fostering Constitutionalism in Africa* (PULP 2010) 31 for analysis of most of the earlier cases.

132 Suit No: SC 377/2019. Decided on 24 May 2019.

Although the Supreme Court of India is itself reported to be now going through what some scholars have referred to as a 'conservative turn' in the protection and enforcement of the rights of the vulnerable,[133] that conservative turn is not a reflection of the usefulness and effectiveness of the innovative approaches. It rather confirmed it. The approaches are therefore commended to Nigerian courts.

The approach of foreign courts situating violations of SRHR in existing civil and political rights framework as seen in the High Court of Kenya's decision in *C.K.(A CHILD) through Ripples International as her guardian and Next friend) and 11 Ors* is also possible and potentially fruitful in Nigeria. This approach is in fact already noticeable in the country with respect to the enforcement of the right to health. In the cases of *Odafe and Others v Attorney-General of the Federation and Others*[134] and *Gbemre v Shell Petroleum Development Company Nigeria Ltd and Others*,[135] the courts read the right to health and environment in Chapter II of the Nigerian Constitution and the African Charter together with the rights to life in Chapter IV of the Nigerian Constitution to found violations of the rights to health and environment in those cases. There is, therefore, ample scope and space for the utilisation of this approach vindicating SRHR of women in Nigeria.

Drawing inspiration from and using international human rights treaties to which a state is a party as a basis for decision, as seen in several cases analysed above, is also potentially fruitful in Nigeria. Nigeria is a signatory to most of the human rights instruments that guarantee SRHR of women. As a matter of fact, this approach is mandated by the Fundamental Rights Enforcement Procedure Rules, 2009 (FREP Rules, 2009). As mentioned earlier, the Rules direct Nigerian courts to respect municipal, regional and international bills of rights brought to their attention.[136] These include international bills of rights like the African Charter and other human rights protocols in the African human rights system as well as the UDHR and other human rights instruments in the UN human rights system. Although as pointed out above, the court in *Registered Trustees of the Socio-Economic Rights and Accountability Project and Others v Attorney-General of the Federation and Another* declined to accept the African Charter as one of the instruments to be enforced via the FREP Rules, this is in clear contravention of the relevant provisions of the Rules.

In addition to the approaches deduced from comparative foreign laws and jurisprudence above, litigation before supra-national human rights courts on the continent is another possibility for litigating SRHR in Nigeria. At the African regional level, the African Commission on Human and Peoples' Rights have entertained cases bordering on the

133 Arun Thiruvengadam, 'Swallowing a Bitter PIL? Reflections on Progressive Strategies for Public Interest Litigation in India' in Oscar Vilhena and others (eds), *Transformative Constitutionalism: Comparing the Apex Courts of Brazil, India and South Africa* (PULP 2013) 519.

134 (2004) AHRLR 205 (NgHC 2004).

135 (2005) AHRLR 151 (NgHC 2005).

136 Paragraph 3(b) of the Preamble to the Preamble to the FREP Rules 2009.

protection of SRHR of women. In *Egyptian Initiative for Personal Rights and Interights v Egypt II*,[137] for instance, the Commission found Egypt in violation of its obligation to protect women from violence when it failed to protect women protesters from intimidation, harassment and sexual violence. In *Institute for Human Rights and Development and Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) v Kenya*,[138] the African Committee of Experts on the Rights and Welfare of the Child saddled with the monitoring and implementation of the African Charter on the Rights and Welfare of the Child held that Kenya's failure to grant Nubian people Kenyan citizenship is a violation of their right to non-discrimination and right to a name and nationality under the Charter.

Although Nigeria is yet to deposit the declaration recognising the jurisdiction of the African Court on Human and Peoples' Rights in Arusha, Tanzania in order to grant direct access of the Court to Nigerian citizens,[139] the country is, however, also party to the Protocol establishing the Economic Community of West African States (ECOWAS) Court which has the competence to adjudicate human rights complaints from Nigeria. In fact, the ECOWAS Court has handed down a number of decisions that will impact SRHR of women in Africa. In *Hadijatou Mani Koraou v Niger*,[140] for instance, the Court held that the cultural practice of *wahiya* amounted to slavery and violated women's rights under the African Charter. The cultural practice of *wahiya* involves the acquisition and subjugation of young girls to work as domestic servants and concubines without compensation. Also in *IHRDA & WARDC, on behalf of Mary Sunday v The Federal Republic of Nigeria*,[141] the Court found Nigeria liable for domestic violence suffered by a complainant and awarded a 15 million Naira (about USD 42 000) damages against the government of Nigeria. In the recent case *of Dorothy Njemanze & others v Nigeria*,[142] the ECOWAS Court found the Nigerian government in multiple violations of rights of women in the African Charter, the Maputo Protocol, the CEDAW, the ICCPR, etc. for the illegal arrest and detention of several women for alleged prostitution by agents of the Nigerian government. The above shows that there is a very high possibility of litigating SRHR violations emanating from Nigeria before the ECOWAS Court.

Despite the prospects for the litigation of SRHR of women before the ECOWAS Court, the Achilles heel of such endeavour is the enforcement of judgements emanating from the Court. As rightly noted by Ekhator, enforcing the judgements of the ECOWAS

137 Communication 323/06, (2011) AHRLR 90.

138 Communication Com/002/2009, Decision 002/Com/002/2009.

139 A suit to compel Nigeria to accept the African Court's competence is currently pending before a court in Nigeria. See, Ade Adesomoju, 'Falana Sues AGF for Nigerians' Inability to Access African Court' (*Punch*, 5 May 2019) <https://punchng.com/falana-sues-agf-for-nigerians-inability-to-access-african-court/> accessed 25 June 2019.

140 (2008) AHRLR 182 (ECOWAS 2008).

141 ECW/CCJ/JUD/11/18.

142 Suit No: ECW/CCJ/APP/17/14. Judgment No: ECW/CCJ/JUD/08/17.

Court within the jurisdiction of member states is a difficult task.[143] This is because decisions of the Court are required to be enforced through the judicial machinery of member states, who are required to set up national authorities for the implementation of the Court's judgments.[144] Sadly, many ECOWAS member states have not set up the required national authority, and those that have set it up are not implementing decisions of the Courts as expected.[145] One way out of this enforcement conundrum is for ECOWAS to invoke the sanction provisions of the ECOWAS legal regime against erring member states. Another is for the Court to begin to name and shame defaulting member states in order to pressure them to comply with decisions of the Court.

Finally, there are emerging statutes protective of aspects of SRHR of women being gradually added to Nigeria's *corpus juris*. Three of these relatively new developments are examined here. The first is the Child Rights Act, 2003 (CRA), which was an attempt of the federal legislature to domesticate the UN Convention on the Rights of the Child, 1989. The CRA contains robust provisions which can be deployed to protect aspects of SRHR of women and the girl child in Nigeria. The CRA, for instance, apart from making robust provisions for fundamental human rights of children,[146] also prohibits with penal consequences the marriage and betrothal of children,[147] defined in the Act to mean persons below 18 years of age.[148] The CRA, in addition, prohibits the exploitation of children for criminal activities,[149] sexual and other forms of exploitation,[150] among other protections crafted for children under the Act. The CRA is, however, only applicable in the Federal Capital Territory, Abuja. The reason for this is because the CRA being a statute domesticating an international treaty, has to comply with the requirements of section 12 of the Nigerian Constitution, which it did not. Thus, federating units desirous of having the Act apply in their states have to localise it by passing it into law in their states. Reports indicate that as of 5 January 2009, sixteen states in Nigeria have domesticated the CRA while two Houses of Assembly have passed the Law awaiting the assent of the Governors.[151]

143 Eghosa Ekhator, 'International Environmental Governance: A Case for Sub-regional Judiciaries in Africa' in Michael Addaney and Ademola Jegede (eds), *Human Rights and the Environment Under African Union Law* (Palgrave Macmillan 2020) 209 at 220–223.

144 ibid.

145 ibid.

146 Section 3–18 of the CRA.

147 Sections 21–23 of the CRA.

148 Section 277 of the CRA.

149 Sections 25–26 of the CRA.

150 Sections 30–34 of the CRA.

151 The states where the CRA have been passed and in operation are Abia, Anambra, Bayelsa, Edo, Ebonyi, Ekiti, Imo, Jigawa, Kwara, Lagos, Nasarawa, Ogun, Ondo, Oyo, Plateau and Taraba. And the two states where the CRA have been passed awaiting Governors' assents are Rivers and Osun states. See the Committee on the Rights of the Child, 'Consideration of Reports Submitted by States Parties under Article 44 of the Convention. Third and Fourth Periodic Report of States Parties Due in 2008: Nigeria' <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=513748de2> accessed 19 April 2020.

The second statute is the Violence Against Persons (Prohibitions) Act, 2015 (VAPP Act). The VAPP Act prohibits all forms of violence against persons, including women. It enlarged the scope of rape to include men and extended the elements of the offence of rape beyond mere penile penetration to include penetration by other things and materials.[152] The Act also prohibits genital cuttings with penal consequences;[153] prohibits forceful ejections from home;[154] prohibits economic abuse;[155] outlaws emotional and verbal abuse;[156] harmful widowhood practices;[157] abandonment of spouses, children and other dependants are also prohibited; spousal battery;[158] and harmful traditional practices;[159] among others are outlawed. The VAPP Act is a veritable tool to engage many forms of violence which impugn the equality of women and violate SRHR of women in Nigeria.[160] The VAPP Act, like the Child Rights Act, only applies in the Federal Capital Territory, Abuja. Federating states are also required to domesticate it to make it applicable in their territories. The reason for this is that the power of the federal legislature to enact penal statutes is not at large. Where the subject matter of the statute is not in the Exclusive or Concurrent Legislative Lists, it becomes a residual matter within the exclusive competence of state legislatures. The subject matter of the VAPP Act is not in either of the afore-mentioned legislative lists. One of the federating states that have enacted statute similar to the VAPP Act is Lagos State whose statute, in fact, predated the VAPP Act. The Lagos State initiative is examined next below.

The Lagos State legislative initiative is the Protection against Domestic Violence Law (2007) (PADVL). The PADVL prohibits any act of domestic violence and contains robust provisions for the application and grant of protection orders to victims.[161] The Law defines domestic violence very liberally to include physical abuse; sexual exploitation and assault; starvation; emotional, verbal and psychological abuse; economic abuse and exploitation and denial of basic education, among others.[162] The PADVL is also an important tool to safeguard and protect the dignity, equality and autonomy of women in Nigeria.

As a matter of fact, the gist of the penal legislation protective of SRHR of women is the fact that when violated, the government is obliged to investigate, prosecute and bring violators to book. Where this is not done, it may give rise to liability on the part of

152 Section 1(1) of the VAPP Act.
153 Section 6 of the VAPP Act.
154 Section 9 of the VAPP Act.
155 Section 12 of the VAPP Act.
156 Section 14 of the VAPP Act.
157 Section 15 of the VAPP Act.
158 Section 19 of the VAPP Act.
159 Section 20 of the VAPP Act.
160 See also Taiye Omodoyin, 'Violence Against Persons (Prohibition) Act 2015: A Positive Step to Eradication of Domestic Violence in Nigeria' (2018) 9(1) NAUJILJ 39.
161 Sections 3 of the PADVL.
162 Section 18 of the PADVL.

government for breaches of victims' rights of access to justice, equal protection of the law and non-discrimination, among others, as was held in *C.K. (A CHILD) through Ripples International as her guardian and Next friend) and 11 Ors v The Commissioner of Police and 2 Ors* and *IHRDA & WARDC on behalf of Mary Sunday v The Federal Republic of Nigeria* by the Kenyan High Court and the ECOWAS Court, respectively.

Conclusion

This article has examined the fragile position of women fostered by routine violations of their SRHR in Nigeria and interrogated how this fragility of the Law and the condition of women can be strengthened. This is done through a comparative analysis of the challenges and prospects of litigating SRHR of women in Nigeria and in other jurisdictions. The article undertook a comparative study of the practice and jurisprudence of foreign courts such as Uganda, South Africa, India and Kenya to deduce how these courts have engaged with and surmounted the challenges of adjudicating SRHR of women through workable approaches. The study also examined the extent to which the deduced approaches can be made operational within the Nigerian context. The study showed that the challenges confronting the litigation of SRHR of women in Nigeria are many, but comparative analysis of the approaches of foreign courts showed that the challenges are not insurmountable. The study revealed that there is, in fact, robust space within which to operationalise the litigation of SRHR of women in Nigeria. All that is required is creativity and innovation on the part of human rights advocates and willingness and boldness to do substantive justice on the part of the courts.

Granted, the article is focused on litigation as a mechanism for securing the SRHR of women in Nigeria. To address issues affecting the equality and empowerment of women requires a multi-pronged approach. The approach will necessarily include the role of the legislature, executive, judiciary, NGOS and civil society in general in education and in raising awareness on SRHR. Factors that reinforce violation of SRHR, consequences of the violations, the Law protecting women and prohibiting the SRHR and interpretation and the proactive application of the laws by the courts will also need to be unpacked for a more robust and enduring enjoyment of SRHR of women in Nigeria. And as has been suggested by scholars, the Legal Aid Council, Legal advocacy groups and Women's law clinics, amongst others, can also improve access to justice by women in Nigeria.

References

Afulukwe-Eruchalu O, 'Accountability for Maternal Healthcare Services in Nigeria' (2017) 137 International Journal of Gynaecology and Obstetrics <https://doi.org/10.1002/ijgo.12108>

Agu KA, Obi EI, Eze BI and Okenwa WO, 'Attitude towards Informed Consent Practice in a Developing Country: A Community-Based Assessment of the Role of Educational Status' (2014) 15 BMC Medical Ethics <https://doi.org/10.1186/1472-6939-15-77>

Akande JO, 'The Problem of *Locus Standi* in Judicial Review' (1982) 3 Nigerian Current Law Review.

Akintayo A, 'Planning Law versus the Right of the Poor to Adequate Housing: a Progressive Assessment of the Lagos State of Nigeria's Urban and Regional Planning and Development Law of 2010' (2014) 4 African Human Rights Law Journal.

Aniekwu N, 'Gender and Human Rights Dimensions of HIV/AIDS in Nigeria' (2002) 6(3) African Journal of Reproductive Health <https://doi.org/10.2307/3583254>

Atsenuwa A 'Promoting Sexual and Reproductive Rights through Legislative Interventions: a Case Study of Child Rights Legislation and Early Marriage in Nigeria and Ethiopia' in Charles Ngwena and Ebenezer Durojaye (eds), *Strengthening the Protection of Sexual and Reproductive Health and Rights in the African Region through Human Rights* (PULP 2014).

Ayeni O, 'The Impact of The African Charter and the Maputo Protocol in Nigeria' in Oluwasina Ayeni (ed), *The impact of the African Charter and the Maputo Protocol in selected African states* (PULP 2016).

Bellow G, *Turning Solutions into Problems: The Legal Aid Experience* (1977) 34 NLADA BRIEFCASE.

Bhagwati P N, 'Judicial Activism and Public Interest Litigation' (1985) 23 Columbia Journal of Transnational Law.

Budlender S, Marcus G and Ferreira N, *Public Interest Litigation and Social Change in South Africa: Strategies, Tactics and Lessons* (The Atlantic Philanthropies 2014).

Centre for Health Ethics Law and Development, 'Engaging Lawyers in the Fight against Maternal Mortality in Nigeria' <https://cheld.org/engaging-lawyers-in-the-fight-against-maternal-mortality-in-nigeria/> accessed 31 March 2020.

Committee on the Rights of the Child, 'Consideration of reports submitted by States parties under article 44 of the Convention. Third and fourth periodic report of States parties due in 2008: Nigeria' <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=513748de2> accessed 19 April 2020.

Cummings SL and Rhode DL, 'Public Interest Litigation: Insights from Theory and Practice' (2009) 36(4) Fordham Urban Law Journal.

Deva S, 'Public Interest Litigation in India: A Critical Review' (2009) 28(1) Civil Justice Quarterly.

Dugard J, 'Urban Basic Services: Rights, Reality, and Resistance' in Malcolm Langford, Ben Cousins, Jackie Dugard and Tshepo Madlingozi (eds), *Socio-economic Rights in South Africa: Symbols or Substance*? (2014).

Nwauche ES, 'Child marriage in Nigeria: (Il)legal and (Un)constitutional?' (2015) 15 African Human Rights Law Journal <https://doi.org/10.17159/1996-2096/2015/v15n2a9>

Ekhator E, 'International Environmental Governance: a Case for Sub-regional Judiciaries in Africa' in Michael Addaney and Ademola Jegede (eds), *Human Rights and the Environment under African Union Law* (Palgrave Macmillan 2020) <https://doi.org/10.1007/978-3-030-46523-0_9>

Ekhator E, 'Protection and Promotion of Women's Rights in Nigeria: Constraints and Prospects' in Michael Addaney (ed), *Women and Minority Rights Law: African Approaches and Perspectives to Inclusive Development* (Eleven International Publishing 2019).

Ekhator E, 'Sustainable Development and the African Union Legal Order' in Olufemi Amao, Michele Olivier and Konstantinos Magliveras (eds), *The Emergent African Union Law: Conceptualization, Delimitation, and Application* (Oxford University Press 2021).

Ekhator E, 'Women and Access to Environmental Justice in Nigeria' <https://www.africanwomeninlaw.com/post/women-and-access-to-environmental-justice-in-nigeria> accessed 2 August 2021 <https://doi.org/10.2139/ssrn.3719831>

Ekhator EO, 'Improving Access to Environmental Justice under the African Charter on Human and Peoples' Rights: the Roles of NGOs in Nigeria' (2014) 22(1) African Journal of International and Comparative Law <https://doi.org/10.3366/ajicl.2014.0080>

Ekhator EO, 'The Impact of the African Charter on Human and Peoples' Rights on Domestic Law: a Case Study of Nigeria (2015) 41(2) Commonwealth Law Bulletin <https://doi.org/10.1080/03050718.2015.1049633>

Etemire U, 'The Future of Climate Change Litigation in Nigeria: COPW v NNPC in the Spotlight' (2021) 2 Carbon & Climate Law Review <https://doi.org/10.21552/cclr/2021/2/7>

Ezumah N, 'Gender Issues in the Prevention and Control of STIs and HIV/AIDS: Lessons from Awka and Agulu, Anambra State, Nigeria' (2003) 7(2) African Journal of Reproductive Health <https://doi.org/10.2307/3583216>

Galanter M, 'Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change' (1974) 9(1) Law and Society Review <https://doi.org/10.2307/3053023>

Guthrie C, 'Better Settle Than Sorry: The Regret Aversion Theory of Litigation Behaviour' (1999) 43 University of Illinois Law Review.

House of Commons Library Briefing Paper, 'UN Convention on the Rights of the Child: a Brief Guide' (29 November 2016) <https://researchbriefings.files.parliament.uk/documents/CBP-7721/CBP-7721.pdf> accessed 20 July 2021.

Library of Congress, 'Nigeria: Gender Equality Bill Fails in the Senate' (28 March 2016) <https://www.loc.gov/item/global-legal-monitor/2016-03-28/nigeria-gender-equality-bill-fails-in-the-senate/> accessed 28 July 2021.

Mirugi–Mukundi G, 'A Human Rights-based Approach to Realising Access to Sexual and Reproductive Health Rights in Sub-Saharan Africa' in E Durojaye (ed), *Litigating the Right to Health in Africa: Challenges and Prospects* (Ashgate Publishing 2016).

Nwauche E, 'The Nigerian Fundamental Rights (Enforcement) Procedure Rules 2009: a Fitting Response to Problems in the Enforcement of Human Rights in Nigeria?' (2010) 10(2) African Human Rights Law Journal.

Nwauche E, 'Is the End Near for the Political Question Doctrine in Nigeria?' in Charles Fombad and Christina Murray (eds), *Fostering Constitutionalism in Africa* (PULP 2010).

Oduwole J and Akintayo A, 'The Rights to Life, Health and Development: The Ebola Virus and Nigeria' (2017) 17(1) African Human Rights Law Journal <https://doi.org/10.17159/1996-2096/2017/v17n1a9>

Ogeowo T, 'Self-inflicted Constraints on Judicial Government in Nigeria' (2005) 49 Journal of African Law <https://doi.org/10.1017/S0021855305000045>

Ogunniran I, 'Forward Looking or Backward Stepping: Evaluating Child Protection from Sexual Exploitation in Nigeria' (2017) Journal of Human Trafficking <https://doi.org/10.1080/23322705.2016.1146519>

Ogunniran I, 'Combatting Child Marriage in Nigeria' (2011) 2 Nnamidi Azikwe University Journal of International Law and Jurisprudence.

Ojekunle A, 'It's Not Freedom for Women in Nigeria as 23 States Hold Back Signing on the Violence Against Persons (Prohibition) Act' (15 June 2020) <https://www.dataphyte.com/development/gender-development/its-not-freedom-for-women-in-nigeria-as-23-states-hold-back-signing-on-the-violence-against-persons-prohibition-act/> accessed 31 July 2021.

Okongwu OC, 'Are Laws the Appropriate Solution: The Need to Adopt Non-policy Measures in Aid of the Implementation of Sex Discrimination Laws in Nigeria' (2021) 21(1) International Journal of Discrimination and the Law <https://doi.org/10.1177/1358229120978915>

Oluwakayode O and Oluwakemi E, 'Administration of Justice in Nigeria: Analysing the Dominant Legal Ideology' (2018) 10(1) Journal of Law and Conflict Resolution <https://doi.org/10.5897/JLCR2016.0242>

Omodoyin J, 'Violence Against Persons (Prohibition) Act 2015: a Positive Step to Eradication of Domestic Violence in Nigeria' (2018) 9(1) Nnamdi Azikiwe University Journal of International Law and Jurisprudence.

Otoo-Oyortey N and Pobi S, 'Early Marriage and Poverty: Exploring Links and Key Policy Issues' (2003) 11 Gender and Development <https://doi.org/10.1080/741954315>

Pieterse M, 'On "Dialogue", "Translation" and "Voice": A Reply to Sandra Liebenberg' in Stu Woolman and Michael Bishop (eds), *Constitutional Conversations* (PULP 2008).

Pizzarossa L, 'Here to Stay: The Evolution of Sexual and Reproductive Health and Rights in International Human Rights Law' <www.mdpi.com/journal/laws> accessed 13 June 2018.

Iroanusi Q, 'Senator reintroduces Gender Equality Bill' (*Premium Times*, 26 November 2019) <https://www.premiumtimesng.com/news/top-news/365263-senator-reintroduces-gender-equality-bill.html> accessed 21 March 2020.

Ojoye T, 'Ex-minister Predicts Increased Poverty' (*Punch*, 28 November 2018) <https://punchng.com/ex-minister-predicts-increased-poverty/> accessed 28 January 2019.

Adesomoju A 'Falana Sues AGF for Nigerians' Inability to Access African Court' (*Punch*, 5 May 2019) <https://punchng.com/falana-sues-agf-for-nigerians-inability-to-access-african-court/> accessed 25 June 2019.

Abayomi J, 'Supreme Court Laments Workload, Adjourns Atuche Appeal for One Year' (*Punch*, 5 March 2017) <http://punchng.com/supreme-court-laments-workload-adjourns-atuche-appeal-for-one-year/> accessed 5 March 2017.

Kazeem Y, 'Nigerian Lawmakers Voted down a Women Equality Bill Citing the Bible and Sharia Law' (*Quartz Africa*, 15 March 2016) <https://qz.com/africa/639763/nigerian-lawmakers-voted-down-a-women-equality-bill-citing-the-bible-and-sharia-law/> accessed 21 March 2020.

Raz J, 'Rights and Politics' (1995) 71 Indiana Law Journal.

Sabel CF and Simon WH, 'Destabilization Rights: How Public Law Litigation Succeeds' (2004) 117 Harvard Law Review <https://doi.org/10.2307/4093364>

Sanni A, 'Fundamental Rights Enforcement Procedure Rules, 2009 as a Tool for the Enforcement of the African Charter on Human and Peoples' Rights in Nigeria: The Need for Far-reaching Reform' (2011) 11(2) African Human Rights Law Journal.

Shankar S, 'Descriptive Overview of the Indian Constitution and the Supreme Court of India' in Oscar Vilhena, Upendra Baxi and Frans Viljoen (eds), *Transformative Constitutionalism: Comparing the Apex Courts of Brazil, India and South Africa* (PULP 2013).

The Brookings Institution, 'The Start of a New Poverty Narrative' <https://www.brookings.edu/blog/future-development/2018/06/19/the-start-of-a-new-poverty-narrative/> accessed 31 March 2020.

The Conversation, 'Why the Child's Rights Act still doesn't apply throughout Nigeria' (24 September 2020) <https://theconversation.com/why-the-childs-rights-act-still-doesnt-apply-throughout-nigeria-145345> accessed 28 July 2021.

Thiruvengadam A, 'Swallowing a bitter PIL? Reflections on progressive strategies for public interest litigation in India' in Oscar Vilhena, Upendra Baxi and Frans Viljoen (eds), *Transformative Constitutionalism: Comparing the Apex Courts of Brazil, India and South Africa* (PULP 2013).

Cases

Adebisi Olafisoye v Federal Republic of Nigeria (2004) 4 NWLR (Pt. 864) 581.

Archbishop Okogie v The Attorney-General of Lagos State [1981] 2 NCLR 337.

Bamidele Aturu v Minister of Petroleum Resources and Others (Suit No: FHC/ABJ/CS/591/09).

C.K.(A CHILD) through Ripples International as her guardian and Next friend) and 11 Ors v The Commissioner of Police and 2 Ors Petition 8 of 2012.

Centre for Health Human Rights and Development and 3 Ors v Attorney General (Constitutional Petition No. 16 of 2011).

Centre for Health Human Rights and Development and 3 Ors v Attorney General (Constitutional Appeal No 01 of 2013).

Centre for Health Human Rights and Development and 4 Ors v Nakaseke District Local Administration (Civil Suit No. 111 of 2012).

Centre for Oil Pollution Watch (COPW) v Nigerian National Petroleum Corporation (2019) 5 NWLR [Pt.1666] 518.

Chief Gani Fawehinmi v Akilu and Togun (1987) 4 NWLR797.

Dorothy Njemanze & others v Nigeria (Suit No: ECW/CCJ/APP/17/14. Judgment No: ECW/CCJ/JUD/08/17).

Egyptian Initiative for Personal Rights and Interights v Egypt II Communication 323/06, (2011) AHRLR 90.

Gbemre v Shell Petroleum Development Company Nigeria Ltd and Others (2005) AHRLR 151 (NgHC 2005).

Hadijatou Mani Koraou v Niger (2008) AHRLR 182 (ECOWAS 2008).

IHRDA & WARDC, on behalf of Mary Sunday v The Federal Republic of Nigeria (ECW/CCJ/JUD/11/18).

Institute for Human Rights and Development and Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) v Kenya (Communication Com/002/2009, Decision 002/Com/002/2009).

J O O (also known as J M) v Attorney General & 6 Ors [2018] eKLR 1.

Law and Advocacy for Women in Uganda (Constitutional Petition No 8 of 2007.

Mrs Lois Chituru Ukeje & Anor v Mrs Gladys Ada Ukeje SC. 224/2004.

Nvumeleni Jezile v The State High Court (Case No: A 127/2014).

Odafe and Others v Attorney-General of the Federation and Others (2004) AHRLR 205 (NgHC 2004).

Owodunni v Reg. Trustees of CCC (2000) 10 NWLR (Pt. 675) 315.

Progressive Congress (APC) and Anor v Senator Kabiru Garba Marafa and Ors Suit No: SC 377/2019. Decided on 24 May 2019.

Registered Trustees of the Socio-Economic Rights and Accountability Project and Others v Attorney-General of the Federation and Another Suit No. FHC/ABJ/CS/640/2010, decision of the Federal High Court Abuja, delivered 29 November 2012.

Senator Adesanya v President of Nigeria [1981] 2 NCLR 358.

Women Empowerment and Legal Aid v Attorney-General of the Federation (2015) 1 NHRLR 39.

Legislation

Constitution of Kenya, 2010.

Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Constitution of the Republic of South Africa, 1996.

Constitution of Uganda, 1995.

African Charter (Ratification and Enforcement) Act Cap A9 LFN 2004.

Child Rights Act, 2003.

Lagos State Protection against Domestic Violence Law, 2007.

Violence Against Persons (Prohibition) Act, 2015.