ACHPR
African Commission on Human and Peoples' Rights

AfCHPR
African Court on Human and Peoples' Rights

ACERWC
African Committee of Experts on the Rights and Welfare of the Child

Tripartite Study on Challenges of Litigating **Women's and Girls' Human Rights Before African Union Human Rights Organs.**





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FOREWORD



The protection and promotion of the rights of women and girls are central to the mandate of the African Commission on Human and Peoples' Rights (African Commission) and to the broader aspirations of the African human rights system. Over the years, the African Union (AU) has developed a progressive normative framework for advancing gender equality and safeguarding the dignity and rights of women and girls, notably through the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the African Charter on the Rights and Welfare of the Child.

Despite these important normative advances, significant barriers continue to prevent women and girls from

accessing justice and obtaining effective remedies for violations of their rights. The comparatively limited litigation concerning women's and girls' rights before African Union human rights organs demonstrates the need to examine not only the standards that have been established, but also the extent to which the mechanisms created to enforce them are accessible and responsive to women and girls.

It was against this background that the African Commission adopted Resolution **ACHPR/Res.594 (LXXX) 2024,** mandating the development of an analytical study on the challenges of litigating the rights of women and girls before AU human rights organs. The resulting Tripartite Study on Challenges of Litigating Women's and Girls' Human Rights before AU Human Rights Organs examines the structural, institutional, procedural, evidentiary, socio-economic, and socio-cultural barriers affecting access to regional justice. It also identifies opportunities for strengthening strategic litigation and proposes recommendations aimed at improving access to justice and the effective implementation of decisions.

While this initiative originates from the mandate of the African Commission, its development benefited significantly from collaboration with the African Court on Human and Peoples' Rights (the African Court) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC). I wish to acknowledge the leadership and representatives of these sister organs

for their valuable engagement and technical contributions to the Study. Their participation enriched its analysis and demonstrates the importance of cooperation and complementarity within the African human rights system.

The Study further underscores that strengthening litigation on the rights of women and girls requires collective action. AU Member States, regional human rights organs, National Human Rights Institutions (NHRIs), Civil Society Organisations (CSOs), women's rights organisations, legal practitioners and other stakeholders all have important roles to play in ensuring that women and girls can access regional mechanisms and obtain meaningful remedies.

I commend the collaborative and consultative process through which the Study was developed and acknowledge the contributions of the Technical Reference Group, experts, practitioners, NHRIs, CSOs, and other stakeholders who informed its findings and recommendations. I also recognise the Consultant who led the research and preparation of the Study and all those who provided technical and institutional support throughout the process.

The African Commission expresses its appreciation to the German Federal Ministry for Economic Cooperation and Development (BMZ), through the GIZ African Women's Rights and Empowerment (AWARE) Project, for its support towards this important initiative.

The African Commission remains committed to working

with the African Court, the ACERWC, Member States and all relevant stakeholders towards an African human rights system in which every woman and girl is able to claim her rights, access justice and obtain an effective remedy when those rights are violated.



Honourable Commissioner Idrissa Sow
Chairperson
African Commission on Human and Peoples' Rights

PREFACE



The development of this Tripartite Study on Challenges of Litigating Women's and Girls' Rights before African Union Human Rights Organs represents an important step in our continuing efforts to ensure that the rights guaranteed to women and girls under Africa's human rights framework are not merely promises on paper, but rights that can be effectively claimed, enforced and enjoyed.

As Special Rapporteur on the Rights of Women in Africa (SRRWA), I have had the privilege of accompanying this process from its inception. The Study responds to an important concern: despite Africa's progressive normative framework for the protection of women and girls, cases concerning violations of their rights remain comparatively

limited before our regional human rights mechanisms. It therefore examines the barriers that prevent women and girls from accessing these mechanisms and obtaining effective remedies.

I am particularly grateful to the African Court on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child for their collaboration and contribution to this process. Their perspectives and institutional experiences were invaluable in shaping the analysis and recommendations contained in this Study.

The findings remind us that access to justice requires more than the existence of institutions and procedures. Women and girls must know that remedies exist and be able to access the information, resources, legal assistance and support necessary to pursue them without fear of stigma, retaliation or further harm. Where decisions are rendered in their favour, those decisions must also be effectively implemented.

At the same time, the Study demonstrates the transformative potential of strategic litigation to provide remedies for victims and survivors, expose structural discrimination, clarify State obligations, challenge harmful laws and practices, influence public policy and strengthen accountability.

Our task now is to move from analysis to action. The Study

provides an important roadmap for Member States, the African Union human rights organs, National Human Rights Institutions, legal practitioners, civil society, women's rights organisations and other stakeholders to strengthen access to justice for women and girls.

For the mandate of the SRRWA, the Study reinforces our responsibility to bring the African human rights system closer to the women and girls it is intended to serve. We must continue raising awareness of available mechanisms, promoting the use of the Maputo Protocol and other regional standards in litigation, addressing barriers to justice and strengthening partnerships with those who accompany women and girls in seeking remedies. At the same time, the rights of women and girls are both cross-cutting and intersectional across the African human rights system and should therefore be mainstreamed across its institutions and mandates. This requires recognising that violations of the rights of women and girls are often shaped by the intersection of gender with other forms of discrimination, inequality and vulnerability, and ensuring that these intersecting dimensions are reflected in the interpretation, application and enforcement of human rights standards and remedies.

I therefore invite all stakeholders to treat this Study not simply as a publication, but as a living advocacy and action tool. Its recommendations should inform institutional reform, capacity-building, strategic litigation and stronger partnerships between national and regional actors, with

a view to ensuring that women and girls across Africa can effectively claim and enjoy their rights.



Honourable Commissioner Janet Ramatoulie Sallah-Njie

Special Rapporteur on the Rights of Women in Africa
African Commission on Human and Peoples' Rights



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The development of the *Tripartite Study on Challenges of Litigating Women's and Girls' Human Rights Before African Union Human Rights Organs* was made possible through the collective efforts, expertise and commitment of the African Commission on Human and Peoples' Rights (African Commission), the African Court on Human and Peoples' Rights (African Court) and the African Committee of Experts on the Rights and Welfare of the Child (African Committee), together with the valuable contributions of experts, practitioners and partners working to advance women's and girls' rights in Africa.

The African Commission expresses its profound appreciation to the German Federal Ministry for Economic Cooperation and Development (BMZ), through the GIZ African Women's Rights and Empowerment (AWARE) Project, for the generous financial and technical support that facilitated the development of this Study. Special acknowledgement is accorded to Ms. Sophia Gallina and

Ms. Rizzan Nasuna of GIZ for their steadfast commitment, close collaboration, and dedicated support to the ACHPR at every stage of the Study's development.

We sincerely appreciate the leadership of the three African Union human rights Organs, as well as the Commissioners of the African Commission, the Judges of the African Court, and the Members of the African Committee, for their institutional commitment and support throughout the development of the Study. In this regard, particular appreciation is extended to Honourable Commissioner Idrissa Sow, Chairperson of the African Commission; Honourable Justice Blaise Tchikaya, President of the African Court; and Honourable Sabrina Gahar, Chairperson of the African Committee, for their leadership and institutional support in advancing this collaborative initiative.

Special recognition and profound appreciation are extended to Honourable Commissioner Janet Ramatoulie Sallah-Njie, Special Rapporteur on the Rights of Women in Africa, for her leadership in the development of the Study. Under her leadership, the initiative was advanced as an important undertaking within the framework of her mandate. Her strategic guidance, active oversight and continued engagement throughout the various stages of the process were instrumental in steering the Study from its development through to its completion. Her leadership and dedication have been central to bringing this important initiative to fruition.

We express our deep appreciation to the Secretariats and technical teams of the three institutions, whose expertise, coordination and sustained engagement were essential to the development, review and finalization of the Study.

In particular, we are grateful to Mme. Abiola Idowu-Ojo, Executive Secretary of the African Commission, and Mr. Yassine Driane, Deputy Executive Secretary, for their strategic leadership, guidance and institutional support throughout the process. Special recognition is accorded to Madam Irene Mbengue for her outstanding technical leadership in steering the initiative, and to Mr. Pedro Rosa Co, Ms. Mosupatsila Nare and Ms. Meron Eshetu for their dedicated technical contributions. Together with the wider Secretariat of the African Commission, their commitment and concerted efforts played a pivotal role in advancing the Study.

We are equally grateful to Dr. Robert Eno, Registrar of the African Court, and Mme. Grace Wakio Kakai, Deputy Registrar, for their leadership, and to Dr. Micha Wiebusch and Mr. Maulo Dombaxi for their valuable technical input. Their contributions, alongside those of the wider Registry of the African Court, complemented the work of the ACHPR team, demonstrating the spirit of cooperation and mutual support that underpinned this joint undertaking.

Our sincere appreciation also goes to Dr. Ayalew Getachew Asseffa, Acting Executive Secretary of the African Committee, for his leadership, and to Ms. Hussienatou

Manjang for her dedicated technical involvement. Together with the broader Secretariat of the African Committee, they played an integral role in this collaborative endeavor, reflecting the collective resolve of the three institutions to bring the Study to fruition.

We extend our sincere gratitude to the Consultant, Honourable Dr. Satang Nabaneh, for her dedication, rigorous research and technical expertise in undertaking the Study. Her examination of the challenges to litigating women's and girls' rights, analysis of relevant jurisprudence and formulation of practical recommendations provided a substantive foundation for the publication.

We further acknowledge the Technical Reference Group, whose diverse expertise and perspectives informed the analytical direction, findings and recommendations of the Study. Our thanks also go to the participants in the Validation Workshop held in Accra, Ghana, on 23 and 24 September 2025, whose insightful observations and constructive feedback helped refine and strengthen the final publication.

We also acknowledge the contributions of Member States, National Human Rights Institutions, Civil Society Organisations, Legal Practitioners, academics and women's rights advocates, whose knowledge, experiences and perspectives enriched the Study. Their continued engagement in advancing strategic litigation, promoting accountability and supporting women and girls in

accessing justice remains essential to strengthening the African human rights system.

It is hoped that the collective efforts reflected in this publication will provide a foundation for continued institutional cooperation, informed advocacy and practical action to address the barriers identified in the Study and advance more accessible, responsive and effective avenues for justice for women and girls across Africa.



EXECUTIVE SUMMARY

The African human rights system stands at a critical juncture. Despite the establishment of a robust and progressive legal framework for the protection of women's and girls' rights, most notably through the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and the African Charter on the Rights and Welfare of the Child (ACRWC/ African Children's Charter), the effectiveness of litigation remains heavily constrained. A primary obstacle facing the African Union human rights system is the disparity between treaty ratification and actual compliance. While numerous States have ratified the core human rights instruments, they demonstrate limited commitment to fulfilling the resulting obligations. This gap is particularly evident in the non-enforcement of decisions, including judgments, recommendations and findings, issued by the African Union (AU) human rights organs: the African Court on Human and Peoples' Rights (AfCHPR/African Court/

Court), the African Commission on Human and Peoples' Rights (ACHPR/ African Commission/ Commission), and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC/ African Committee/ Committee).

The low number of cases concerning women's and girls' rights brought before these organs hampers the advancement of rights. However, the few cases handled have demonstrated the practical realisation of these rights, underscoring the importance of addressing the obstacles that impede the initiation of litigation. Consequently, the ACHPR passed Resolution ACHPR/Res.594 (LXXX) 2024 on August 12, 2024, mandating this joint analytical study to identify barriers and provide evidence-based recommendations to strengthen litigation.

Therefore, this tripartite study examines the challenges of litigating women's human rights before the three principal human rights organs of the African Union. The study is guided by a dual analytical framework: a Human Rights-Based Approach (centering on substantive equality and state accountability) and a Gender-Transformative Framework (addressing underlying patriarchal norms and power dynamics).

The study's case analysis of litigation reveals a critical access deficit for cases related to violations of women's and girls' rights. Of the 894 total Communications received by the ACHPR since its inception:

i. 227 have been finalised on the merits
ii. 488 declared inadmissible, strike out and withdrawn.
iii. 5 referred to the African Court
iv. 174 pending.

The case source breakdown for these pending cases comprises Individuals (16 communications filed by women, and 136 filed by men), and NGO/Legal Person Communications at 22 cases. While these figures underscore severe access barriers for individual women, this "access deficit" must be understood within the broader litigation landscape of the African Union human rights organs. A significant volume of litigation concerning women's and girls' rights is spearheaded by women's organisations and CSOs. These entities often utilise strategic litigation or *actio popularis* to bring systemic issues before the organs, meaning that the rights of women and girls are often vindicated through collective representative actions rather than individual submissions. Therefore, the access deficit is not merely a lack of cases but a reflection of the structural, financial, and socio-cultural hurdles that make it nearly impossible for individual women to navigate the regional system without institutional support.

Similarly, of the 374 applications received by the AfCHPR since 2006, only four resulted in decisions specifically addressing women's rights, reinforcing the challenge of restricted direct access due to the withdrawal of the Article

34(6) declaration of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (Protocol establishing the African Court) by Benin, Tanzania, Côte d'Ivoire, Tunisia and Rwanda. Conversely, the ACERWC demonstrates its strategic value as a dedicated forum, with 10 out of its 26 total Communications at the time of the adoption of the Study addressing violations against girls; four of these cases have been adjudicated, and three are currently pending on the merits.

The analysis further reveals that beyond procedural barriers, challenges are deeply rooted in structural, political, economic, and socio-cultural factors. Key findings include a pervasive lack of state political will, a crisis of non-compliance with judgments, amplified procedural and evidentiary hurdles, gendered justice and socio-cultural resistance, including judicial stereotyping and the chilling effect of the fear of reprisal, stigma, and social ostracism.

The study argues that while the African human rights system has progressive legal instruments, their transformative potential is currently undermined by systemic deficiencies. States often engage in "symbolic obedience," ratifying treaties but actively undermining their enforcement through non-compliance and, in the case of the African Court, withdrawing declarations that grant individuals direct access. This phenomenon suggests that the "access deficit" is not merely a logistical failure but a manifestation of systemic and structural exclusion

embedded within the very architecture of legal and institutional systems.

However, a review of jurisprudence from the African Commission, the African Court, and the African Committee reveals a powerful, albeit underutilised, pathway for justice. For instance, the Committee, with its specialised mandate and unique procedural rules, offers a strategic and promising forum for cases concerning the rights of the girl child. Landmark decisions have demonstrated that it is possible to challenge systemic policies like the expulsion of pregnant schoolgirls and to establish states' "due diligence" obligation to protect against gender-based violence.

Recommendations

The future of women's and girls' human rights litigation depends on a collective, multifaceted effort that extends beyond the courtroom to encompass sustained political advocacy and grassroots mobilisation.

For African Union Member States:

- **Ratify and Implement:** States should ratify the Maputo Protocol and the Protocol establishing the African Court if they have not already done so. Those that have withdrawn the Article 34(6) declaration, which grants direct access to the Court, should be encouraged to reinstate it.

- **Strengthen Legislative Accountability:** States should mandate that Parliaments dedicate resources and oversight to ensuring budgetary allocations align with human rights obligations and prioritise the timely enactment of domestic laws.

- **Enhance Compliance:** To bridge the domestic implementation gap, AU Member States should establish a flexible national coordination framework integrated within domestic institutional structures that designates a high-level focal point to manage inter-institutional protocols, maintain customised compliance trackers for regional judgments and decisions, and ensure the decentralised execution of women's and girls' rights decisions at all levels of governance

- **Invest in Justice Systems:** States should allocate resources to fund legal aid, translation services, and gender-sensitive institutional capacity building. These investments must be specifically designed to dismantle the financial and practical barriers faced by both women and girls, ensuring that justice mechanisms are accessible to adults and age-appropriate for children.

For Human Rights Organs:

- **Increase Inter-Organ Collaboration:** The ACHPR, AfCHPR, and ACERWC should develop a formal

mechanism for systematic information sharing and case referrals to prevent applications from being dismissed due to procedural conflicts or forum overlap. It is important to note that the formal concept of "referral" is currently only pertinent between the ACHPR and the AfCHPR, as explicitly laid down by Article 5 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (Protocol establishing the Court). This procedure is further operationalised by Rule 130 of the Rules of Procedure of the ACHPR (2020) and Rule 38 of the Rules of Procedure of the Court (2021). To strengthen the overall system, a similar, legally grounded referral or transfer framework should be explored for the ACERWC to ensure that cases concerning children's rights can be harmonised across all three organs without falling into procedural gaps.

- **Develop Enforcement and Sanction Mechanisms:** The Executive Council of the AU, in collaboration with the human rights organs, should establish a clear mechanism to address states' non-compliance, possibly including a system of escalating sanctions.

- **Institutionalise Implementation Hearings:** Adopt the procedural innovation of public and private implementation hearings to actively monitor state compliance, drawing lessons from strategic cases like the *Ogiek* judgment.

- **Due Diligence Framework:** Jointly issue a Gender and Child-Sensitive Due Diligence Framework that explicitly demands states to address the compounded discrimination girls face (GBV, FGM, expulsion of pregnant girls from school) and mandates trauma-informed, survivor-centred judicial procedures.

- **Systematise Transparency:** Publish short, anonymised summaries of pending cases before the ACHPR to address the confidentiality restrictions and encourage *Amicus Curiae* briefs, thereby enriching the deliberative process.

- **Operationalise Legal Aid Fund:** Operationalise the Legal Aid Fund for the AU Human Rights Bodies, to primarily fund and remunerate lawyers on the existing African Court Roster of Counsels and the envisaged Commission and Committee Rosters ensuring competent representation for women and girls in priority cases. This dedicated funding mechanism would tackle the representation gap and technical errors that frequently lead to case dismissal.

For Litigators, Civil Society Organisations (CSOs), Non-Governmental Organisations (NGOs) with Observer Status, and National Human Rights Institutions (NHRIs) with Affiliate Status:

- **Strategic and Sequenced Litigation:** Adopt a strategy that maximises the potential of each organ

by building a robust domestic record before regional filing and leveraging positive decisions across forums (e.g., using an ACERWC finding to support an AfCHPR compliance request).

- **Intersectional Framing:** Craft legal arguments that address the compounded forms of injustice by articulating how factors like gender, poverty, disability, and age intersect to create multi-layered rights violations.

- **Collaboration with Bar Associations and Professional Bodies**: Deepen partnerships with national bar associations and female lawyers' associations. This collaboration serves two primary functions essential for building a robust regional litigation strategy:

    1. Creation of Specialised Legal Teams: Establish stronger relationships with professional bodies to support the creation of specialised legal teams dedicated to women's rights cases. These teams bolster the capacity to handle complex, intersectional gender claims at both the national and regional levels.

    1. Bolstering Pro Bono Services and Quality: Engage with bar associations to support pro bono services and to ensure that the pool of available lawyers has the specialised training

required for gender-sensitive advocacy. This improves the overall quality and volume of cases brought forward, helping to avoid dismissals due to technical or procedural errors. This cooperation is vital for transforming legal rights into meaningful protections for marginalised women.

- **Establish Formal Compliance Tracking Scorecards by NHRIs with affiliate status**: NHRIs with affiliate status before the relevant human rights organs should develop gender compliance scorecards. Utilising their statutory power to access government agencies, NHRIs should publish annual independent monitoring reports evaluating state progress on executing regional judgments, maintaining compliance dialogue with national parliaments, and providing direct navigational support for indigent female complainants.

- **Build Advocacy Alliances:** Litigators must integrate legal action with long-term advocacy and community mobilisation to ensure that court judgments are translated into tangible policy and cultural changes, thereby avoiding "paper victories."

The study concludes that the future of women's and girls' rights litigation depends on a collective, multi-faceted effort that extends beyond the courtroom to encompass sustained political advocacy and grassroots mobilisation.

This effort is essential to bridge the persistent gap between progressive law and daily reality.



LIST OF ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
AfCHPR	African Court on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ADR	Alternative Dispute Resolution
AJUDATA	African Union Judicial Data Platform
AU	African Union

AWARE	African Women's Rights and Empowerment Project
BARCTA	Bar Association of Regional Courts and Tribunals in Africa
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEVAWG	AU Convention on Ending Violence Against Women and Girls
CSOs	Civil Society Organizations
EACJ	East African Court of Justice
ECOWAS	Economic Community of West African States
EWLA	Ethiopian Women Lawyers Association
FARDC	Congolese Armed Forces
FGM	Female Genital Mutilation
GBA	Gambia Bar Association
GBV	Gender-Based Violence

GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
IHRDA	Institute for Human Rights and Development in Africa
ISLA	International Service for Human Rights
KELIN	Kenya Legal and Ethical Issues Network on HIV and AIDS
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights and on the Rights of Women in Africa
MOOC	Massive Open Online Course
NAIL	Network of African Human Rights Lawyers
NANHRI	Network of African National Human Rights Institutions
NHRIs	National Human Rights Institutions
NGOs	Non-Governmental Organizations
OHCHR	Office of the High Commissioner for Human Rights

OSI	Open Society Initiative
PALU	Pan African Lawyers Union
PIL	Public Interest Litigation
RAPID Africa	Regional African Program on Implementation of Decisions in Africa
RWI	Raoul Wallenberg Institute
SALC	Southern Africa Litigation Centre
SOAWR	Solidarity for African Women's Rights
SRRWA	Special Rapporteur on the Rights of Women in Africa
TDR	Traditional Dispute Resolution
TFGBV	Technology-Facilitated Gender-Based Violence
TRG	Technical Reference Group
UHRI	Universal Human Rights Instruments
UN	United Nations

CHAPTER ONE

INTRODUCTION

1.1. Background and Rationale of the Analytical Study

The struggle for the rights of women and girls in Africa[1] has unfolded as a cyclical process of legal and policy advancement, followed by the revelation of new, deeply embedded problems. Access to justice for women and girls begins within national legal frameworks. Exhaustion of local remedies, systemic delays, lack of domestic legal aid, and deeply entrenched social norms at the state level constitute the primary barriers before a claim ever reaches regional and continental mechanisms. Consequently, regional recourse functions not as a primary forum, but

as a high-stakes mechanism of last resort when domestic avenues are ineffective, inaccessible, or unduly prolonged. This underscores the fundamental responsibility of State Parties to strengthen domestic justice systems, allocate adequate resources, and ensure the full implementation of the rights of women and girls at the national level. Due to the failure of domestic justice systems to address pervasive gender inequality and disenfranchisement, the initial strategy for many was to seek redress through global human rights instruments. While global instruments like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) provided a vital normative foundation, they faced specific challenges regarding geographical and institutional distance when applied to the distinct challenges of the African continent. Their frameworks at times required regional adaptation to better account for unique African socio-cultural and historical contexts.

The current litigation deficit must be understood within this historical context of systemic failure, where both domestic and regional justice mechanisms have often lacked the gender-sensitive safeguards necessary for effective redress. This failure is explicitly recognised in the AU Strategy for Gender Equality and Women's Empowerment (GEWE) 2018–2028, which identifies the prohibitive cost of legal services and the absence of free legal aid as primary barriers to the realization of women's human rights. Under its key pillars, the GEWE

Strategy highlights that high legal fees hinder women from achieving substantive legal victories. The historical reliance on pro-bono services or limited donor-funded initiatives has proven insufficient, as the failure of national systems to institutionalise legal aid creates a "filtering" effect. This systemic disenfranchisement ensures that many cases are abandoned at the local level due to poverty and lack of support long before they can reach continental human rights organs.

This evolution emphasised the importance of "African solutions for African problems," leading to the continued development of the AU human rights framework. This framework includes landmark instruments such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) and the African Charter on the Rights and Welfare of the Child (ACRWC). While global instruments like CEDAW and the CRC remain cornerstones of international law, these regional mechanisms emerged as early institutional vanguards. For example, the Commission began its communications work as early as 1987 and issued its first decisions in 1988. Similarly, the Committee received its first communication in 2005 and began issuing decisions in 2013, preceding the operationalisation of the CRC's communications procedure in 2014.

Despite the proliferation of human rights instruments and avenues for redress, the AU human rights organs face significant practical and social barriers. Women, in

particular, face a lack of awareness and knowledge about the procedures of the Court and the Commission, which hinders their ability to file cases. While the lack of direct interaction with child victims precludes a definitive conclusion regarding their personal levels of awareness, this study identifies a 'girls' rights litigation deficit.' This gap is driven largely by the inherent procedural and ethical sensitivities involved in litigating violations against minors. Specifically, the lack of a universally applied survivor-centred and trauma-informed approach within judicial mechanisms acts as a deterrent, as litigation processes often fail to prioritise the specific needs, dignity, and safety of the child victim. Consequently, the challenge for the girl child is less a matter of documented awareness and more a result of a system that requires significant procedural reform to provide safe and accessible redress.

Furthermore, cultural and social norms play a critical role across the board. These norms often discourage women's active participation in legal and judicial processes, leading to a reluctance to engage with human rights institutions.

The culmination of these challenges has led to a persistently low volume of litigation and scant jurisprudence specifically on women's rights. The promise of instruments like the Maputo Protocol and the ACRWC has therefore not translated into a robust body of case law, indicating that the system's intended users are not effectively accessing or leveraging the mechanisms designed to protect their rights.

However, the few cases that have been handled by these three organs have affirmed the practical realisation of these rights, underscoring the importance of addressing the obstacles that impede litigation. Consequently, to provide a roadmap for overcoming these barriers, the ACHPR adopted a Resolution for a joint analytical study on the challenges of litigating the rights of women and girls at the AU human rights organs (ACHPR/Res. 594 (LXXX) 2024). The Resolution delegates the responsibility for developing the study to the Special Rapporteur on the Rights of Women in Africa (SRRWA) of the ACHPR, in collaboration with the ACHPR's Working Group on Communications, representatives from the AfCHPR, and the ACERWC's Special Rapporteur on Child Marriage and Other Harmful Practices, and the Special Rapporteur on Violence Against Children.

As such, with the support of the GIZ AWARE Project, the ACHPR, jointly with the AfCHPR, and the ACERWC, developed a Tripartite Study on challenges of litigating the rights of women and girls at the three human rights organs. The study aims to identify barriers to women's and girls' access to justice at the regional level and provide evidence-based recommendations to strengthen litigation before these AU human rights organs.

1.2. Research Questions

The study is guided by three core research questions:

What are the structural, socio-cultural, and evidentiary obstacles that hinder women's and girls' access to justice, and how do these barriers contribute to the litigation deficit before the African Union's human rights organs?

How do the procedural frameworks and institutional dynamics within the African Union's human rights organs impact the initiation, progression, and outcomes of litigation related to the rights of women and girls?

Drawing from past experiences and notable cases, what strategic insights and good practices can be identified to enhance the effectiveness of litigating the rights of women and girls before the African Union's human rights organs?

1.3. Definition of terms

Strategic litigation: This is a legal action that aims to have a lasting impact beyond repairing the harm of an individual victim. It is a hybrid process that combines judicial action with sustained advocacy and mobilisation to address structural inequalities, influence public discourse, and drive broader policy and legal reforms.

Decisions: A decision is the formal, judicial determination of the rights and obligations of parties in a case. While this often refers to a court's final ruling on the merits or procedural matters such as jurisdiction and admissibility, the definition also encompasses the formal pronunciations

of quasi-judicial bodies. Within the African human rights system, this includes the final determinations and recommendations issued by bodies such as the Commission and Committee.

Implementation: The process by which a state fulfils its obligation to provide the reparations ordered in a judicial decision or judgment. Successful implementation is the true measure of a litigation's impact, as it determines whether a legal victory leads to tangible change on the ground.

Compliance: Compliance with human rights obligations is the outcome of a state's overall behaviour, which may align with a court's decision even without specific, active implementation measures.

Forum Shopping: The strategic practice by which litigators choose to bring a case before a specific court or legal body from a range of available options to maximise the chances of a favourable and enforceable outcome. This choice is often based on the body's procedural rules, track record, and perceived effectiveness.

Reparations:[2] These are the measures a state is ordered to take to repair the violations of human rights found. They can be provided in various forms to address both individual and systemic harm.

- Compensation: Monetary awards to address material

and moral damages. While often the most easily implemented, compensation alone does not guarantee a behaviour change.

- Rehabilitation: Provision of medical and psychological care and legal and social services to restore the victim.

- Restitution: Measures that aim to restore the victim to their original situation, such as re-admitting an expelled student or returning confiscated property.

- Satisfaction: Measures that provide public recognition and accountability, such as truth-seeking, public apologies, and judicial or administrative sanctions against perpetrators.

- Guarantees of Non-Repetition: Structural and legislative reforms to prevent future violations. This is the most crucial, and often most resisted, form of remedy, as it requires a fundamental shift in state policy and practice.

1.4. Scope of the study

This study is an expert-level, foundational document that highlights challenges in litigating the rights of women and girls before the African Union's key human rights organs: the African Commission, the African Court, and the African Committee. This analysis is designed to identify barriers

and to provide strategic insights for future litigation.

1.5. Analytical framework

This study is grounded in a central argument: that the challenges in litigating women's rights cases before the African human rights system are a direct result of gendered injustice. This concept recognises that legal systems are not neutral but are shaped by deep-seated patriarchal norms, which systematically disadvantage women and girls. As Charlesworth argued, "by and large, when women enter into focus at all in international law, they are viewed in a very limited way, often as victims, particularly as mothers, or potential mothers, in need of protection".[3] This assertion holds when applied to women's and girls' rights litigation before the African human rights system. Echoing this critique and highlighting a core tension within African jurisprudence, the acknowledgment and embracement of the role of motherhood by some African feminists stands in conflict with women's full rights to autonomy. This limiting view is reinforced by the way institutions often treat women's concerns. Mama further argues that the assigned roles of childbearing and homemaking are deeply shrouded within the dichotomy between the public and private spheres.[4] This dichotomisation is often anchored on limiting women's reproductive autonomy, confining women's concerns (such as reproductive health and family violence) to the ostensibly "private" domain where human rights protection is historically weak.[5]

This structural exclusion serves as a primary driver of the practical challenges observed in litigation, since framing these violations as "private" issues often triggers higher evidentiary burdens and judicial stereotyping, resulting in the dismissal of claims before regional organs. While this foundational critique of motherhood specifically addresses adult women, the underlying public-private divide similarly impacts the girl child. Her specific vulnerabilities, such as child marriage or expulsion from school due to pregnancy, are frequently relegated to this same "private" family sphere, directly contributing to the persistent "litigation deficit" by treating these as domestic matters rather than actionable human rights violations. This structural exclusion validates the need for a Gender-Transformative Framework to challenge these restrictive and essentialising roles.

While the goal of litigation is often judged by traditional metrics like state compliance and legal effectiveness, this study recognises that the performance of African human rights organs should also be assessed against a broader, multidimensional set of criteria.

To inform strategic pathways, the analysis also pays attention to the political, social, and legal dimensions of change, including the capacity of litigation to amplify political disputes, strengthen the organisational capabilities of social movements, educate the public, and challenge the *status quo* beyond formal judgment enforcement (as discussed in Chapter Four on the utility of

strategic litigation). To move beyond this problematisation and toward a solution-oriented analysis grounded in both traditional and expanded performance metrics, the study employs a dual analytical framework.

A. *Human Rights-Based Approach*

The study's primary lens is a human rights-based approach, centring on the fundamental principles of substantive equality and non-discrimination as enshrined in international and regional human rights instruments. This framework holds states accountable for their legal obligations to respect, protect, and fulfil the human rights of women and girls.

This approach is employed to analyse two key dimensions of the problem:

- Legal and Institutional Gaps: The study identifies and analyses the inconsistencies between national laws and a state's human rights commitments. This includes examining legal pluralism, where customary and religious laws often conflict with formal legal statutes, leading to discriminatory outcomes. While this conflict can lead to discriminatory outcomes in areas such as inheritance, marriage, and property rights, the analysis acknowledges that the presence of conflict does not necessarily lead to discrimination, as customary laws in some contexts may be more progressive and offer unique remedies to women

and girls. In addressing this, the analysis emphasises the need for States to ensure safeguards against violations of women's human rights by enabling review by State courts or administrative bodies of the activities of all components of plural justice systems, including village and traditional courts, in line with international human rights standards.

- Access to Justice Barriers: This framework is utilised to investigate the practical and procedural obstacles that prevent women from accessing and utilising the formal justice system. The analysis focuses on socio-economic factors such as the prohibitive cost of legal representation, the lack of state-funded legal aid, and the low levels of legal literacy among women, particularly in rural and impoverished communities.

B. *Gender-Transformative Framework*

To complement the human rights-based analysis, the study is also grounded in a gender-transformative framework (GTF). This approach goes beyond simply acknowledging that women's rights are violated; it seeks to understand and address the underlying gender norms and power dynamics that create and sustain these violations. This framework is essential for explaining why legal reforms often yield only marginal gains and why women continue to be marginalised within legal systems.

This framework allows the study to:

- Deconstruct Patriarchal Norms: The study analyses how deep-seated cultural, religious, and historical beliefs about gender roles influence judicial decisions and legal processes and disadvantages female claimants, whether they are women or girls.

- Examine Power Imbalances: The analysis surfaces the unequal power dynamics within the legal system itself. This includes examining the language and procedures used in legal settings that may be intimidating or inaccessible, effectively filtering out cases before they reach a formal hearing.

- Address the Litigation Deficit: While this framework is often applied to adult women, it is crucial for addressing the "litigation deficit" concerning the girl child. By challenging the underlying norms that relegate girls' rights violations to the "private" family sphere, the GTF demands that judicial procedures become trauma-informed and survivor-centred to ensure girls can effectively access regional justice mechanisms.

While this study is primarily grounded in a Gender-Transformative Framework to challenge patriarchal norms, it conceptually accounts for the diverse "power architectures" across Africa. This includes an analytical recognition of matriarchal and matrilineal systems, where the source of legal and social authority differs from traditional patriarchal models. In these contexts, the

framework does not assume a monolithic form of female subordination; instead, it interrogates how different traditional power structures, whether based on male or female lineage, interact with the "individualistic" nature of regional human rights litigation. This allows the study to analyse whether access to justice is hindered by the structure of the system itself, regardless of the specific gendered hierarchy in place.

The Gender-Transformative Framework is essential for moving beyond simply documenting violations to addressing the underlying gender norms and power dynamics that sustain them. This framework is operationalised through a uniquely African feminist approach, which critically acknowledges the limitations of universal human rights systems. This approach necessitates incorporating culturally resonant strategies for change that do not essentialise women's roles but instead affirm the right to live in a positive cultural context, as articulated in the Maputo Protocol and the African Children's Charter.

A core pillar of this unique approach is the concept of substantive equality.[6] This is distinct from formal equality, which merely guarantees equal treatment under the law on paper. Substantive equality mandates that legal interventions and reforms must actively address historical disadvantage, socio-economic disparities, and structural barriers that prevent women and girls from realising their rights. Regarding the struggle to safeguard equality within

a liberal polity, Charles Ngwena holds that:

Taking equality seriously means taking steps to protect the equality rights of a vulnerable social group by countering discriminatory and obstructive barriers that are unconstitutional or superfluous and have the effect of delaying or ultimately thwarting the exercise of legal rights, thus perpetuating the status quo.[7]

The transformative potential of substantive equality has also been advanced by the South African Constitutional Court in several cases.[8]

1.6. Methodology and approach

The methodology for this study was structured into distinct phases, ensuring a comprehensive approach to analysing the challenges, good practices, and lessons learnt on litigating women's rights before the African Union's human rights organs.

1.6.1 Synergy and Coordination with Existing Initiatives

The study began with a crucial mapping phase to actively build on and coordinate with existing initiatives related to women's rights litigation before AU organs. This step ensured that the study avoids duplicating efforts and instead leverages the expertise and infrastructure already

in place. These initiatives were utilised as primary data sources to identify strategic gaps, validate capacity challenges, and provide the empirical evidence necessary to analyse the litigation deficit for women and girls.

I. Identifying Strategic Gaps and Jurisprudential Trends

Several initiatives provided the empirical foundation for identifying which human rights are being litigated and where the "silences" remain:

African Union Judicial Data Platform (AJUDATA): AJUDATA is a thematic jurisprudence database that is still in development.[9] The plan is to launch a pilot phase using only the African Court's jurisprudence. The database will then be expanded to include jurisprudence from other AU human rights organs, such as the ACHPR and ACERWC, as well as the EAC and ECOWAS. While still in development, the pilot phase focusing on the African Court provided the study with raw data on existing case law, allowing for a preliminary assessment of how frequently the Maputo Protocol is invoked compared to other instruments.

Guidelines on Complementarity: The Court-Commission Guidelines, which are being finalised in the four official AU languages, are relevant to the study. These guidelines aim to address the issue of complementarity between the two organs. The draft Court-Commission Guidelines were analysed to identify the procedural "bottlenecks" between

the two organs. This helped the study pinpoint why certain cases involving women's rights stall during the referral process from the Commission to the Court.

Guidelines on Amicable Settlement: The African Court recently adopted guidelines on amicable/friendly settlement as part of its strategic plan, and there is a need to sensitise parties, including states and applicants, to enhance the procedure's use. The 2020 Rules of Procedure of the Commission require it to promote amicable settlement of disputes between parties. Before a settlement is endorsed by the competent body, the terms must be acceptable to both parties andmust comply with human rights principles. However, there remains ambiguity and the need for such guidelines. The recent developments in these guidelines also highlighted a strategic gap: the underutilisation of alternative dispute resolution in gender-sensitive cases, which influenced the study's focus on diverse pathways to justice.

II. Capacity Gaps and Procedural Barriers

The following initiatives served as "proof of concept" for the study's focus on the lack of specialised regional legal expertise:

Network of African Human Rights Lawyers (NAIL) coordinated by the Pan African Lawyers Union (PALU): NAIL is a core, ongoing project within PALU's mandate designed to strengthen the capacity of legal

professionals to engage effectively with African Courts and Tribunals. The goal is to improve both the success rate and the broader impact of cases. The initiative was initially envisaged as the Bar Association of Regional Courts and Tribunals in Africa (BARCTA), but was changed to NAIL to include quasi-judicial bodies and due to the challenges faced in institutionalising a bar. There is also a work-in-progress database of litigants before the East African Court of Justice, which aims to identify gaps in legal representation, such as gender, geographical location, and quality of legal counsel. This database also serves as a starting point for mapping lawyers with experience or an interest in regional litigation. By examining the NAIL initiative, the study was able to validate geographical and gender imbalances in legal representation and confirm the hypothesis that few lawyers possess the specialised skills to bring gender-based cases to the regional level.

Capacity Building for Bar Associations: Existing initiatives, such as those undertaken by the Institute for Human Rights and Development in Africa (IHRDA), focus on strengthening the capacity of domestic legal practitioners. A recent example is the specialised training provided to members of the Gambia Bar Association (GBA), which was specifically designed to equip them with the skills and tools required to litigate human rights cases before regional and continental mechanisms, including the ECOWAS Court of Justice and the African Union human rights mechanisms. Training outcomes from these programs provided qualitative evidence of the specific

"skills gaps" (such as drafting regional communications) that domestic practitioners face. This validated the study's emphasis on the need for specialised litigation support.

Massive Open Online Course (MOOC) on Litigation before AU Organs: This MOOC is currently a work in progress, with a full draft of the modules under review. It is crucial that its content is made practical and not overly academic, so that it can be effectively used by actual litigants. This also allowed the study to identify the most common "points of confusion" for litigants, directly informing the procedural analysis.

III. Sourcing Empirical Data on Implementation and National Uptake

To understand the "outcome" side of litigation, the study drew on initiatives focused on what happens *after* a judgment is rendered:

The Regional African Program on Implementation of Decisions in Africa (RAPID Africa) Consortium, facilitated by the Raoul Wallenberg Institute (RWI): The Regional African Programme on Implementation of Decisions (RAPID) is a regional initiative led by the Raoul Wallenberg Institute (RWI) that explicitly seeks to narrow implementation gaps. RAPID aims to strengthen the capacity of national and regional actors to monitor, follow up, and secure the implementation of judgments, decisions, provisional measures, and recommendations

issued by continental bodies. The RWI's Regional Africa Programme is explicitly designed to leverage regional knowledge and partnerships to strengthen human-rights systems across countries and to ensure that legal reforms, monitoring mechanisms, and training programmes are aligned and mutually reinforcing. The programme's emphasis on connecting regional jurisprudence to national uptake makes it a useful model for how intermediary actors can catalyse systemic change. This program provided critical data on the "implementation gap." By studying their monitoring models, the study identified the specific state-level barriers (lack of political will and sovereignty concerns) that prevent regional decisions for women and girls from becoming a domestic reality.

National Human Rights Institutions (NHRIs): NHRIs are increasingly central to protecting women litigants and advancing gender equality in Africa. NHRIs promote and protect rights, investigate abuses, advocate legal reform, and facilitate access to justice. Where they are independent and resourced, NHRIs aggregate complaints, document systemic violations, support strategic litigation, and advise on domestication of regional jurisprudence, translating regional decisions into national practice. For this methodology, reports from NHRIs with affiliate status served to validate best practices, and also to identify the structural bottlenecks that hinder women's and girls' access to regional justice.

Equality Now and the Solidarity for African Women's

Rights (SOAWR): As a continental network of over 70 organisations across 33 countries, SOAWR was engaged as a primary source of advocacy-based data to map the "uptake gap" between the ratification and domestication of the Maputo Protocol. The coalition's technical inputs, including toolkits and monitoring of the Protocol's life cycle (Protocol Watch), provided this study with empirical evidence of the political and social hurdles that prevent regional treaties from being utilised in national courts. By analysing the coalition's efforts to mobilise mass advocacy, the study was able to source strategic insights into how mutually reinforcing pathways between civil society and regional organs can translate jurisprudence into tangible legal change for women and girls.

1.6.2 Literature Review

The initial phase involved a comprehensive literature review to gather existing knowledge on women's rights litigation at the AU level. Relevant legal instruments, including the African Charter, the Maputo Protocol, and the African Children's Charter, were reviewed. The analysis also covered academic literature, reports from non-governmental organisations (NGOs), and key case law related to women's rights in Africa. This phase was crucial for identifying procedural and institutional obstacles highlighted in previous studies. Where feasible, best practices were also identified by drawing lessons from a comparative analysis of other regional and international human rights bodies. All findings were systematically

documented using a review matrix to ensure thorough analysis.

1.6.3 Stakeholder Engagement

To gather qualitative data and expert input, a pre-constituted reference group was engaged instead of conducting formal interviews or focus group discussions. A coordinating group was composed of representatives from each of the organs.[10] In addition, a 20-member Technical Reference Group (TRG) was set up, composed of legal professionals with extensive experience in women's rights litigation; women's rights organisations and activists, and scholars with expertise on the topic.[11] NHRIs were also part of the core stakeholders through the Network of African National Human Rights Institutions (NANHRI). The TRG was established to ensure that high-level expertise and diverse perspective feedback was incorporated into the study at all stages. The inclusion of NHRIs in this consultative framework recognises their pivotal yet often underutilised position. Operating as bridges between the State and the citizenry, NHRIs are critical partners in supporting survivors, providing information on the AU human rights system, channelling grassroots concerns, and lending legitimacy to cases through the submission of Amicus Curiae briefs. Their involvement is essential to ensuring that the study's roadmap is practical for both regional organs and domestic implementation mechanisms.

The TRG was able to make input into the inception report, shared necessary resources, and engagement was structured as a technical validation process,[12] where preliminary findings, emerging trends, and draft recommendations were presented for discussion and feedback. This allowed for valuable insights from practitioners and experts throughout the study.

1.6.4 Ethical Considerations

The study prioritised the principle of "Do No Harm," ensuring that all members of the TRG were protected through the use of a policy of strict confidentiality and anonymity to mitigate risks of retaliation or secondary harm arising from the analysis of sensitive cases.

1.6.5 Case Analysis

The final phase involved a detailed case analysis to identify and document landmark women's and girls' human rights cases.[13]

AfCHPR Statistics

The following data reflects the Court's overall activity since its inception and highlights the low volume of women's rights cases within the total workload:

> Total Applications Received (Overall): 374 applications.

Total Applications Finalised: 272 (73%).

Total Contentious Cases Filed: 359 cases.

Total Decisions Rendered: 458 decisions, including 276 judgments and 182 orders.

Case Source Breakdown: Individuals are the primary source of applications, having filed 333cases, while NGOs filed 22, the ACHPR filed 5, and States filed 1 case.

Women's Rights Volume: Out of the over 300 applications filed since 2006, very few focus on women's rights.

ACHPR Statistics

The Commission's data provides insight into the gender breakdown of complaints:

Total Communications Received (Overall): 894

Total Communications Pending: 174 Communications

Communications Status Breakdown:

- Finalized (Merits): 227

- Declared Inadmissible, Strike Out, Withdrawal: 488
- Referral to the Court: 5

Pending Case Source Breakdown**:** Individuals (174 total: 16 filed by women and 136 filed by men) and NGOs/Legal Persons (22 cases).

ACERWC Statistics

The ACERWC data clearly shows the importance of this organ for girls' rights:

Total Communications Received: 26

Communications on Girls' Rights: 10 out of 26 Communications address violations against girls (including pending and inadmissible cases), representing a significant portion of its workload.

Communications Status Breakdown (of 26):

- Finalized (Merits): 10 (38.5%).
- Declared Admissible: 6 (23.1%)
- Amicably Settled: 3 (11.5%)

A representative sample of cases from the ACHPR,

AfCHPR, and ACERWC was selected, focusing on the legal arguments, outcomes, and procedural practices of each case. A key objective was to identify and document best practices that can be scaled or replicated in future litigation. A selected analysis of cases from other regional bodies was also selected to provide a comparative perspective on successful litigation strategies. This phase provided the empirical evidence needed to support the findings of the study and recommendations.

To maintain the study's analytical depth and focus on its core mandate, the study deliberately excludes review of domestic and national-level case law. A full exploration of the domestic justice systems falls beyond the scope of this joint analytical study. This strategic limitation ensures that the research remains focused, and attention is concentrated on strengthening litigation before the AU human rights organs.

1.7. Data analysis

The data gathered through the literature review, stakeholder engagement, and case analysis were analysed using a qualitative approach, specifically thematic analysis. This method was chosen to systematically identify, analyse, and report on patterns or themes within the data.

The analysis proceeded as follows:

- Initial Coding: The data was reviewed to generate

initial codes. These codes were strategically based on two criteria: key structural issues identified in the literature review, and the conceptual pillars of the study's dual analytical framework. Codes were developed to capture instances where Human Rights-Based obligations failed due to Gender-Transformative barriers. Core codes included "jurisdictional challenges" (issues relating to whether an organ has the authority or competence to hear a case), "evidential barriers" (difficulties faced by litigants, particularly women, in collecting and presenting the required evidence for human rights violations), and "cultural norms" (deeply entrenched traditional, religious, or customary beliefs and practices that conflict with fundamental human rights principles, creating obstacles to women's rights).

- Theme Identification: Related codes were then grouped to form broader themes, allowing for the emergence of overarching issues like "economic barriers to access" and "crisis of state non-compliance".

- Reporting: The identified themes and patterns were synthesised into the findings and recommendations of this study. This process ensured that the conclusions were directly supported by the qualitative evidence gathered.

Gender-Disaggregated Data and Jurisprudential

Trends: To address the need for statistical clarity and identify emerging trends, this study analysed available data across 40 years of regional human rights activity. While the African human rights system has processed over 1,000 cases, a profound "access deficit" as discussed later, remains evident when the data is disaggregated by gender.

Individual vs. NGO Filings: Of the 174 pending Communications before the African Commission, only 16 (approximately 9%) were filed by individual women, compared to 136 (78%) by men.

Thematic Concentration: Analysis of the African Court's case history reveals a high concentration of applications originating from Tanzania, primarily involving men filing in criminal matters regarding the right to fair trial.

Institutional Variation: In contrast, the African Committee demonstrates a more gender-focused workload, with 10 out of its 26 total Communications specifically addressing violations against girls.

The Documentation Gap: The persistent lack of comprehensive, publicly accessible gender-disaggregated data hinders the ability of advocates to track the long-term impact of the decisions of the AU human rights organs or provide evidence-based recommendations.

1.8. Limitations

This study is grounded in a robust methodology, but it is important to acknowledge certain limitations that bound the scope of its findings. While the study benefited from the invaluable expert insights of a pre-selected reference group, this methodological choice, rather than a broader sample of interviews and focus groups, means the findings are based on the perspectives of a limited group of specialists. However, the diversity within the group, including geographic representation, academics, and practitioners, strengthens the validity of the findings. The study's reliance on qualitative data and a purposive case sample means the findings are indicative of trends rather than statistically generalisable. To mitigate these limitations, the study focused on providing an in-depth, nuanced understanding of common barriers and a deep insight into the nature of successful and unsuccessful litigation.

1.9. Roadmap

The study is structured in three main parts to provide a comprehensive analysis and an actionable roadmap for change.

Part I: The Foundational Landscape for Women's Rights Litigation

This part provides the study's overview. It also details the research methodology, including the literature review, expert stakeholder engagement, and case analysis. A subsequent chapter examines the African human rights architecture, reviewing key legal instruments such as the African Charter, the Maputo Protocol, and the African Children's Charter, and detailing the mandates of the African Commission, the African Court, and the African Committee.

Part II: Jurisprudence and Case Studies

This part presents a review of landmark jurisprudence from the AU human rights organs, providing a direct look at the impact of litigation. This section also reviews jurisprudence from sub-regional and domestic courts to provide a comparative perspective on successful litigation strategies. The study identifies key trends and patterns from this analysis and concludes with a series of actionable recommendations for Member States, AU human rights organs, and litigators aimed at bridging the gap between progressive law and lived reality.

Part III: The Roadblocks to Justice: Systemic, Procedural, and Socio-Cultural Barriers

This section is a deep dive into the practical and structural challenges that prevent women and girls from accessing justice. It systematically explores systemic obstacles such as the crisis of state non-compliance and political will, and the capacity gaps within justice institutions. The analysis also covers procedural complexities like the high cost of legal representation, the burden of exhausting local remedies, and language barriers. Finally, it addresses the socio-cultural hurdles that create a "chilling effect," such as stigma and the fear of reprisal, and highlights the complexities of intersectional discrimination.

The study concludes in chapter six with recommendations for all key stakeholders, with the ultimate goal of bridging the persistent gap between progressive law and lived reality.



PART I

THE FOUNDATIONAL LANDSCAPE FOR WOMEN'S RIGHTS LITIGATION

CHAPTER TWO

THE LIVED REALITY: A CALL TO ACTION FOR WOMEN'S AND GIRLS' RIGHTS

The struggle for the rights of women and girls in Africa is a complex, multi-layered issue that has consistently outpaced the formal systems designed to address it. Despite significant legal and policy advancements over the past few decades, the lived reality for many remains one of pervasive and deeply entrenched gender inequality.

The evidence from recent reports paints a compelling

picture of this persistent crisis. The proportion of women and girls living in extreme poverty has stagnated since 2020, with most of those affected residing in parts of Africa and Central and Southern Asia.[14] Climate change, in a worst-case scenario, could push up to 158.3 million more women and girls globally into extreme poverty by 2050, with nearly half of that number in sub-Saharan Africa.[15] Beyond economic precarity, the threat of violence is escalating. In 2024, a record 676 million women and girls lived near a deadly conflict, the highest number since the 1990s. The Lake Chad Basin was especially dangerous for girls, as the UN verified that 60% more girls than boys were victims of incidents perpetrated by terrorist groups in 2024.[16] This disproportionate victimisation often stems from gendered roles that increase risk exposure, such as girls being sent out to fetch essential resources (water, wood, or food) or being specifically targeted for abduction and exploitation by armed groups. This highlights a systemic crisis perpetuated by actionable injustices.

This systemic crisis is perpetuated by a range of specific, actionable injustices that require legal intervention. Sexual violence, particularly rape, is a widespread and under-prosecuted human rights violation across the African continent, with survivors facing a patchwork of discriminatory laws and a lack of access to justice and survivor-centred response services.[17] Child marriage and Female Genital Mutilation (FGM) remain major concerns, with an estimated 144 million affected women and girls residing in Africa and an estimated 4 million girls

undergoing FGM each year.[18] Moreover, discriminatory family laws and legal pluralism, where informal or customary marriages deny women rights in areas such as inheritance, divorce, and property, continue to operate in parallel with progressive statutory law, often to the detriment of women and girls.[19]

It is also argued that women frequently engage with national courts, particularly regarding family law, due to geographic proximity and perceived lower costs. This study identifies a strategic choice: if women obtain satisfactory or "tolerable" outcomes domestically, the immense financial and procedural burden of regional litigation acts as a deterrent. Regional recourse is often viewed not as a primary choice, but as a high-stakes last resort for cases where domestic remedies are non-existent, ineffective, or unduly prolonged.

This evolving landscape makes a case for the necessity of a strategic, multi-faceted approach that includes litigation as a core component. The problems faced by women and girls are not abstract; they are tangible human rights violations that should be addressed through judicial processes. This study posits that while litigation is not a silver bullet, it serves as a crucial tool for disrupting the status quo and holding states accountable for their failures.

The pursuit of solutions to pervasive gender inequality has led to a progression of institutional responses, each encountering distinct structural limitations.[1] Parallel to the

adoption of global standards, the African regional human rights system established a foundational framework that continues to evolve to address the continent's unique challenges. While instruments like CEDAW provided an early international normative foundation, they have consistently coexisted with the African Charter and were later specialised through the Maputo Protocol and the African Children's Charter to provide a more localised and gender-responsive complement to the global system.

The establishment of the AU human rights organs- the Commission, the Court, and the Committee, represents a deliberate regional evolution designed to safeguard human rights across the continent, including the specific rights of women and girls. While these organs possess progressive and expansive mandates, they navigate structural challenges that are inherent to the nature of international law. Obstacles such as the invocation of state sovereignty and the procedural requirement to exhaust local remedies are universal characteristics of international legal oversight. Within the African context, these shared hurdles necessitate a specialised approach to strategic litigation to ensure that the protections promised to women and girls are effectively realised within their national justice systems.

The following table visually and persuasively links the injustices discussed in this chapter to the legal instruments designed to address them, providing an actionable reference for advocates.

Table 1: Mapping Real-World Problems to Key Legal Instruments

Real-World Problem	**Relevant Legal Instrument & Provision**	**How Litigation Helps**
Gender-Based Violence & Human Trafficking	African Children's Charter, Article 3 (Non-discrimination), Article 27 (Sexual Exploitation), and Article 29 (Sale, Trafficking and Abduction); Maputo Protocol, Article 4 (Life and Integrity of Person) and 4(2)(g) (Protection from Trafficking); African Charter, Article 5 (Dignity and Security of Person); AU Convention to End Violence Against Women and Girls (CEVAWG), Article 2 (Right to Live from Violence), Article 5 (State Obligations on Ending Violence Against Women and Girls), Article 7 (State Obligations on Multiple and Interconnected Factors that Exacerbate Violence Against Women and Girls), Article 8 (State Obligations to End Violence Against Women in the World of Work), Article 9 (State Obligations to Protect Girls in the World of Work)	Creates precedent on a state's 'due diligence' obligation to protect victims and prosecute perpetrators.

Discriminatory Inheritance & Property Laws	Maputo Protocol, Article 7 (Separation, Divorce and Annulment of Marriage) and Article 21 (Right to Property); African Charter, Article 18(3) (Protection of Women and Children)	Challenges legal pluralism and ensures that statutory law overrides discriminatory customary practices, turning legal entitlements into lived protections.
Child Marriage & FGM	African Children's Charter, Article 21 (Protection from Harmful Practices); Maputo Protocol, Article 5 (Elimination of Harmful Practices) and Article 6(b) (Minimum Age for Marriage)	Enforces legislative reforms and holds states accountable for the rights of girls. Sets a clear standard that these practices are human rights violations.

Sexual & Reproductive Health Rights	African Children's Charter, Article 14 (Health and Health Services); Maputo Protocol, Article 14 (Health and Reproductive Rights); African Charter, Article 16 (Right to Health)	Provides an avenue for addressing state failures in providing adequate maternal healthcare, access to safe abortion services, and for challenging policies like forced sterilisation or pregnancy testing.

Effective regional litigation remains fundamentally dependent on the critical role of grassroots civil society organizations, whose models for community-based documentation, survivor accompaniment, and rights awareness serve as the essential precursors for translating lived violations into legally actionable claims before the human rights organs. Thus, this study is an effort to move beyond merely identifying these problems to understanding the specific mechanics of these failures and proposing innovative, action-oriented solutions.

CHAPTER THREE

AFRICAN HUMAN RIGHTS ARCHITECTURE: A REVIEW OF INSTRUMENTS AND INSTITUTIONS

The African human rights system is a multi-layered and dynamic architecture built upon a foundation of key legal instruments and institutional pillars.

3.1. Selected African Human Rights Treaties

There are various human rights instruments with several

provisions for the promotion and protection of the rights of women and girls at the regional level. They include the African Charter,[20] theMaputo Protocol, [21] the African Children's Charter, the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities*[22] and the recently adopted AU Convention on Ending Violence Against Women and Girls (CEVAWG). This section briefly examines these instruments particularly in relation to access to justice and litigation opportunities for women and girls on the continent.

3.1.1 The African Charter

The African Charter serves as the foundational legal instrument for the African Human Rights system, having been ratified by 54 of the 55 AU member states.[23] It is notable for being the first international treaty in Africa to comprise a broad range of civil, political, economic, social, cultural (ESC), and group rights.[24]

Generally, scholars[25] discuss the two broad references to the protection of women's rights contained in the African Charter. First, Article 2 provides that persons are entitled to rights and freedoms on an equal basis and without discrimination, including based on sex or "other status," the African Charter also guarantees equality before the law and equal protection of the law[26] affirming that all persons are "equal" and entitled to the same rights and respect.[27] Although these provisions are gender neutral, they are relied upon to ensure the equality and non-discrimination

of women.

The Charter also has been criticised for framing women's human rights as rights related to family protection under Article 18(3) rather than gender equality and for grouping the rights of women with those of children, which perpetuates outdated stereotypes and essentialises women's roles as wives and mothers.[28] Others discuss how the emphasis in article 18(3) of the protection of women in the family context raises questions about the protection of women outside of the family sphere.

Despite these limitations, the African Commission has played a crucial interpretive role, establishing "implied" rights where they are not explicitly mentioned in the Charter to protect women.[29] This innovative interpretation demonstrates that even a seemingly limited legal framework can be expanded through jurisprudence, a key strategic consideration for litigators.[30] For instance, in the 2011 *Egyptian Initiative for Personal Rights and Interights v. Egypt*[31] case, the African Commission found Egypt in violation of Articles 2, 3 and 18(3) of the African Charter to impose a positive "due diligence" obligation on the state to actively prevent, investigate, and punish such acts. In essence, the ACHPR took the existing rights to equality, non-discrimination, and protection of the family, which includes women's human rights and interpreted them to create an enforceable right for women to be free from gender-based violence and to have the state protect them from such violence in public life.

3.1.2 The Maputo Protocol

Member States adopted the Maputo Protocol in 2003 to further substantiate and strengthen women's rights, given the limitations of the African Charter regarding women's rights issues.[32] This comprehensive treaty has been ratified by 46 of the 55 AU Member States as of September 2025, with the Central African Republic being the most recent to do so in 2025.[33] The Protocol clarifies that its reference to women includes girls. The Maputo Protocol provides a comprehensive framework that consists of robust provisions aimed at realising gender equality and ensuring the empowerment of women and girls on the continent. Specifically, the treaty has been applauded for its *by and for* nature and its attention to the specific needs and interests of women and girls on the continent.

The Maputo Protocol addresses issues such as equality and non-discrimination and creates new rights while expanding on existing rights. For instance, it is viewed as the second international human rights treaty that recognises that violence against women can occur in *all spheres,* including both the private and the public domains, and treats both domains as equally deserving of human rights protection. It explicitly protects women from violations such as marital rape and FGM. It is the first human rights treaty to prohibit verbal and economic harm. This treaty includes other trailblazing protections around women's reproductive rights, including a requirement that states provide medical abortions in certain cases, including

offering protection from HIV/AIDS.

The Maputo Protocol does not have an explicit reference to intersectionality. However, several of its provisions illustrate the recognition of intersecting forms of discrimination. As such, in addition to general provisions that apply to all women and girls in Africa, it provides for the special protection of specific women groups, including women with disabilities and older women. Special protection is also accorded to widows and the inheritance rights of women. It also pays attention to women in distress, including poor women, women heads of families, pregnant or nursing women, and women in detention. The enshrinement of these rights shows the Maputo Protocol's recognition of how gender and other intersecting identities that women embody can impact their experiences of discrimination.

Like the African Charter, the Maputo Protocol's recognition of group and 'third generation rights' is significant. For instance, the Maputo Protocol recognises women's right to peace and their right to healthy and sustainable development. It also innovatively recognises women's right to live in a positive cultural context. By recognising this right, the Maputo Protocol places emphasis on positive cultural values while striving to eliminate harmful practices. These harmful practices are usually rationalised by tradition, culture, and religion that hampers the realisation and enjoyment of the rights of women. Additionally, by articulating women's right to

live in a positive cultural context, the Maputo Protocol counters the common conflictual tendency between rights and culture, especially women's rights, suggesting that as an instrument created by African women for African women, there is an acknowledgement that women do not necessarily have to choose between the enjoyment of their rights to gender equality and their cultural identity as African women.

Nonetheless, despite innovative provisions, some scholars discuss how flawed and incoherent the Maputo Protocol is. For instance, research has used the example of Article 14 to demonstrate how, like the African Charter, the Maputo Protocol protects women stereotyped as mothers. The effectiveness and strength of the Maputo Protocol has also been questioned, considering that its effectiveness is dependent on strong enforcement mechanisms and institutions. The importance of a strong political will to implement the Maputo Protocol as key to achieving substantive improvement in the lives of African women cannot be underestimated.

3.1.3. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities

The *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities* (African Disability Protocol) was adopted on 30 January 2018 and came into force on 3 May 2024. The Protocol serves

as a "regional anchor" to protect and promote the rights of persons with disabilities, including women and girls with disabilities in Africa.[34] The African Disability Protocol safeguards the human rights of persons with disabilities in Africa by considering their lived experiences.[35]

Thus, it contains provisions protecting women with disabilities,[36] children with disabilities,[37] youths with disabilities,[38] and older persons with disabilities.[39] provisions that guarantee the rights of persons with disabilities, including the rights to non-discrimination,[40] reasonable accommodation,[41] equality,[42] equal recognition before the law[43] and its attendant right to legal capacity,[44] accessibility,[45] education,[46] access to information,[47] and freedom from harmful practices.[48] Generally, the African Disability Protocol's provisions, as highlighted above, that address issues of women (Art. 27), children (Art. 28), youth (Art. 9), and older persons (Art. 30) illustrate an intersectional approach. It also reaffirms the obligations established in the UN Convention on the Rights of Persons with Disabilities, while additionally addressing issues that were not dealt with by this global disability rights instrument.[49]

3.1.4. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons (Older

Persons Protocol) was adopted by AU member states on 31 August 2016 and came into force on 6 November 2024. The eight-year delay in the entry into force of the Protocol on the Rights of Older Persons serves as a symptom of a broader challenge within the AU system: a lack of sustained political priority for specialised human rights protections. For the litigation of women's rights, this underscores a critical reality: legal progress is less a result of spontaneous state compliance and more the product of sustained pressure from civil society.

The Protocol is a pioneering legal tool that sets standards for protecting older Africans' rights. It's a major milestone for the continent's human rights system, making it the second legally binding instrument worldwide focused on the rights of older people.[50] The Protocol acknowledges the difficulties older persons face, such as discrimination, social exclusion, poverty, neglect, and abuse. It advocates for the promotion and protection of their rights, including the right to dignity, healthcare, social security, and involvement in decision-making.

The Protocol also provides for various rights, including equality and non-discrimination, access to justice and equal protection before the law; right to make decisions, protection against discrimination in employment, social protection, support for older persons taking care of vulnerable children, older persons with disabilities, older persons in conflict and disaster, and access to health services. The Protocol also provides for the duties of older

persons.

Experiences of ageing are not uniform; a trajectory of feminisation of ageing is apparent, with older women facing a triple jeopardy of sexism, disempowerment, and ageism. Women generally tend to outlive their male counterparts despite the cumulative effects of disadvantage linked to gender inequality and lack of access to income, social security, and political power, childbearing, and violence experienced over the course of their lives.[51] This issue impacts their overall health and well-being in old age. Older women are more likely than older men to experience poverty, widowhood, and a lack of pensions and health care. They also often face social exclusion, abuse, and violence in their old age. In addition to these challenges, many older women are burdened with caregiving responsibilities for grandchildren and sick family members.[52]

The Older Persons Protocol calls on states to prohibit and criminalise 'harmful traditional practices' that are targeted at older persons.[53] States commit to taking all the necessary measures to eliminate harmful practices, including witchcraft accusations, which affect the welfare, health, life, and dignity of older persons, especially older women.[54] The Older Persons Protocol further provides that older women should also be protected from violence, sexual abuse, and discrimination based on gender.[55] Furthermore, they are accorded protection against abuses related to property, land, and inheritance rights. While

it is clear that women are overrepresented in relation to violence and abuse, there are also vulnerable men among older persons.[56] Both the African Commission and the African Court have powers of interpretation of the Protocol.[57]

3.1.5. The African Children's Charter

The African Children's Charter is a regional human rights treaty that addresses specific concerns, welfare, and rights of children on the continent.[58] As of August 2025, 51 AU Member States have ratified the ACRWC. The African Children's Charter establishes the African Committee of Experts on the Rights and Welfare of the Child The Committee is composed of 11 members who are persons of high moral standing, recognised competence, and experience in the field of the rights and welfare of the child. These experts serve in their personal capacity and not as representatives of their respective States Parties.[59]

Article 2 defines a child as a person below the age of 18.[60] The Charter adopts a child rights-based approach that is guided by four principles in the realisation of the rights of the child. These include the principle of non-discrimination,[61] the best interests of the child,[62] the right to life, survival and development,[63] and respect for the child's views.[64] The application of the principle of non-discrimination requires that every child enjoys the rights and freedoms recognised and guaranteed in the Charter, regardless of the child's or their parents' or

legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth, or other status. This quasi-judicial function is the primary mechanism for transforming the Charter's abstract protections into enforceable justice for the girl child and boy child alike. The significance of this procedure was first realised in 2011, when the Committee handed down its first decision in the Nubian children in Kenya case.[65] This landmark ruling was critical because it established that the Committee has the mandate to address systemic discrimination and statelessness. By ruling that Kenya had violated the rights of Nubian children to a nationality and to health and education, the Committee signalled that it would act as a vital oversight body for children who are otherwise marginalised by national legal systems. For the girl child, this case set a precedent for challenging discriminatory identity and citizenship laws that often serve as a first barrier to accessing further rights like education and legal protection.

The African Children's Charter contains several key provisions vital for strategic litigation concerning the girl child. Specifically, the Charter directly addresses and mandates the elimination of harmful social and cultural practices under Article 21, making it a crucial legal tool for challenging injustices such as child marriage and FGM. Furthermore, while the Charter's Article 11 guarantees the overall right to education, Article 11(6) specifically protects vulnerable girls by requiring States to take measures to ensure that a child who becomes pregnant is not expelled

from school; this provision has been successfully leveraged in landmark cases to challenge discriminatory policies. In addition, the Charter provides robust protections for a child's security and dignity against violence and exploitation. Article 16 protects children from all forms of child abuse, torture, inhuman or degrading treatment, and neglect, which is central to addressing GBV against girls. Article 27 guarantees protection against all forms of sexual exploitation and sexual abuse, and Article 29 outlines the obligation of the State in taking appropriate measures to prevent the abduction, the sale of, or traffic in children for any purpose or in any form. These provisions collectively provide the legal basis for holding States accountable and enforcing necessary legislative reforms concerning the rights of the girl child.

3.1.6. AU Convention on Ending Violence Against Women and Girls

In February 2025, the AU adopted the Convention on Ending Violence Against Women and Girls at the 38th Ordinary Session of the Assembly of Heads of State. As provided in Article 4, the Convention's objectives are to foster coordination among state and non-state actors to create an enabling environment for ending violence, to prevent such violence by engaging individuals from all genders and institutions in changing negative norms, and to enhance enforcement mechanisms and comprehensive support services for survivors across the health, social welfare, and justice sectors.

The Convention defines violence against women and girls (VAWG) in Article 1 as any act that causes or could cause verbal, emotional, physical, sexual, psychological, or economic harm. This includes threats, imposing arbitrary restrictions on fundamental freedoms, or deprivation of liberties, in both private and public settings, and extends to digital environments. It applies during times of peace, armed conflict, and post-conflict or disaster situations:

- *Fundamental Rights and Scope*: Article 2 establishes the fundamental right of every woman and girl to live free from violence, linking this right to broader human rights. Article 3 confirms the Convention's application to all forms of VAWG, regardless of where they occur.

- *State Obligations and Guiding Principles*: Under Article 5, State Parties are obligated to enact and enforce laws to eradicate VAWG. This includes using gender-responsive budgeting and conducting surveys to inform policy. Article 6 emphasises a survivor-centred approach, promoting gender equality, and engaging multiple stakeholders to find sustainable solutions.

- *Support and Access to Justice*: Article 11 mandates comprehensive support services for survivors, such as legal and medical aid, and safe shelters. Article 12 calls for fair, non-discriminatory legal processes for survivors, including timely investigations and protective measures.

- *Implementation and Oversight:* The Convention, in Article 13, advocates for partnerships among various actors, including governments, civil society, and international organisations, to create a coordinated response. Article 14 requires State Parties to report on their progress, with the African Commission providing oversight and interpretation. The Convention also stresses the importance of collecting gender-disaggregated data to guide policy and track progress.

The Convention, when it comes into force after the required 15 ratifications, has the potential to influence litigation, particularly in emerging areas like cyberviolence, by providing a specific legal basis to address these previously uncodified harms.

In general, while the adoption of these human rights instruments is commendable, a significant, yet often overlooked, barrier to the effective litigation of rights is the issue of State Reservations to human rights treaties. Reservations allow States to exclude or modify the legal effect of specific treaty provisions in their application to that State. When reservations are lodged against fundamental provisions of the Maputo Protocol, the African Children's Charter, or the African Charter, it can severely restrict the substantive scope of protection available to women and girls.

3.2. The Three Human Rights Organs: An Overview

The African human rights system is operationalised through three principal human rights organs, each with a distinct mandate and a complementary role.

The ACHPR: Inaugurated in 1987, the ACHPR is a quasi-judicial body responsible for the promotion, protection, and interpretation of the African Charter.Composed of 11 independent members, the Commission holds two public Ordinary Sessions and two private Ordinary Sessions each year, with Extraordinary Sessions as needed, to carry out its main functions. The sessions accommodate diverse language groups by providing simultaneous translation in the six official languages of the African Union: English, French, Portuguese, Arabic, Swahili and Spanish. In 2020, the Commission started implementing live transmission of session proceedings where feasible. It interprets the provisions of the African Charter and other relevant legal instruments by issuing General Comments, Thematic Resolutions, and Guidelines to clarify the content of rights and statesobligations. Article 45 of the Charter sets out the mandate of the Commission:

a. Promotion of human and peoples' rights: The Commission carries out sensitisation, public mobilisation, and information dissemination through seminars, symposia, conferences, and missions. The Commission creates subsidiary

mechanisms such as special rapporteurs, committees, and working groups with a focus on specific thematic areas.

b. Protection of human and peoples' rights: The Commission ensures protection of human and peoples' rights through its communication procedure, which allows the Commission to receive and consider complaints (Communications) from individuals, NGOs, and State Parties alleging violations of the Charter. The Communications procedure follows a structured lifecycle to ensure procedural fairness:

    1. Seizure: The formal entry of the complaint into the Commission's registry.

    2. Admissibility: A critical gatekeeping stage where the Commission determines if the case meets specific criteria under Article 56 of the African Charter such as the exhaustion of local remedies.

    3. Merits: The substantive legal analysis of whether a rights violation occurred.

4. Reparations: The recommendation of specific measures to remedy violations.

5. Follow-up on enforcement: The monitoring of state compliance with the Commission's recommendations.

c. Other measures include friendly settlement of disputes, state reporting (including consideration of NGOs' shadow reports), urgent appeals, and other activities of special rapporteurs, working groups, and missions.

d. Interpretation of the Charter: The Commission is mandated to interpret the provisions of the Charter upon a request by a state party, organs of the AU, or individuals.

The decisions of the Commission are only made public after it is included in an activity report adopted by the African Union political organs.[66]

The AfCHPR: Established in 2004, the AfCHPR was created in response to criticisms that the African human rights system lacked the necessary authority to enforce its decisions. The Court consists of 11 Judges elected by the AU Assembly from a list of candidates nominated by member states of the AU. The Judges are elected in their personal capacity, but no two serving judges shall be

nationals of the same state. Due consideration is also given to gender and geographical representation. The Judges are elected for a period of six years and are eligible for re-election only once.

The Court holds both Ordinary and Extraordinary Sessions. All Court sessions are held at the Seat of the Court, or, in exceptional circumstances, in an AU member state or virtually. Ordinary Sessions occur four times a year, each lasting at least four weeks. The dates for these sessions are set by the Court itself or by its President in consultation with other Judges. The 2020 Court Rules, specifically Rules 89 and 90, reinforced the possibility of virtual sessions in response to the challenges posed by the COVID-19 pandemic.

Mandate and Jurisdiction

The Court possesses a comprehensive judicial mandate that allows it to move beyond the quasi-judicial recommendations of the Commission:

- Contentious Jurisdiction: The Court has the mandate to hear all cases and disputes submitted to it concerning the interpretation and application of the African Charter, the Protocol establishing the Court, and any other relevant human rights instrument ratified by the States concerned (Article 3(1)).

- Advisory Jurisdiction: At the request of a Member State, the AU, or any of its organs and any other organisation recognised by the AU the Court may provide an opinion on any legal matter relating to the Charter or other relevant human rights instruments (Article 4).

- Remedial Power: If the Court finds that there has been a violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation (Article 27(1)).

- Binding Nature of Decisions: The Court issues judgments that State Parties undertake to comply with and guarantee execution of within the time limits stipulated by the Court (Article 30).

For women and girls, this mandate is particularly significant because it provides a mechanism to challenge state laws directly. Under its contentious jurisdiction, the Court can determine if national legislation, such as those permitting child marriage or discriminatory inheritance, conflicts with the Maputo Protocol or the African Children's Charter and order the state to amend its domestic framework to ensure compliance.

The ACERWC: The ACERWC is established under the African Children's Charter and is mandated to monitor the

promotion and protection of the rights of the child in Africa. As of August 2025, 51 AU Member States have ratified the ACRWC. The Committee is composed of 11 independent members who serve in their personal capacity.[67] The African Children's Committee, similar to the Commission, uses both country and special (or thematic) rapporteurs.[68] Members are nominated by state parties and elected by the AU Assembly of Heads of States and Governments, serving in their personal capacity. Previously, under Article 37(1) of the Charter, members were elected for a non-renewable five-year term. However, due to an amendment by the AU General Assembly, members can now be re-elected once.[69]

Article 42 of the Charter sets out the mandate of the Committee:

- Promotion and protection of the rights enshrined in the Charter: The Committee collects and documents information, assesses the situation on Africa's problems in relation to children's rights, organises meetings, encourages national and local institutions, and, where necessary, gives its views and makes recommendations to governments. The Committee formulates corresponding principles and rules, and cooperates with other African, international, and regional institutions and organisations.

- Monitoring the implementation and ensuring the protection of the rights enshrined in the Charter.

- Interpretation of the provisions of the Charter at the request of a state party, an institution of the AU, or any other person or institution recognised by the AU.

- Performance of other tasks entrusted by the Assembly of Heads of State and Government.

Concerning its mandate to consider Communications on alleged violations against States Parties under Article 44, The Committee's jurisdiction is based on the child's age at the time of the alleged violation. If a Communication is initiated while the individual is a child but remains unresolved by the time the child turns 18 years old, the Committee still has the authority to continue with the case. Decisions that are rendered by the Committee are non-binding and are contained in activity reports adopted by the African Union political organs.

The Committee has increasingly asserted its advisory mandate to clarify State obligations under the African Children's Charter, most notably through Advisory Opinion n°2/2022. This request, submitted by the IHRDA, challenged reservations made by the Arab Republic of Egypt regarding Articles 44 and 45 of the Charter, which seek to limit the Committee's authority to receive Communications and conduct investigations.

In its findings, the ACERWC affirmed its authority to review the compatibility of such reservations with the "object and purpose" of the Charter, signalling that procedural hurdles

created by Member States cannot be used to insulate them from oversight or undermine the protective mechanisms intended to safeguard the best interests of the child.

It is important to note that these bodies do not operate in isolation but are engaged in a crucial nexus of collaboration. The Court, Commission, and Committee have established a framework for cooperation that is evident in several key areas. It is important to note that the African Court and the African Commission are, by design, built to be in a complementary relationship. The Court can request the Commission to conduct fact-finding missions or on-site investigations. The Commission, in turn, can bring Communications to the Court in cases of massive human rights violations, as has been seen in cases against Libya[70] and Kenya.[71] The Commission refers Communications to the Court before deciding on its admissibility. [72]

In addition to these roles, the Court and Commission have advisory and consultative functions. The Court can seek the Commission's opinion on admissibility issues or issue an advisory opinion at the Commission's request. The two bodies are also required to consult with each other when drafting or reviewing their rules of procedure.

While the relationship between the two bodies is intended to be complementary, providing a judicial enforcement mechanism for the Commission's work, this "complementarity" creates a significant procedural challenge for litigants. For cases against states that haven't

made a declaration accepting the Court's jurisdiction for individual and NGO petitions, litigants must first file a complaint with the Commission. The reliance on the Commission's discretionary power to refer cases to the Court can create a significant two-step process that causes delays and complexities, which may exhaust or deter those seeking a timely and binding resolution. Rather than a seamless, supportive process, this institutional dynamic can act as a procedural obstacle that requires careful strategic navigation by litigants. A more proactive approach would be for the Commission to view access to the Court as a victim's right that should only be restricted under compelling circumstances.

In addition, to be truly effective, collaboration between the African Committee and other bodies like the African Commission and the African Court must be a mutually beneficial process. For instance, the ACERWC could proactively monitor judgments from the African Court that impact children's rights. This allows the Committee to offer critical support in implementing these decisions as part of its own work.

The following table provides a clear overview of these organs.

Table 2: Overview of the Three AU Human Rights Organs

Organ	Establishment Year	Legal Instrument	Mandate	Nature of Decisions	Locus Standi (Individuals & NGOs)
African Commission on Human and Peoples' Rights (ACHPR)	1987	African Charter on Human and Peoples' Rights	Promotion, protection, and interpretation of the Charter	Recommendatory	Broad standing for individuals and NGOs, particularly those with observer status
African Court on Human and Peoples' Rights (AfCHPR)	2004	Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	Protection mandate and interpretation of the Charter and any other relevant human rights instruments.	Binding judicial decisions complements the ACHPR	Direct access for individuals and NGOs is restricted; it requires a specific declaration by the State Party under Article 34(6)
African Committee of Experts on the Rights and Welfare of the Child (ACERWC)	2001	African Charter on the Rights and Welfare of the Child	Promotion, protection, and interpretation of the African Children's Charter	Recommendatory	Any individual, group, or legally recognised NGO in a Member State can access the Committee.

Institutional Complementarity and Thematic Fragmentation: While the relationship between the ACHPR, AfCHPR, and ACERWC is designed to be complementary, providing a judicial enforcement mechanism to reinforce promotional and protective work, it often results in thematic fragmentation. This occurs when a single violation, such as the rights of a girl child, falls under the overlapping mandates of multiple organs, creating significant procedural hurdles for survivors. Without clear inter-organ coordination, this fragmentation can lead to cases being dismissed due to forum overlap or conflicting procedural rules, as evidenced by the *Tike Mwambipile* case, where the Court's application of "prior adjudication" rules barred a victim's access because the Committee had previously ruled on a similar matter. Consequently, the intended institutional harmony often transforms into a procedural obstacle, requiring litigators to engage in careful strategic navigation to ensure that access to justice is not hindered by conflicting rules or the requirement to exhaust local remedies.

CHAPTER FOUR

STRATEGIC LITIGATION

4.1. Definition of Strategic Litigation

Strategic litigation usually involves litigating cases specifically intended to make a broader societal impact. According to Gonese-Manjonjo and Durojaye, [73]strategic litigation refers to litigation on women's rights that positively impacts women's rights in two ways: (a) by broadening the interpretation of the rights and (b)working towards positive legal or other reforms in line with such interpretation. These authors emphasise that strategic litigation is not merely about presenting a legal case, but also about conducting thorough research to secure a favourable outcome and effectively advocating for the case.

That is, it is better to think beyond legal dictionaries, which often narrow it down to include "test cases" that create precedent, to scholars who emphasise that its deeper meaning is in its capacity to manipulate public discourse and institutional practice outside of the courtroom.[74]

Strategic litigation assumes a complex form, including in the African context. It is not merely about winning cases but rather about redefining rights frameworks in such a manner that they address the issue of gender hierarchies and socio-political exclusion that are deeply embedded.[75] Thus, to define strategic litigation in Africa is to recognise its hybrid nature: a process that combines judicial action, sustained advocacy, and reform-oriented mobilisation aimed at confronting structural inequalities.

One common argument is that strategic litigation should lead to eventual reforms. Hence, developing a strategy to ensure a tactical impact requires knowledge of the specific needs of women in Africa, the laws and jurisprudence affecting these needs, and the extent to which litigation can have an impact depending on the composition of the judiciary and the prevailing socio-political conditions. Sadly, the distinctiveness of strategic litigation in Africa lies in its operation within fragile institutional environments marked by weak rule of law, politicised judiciaries, restrictive gender norms, and cultural practices that resist gender equality.[76] The executive influence, underfunding, and corruption often limit courts and render them unreliable avenues to enforce progressive

rights. Additionally, in most African cultures, women are subjected to gendered norms according to which claims to their rights are seen as foreign or disruptive, thus reducing judicial responsiveness to feminist appeals. This implies that litigation is insufficient to bring change. Rather, litigation must be incorporated in larger measures of coalition-building, public advocacy, and community sensitisation so that any court wins reverberate in the social environment.

4.2. Conditions for Effective Strategic Litigation

For strategic litigation to have an impact, there are several factors to consider, including:[77]

- Does the social or societal problem have a legal issue requiring adjudication?
- Would a court be receptive to the arguments?
- Is the judiciary sufficiently progressive and independent?
- Would a positive judgment be implemented?
- Are the authorities receptive enough, and are there resources?

- Is it worth it even if a positive judgment will not be implemented?

- Would the filing of cases face backlash that might negatively affect the rights asserted?

In their article, Gonse-Manjonjo and Durojaye highlight several key factors for successful strategic litigation. One essential element is a strong rights framework, meaning a country's laws must already guarantee the rights for which a legal remedy can be pursued. For this to work, the judiciary must be both proactive and independent. The process is often driven by CSOs that have the capacity to frame social issues as human rights violations and to litigate on behalf of those affected.[78]

While an ecosystem of support is essential for transforming favourable court judgments into meaningful social change, this environment is often compromised. African courts may be susceptible to executive influence, despite declaring their independence. Similarly, civil society groups, though active, can be undermined by fragmentation, reliance on donor funding, or restrictive state policies, all of which hinder long-term advocacy. The media, a powerful tool, is also vulnerable to censorship or spectacle, weakening its role in fostering transformative discourse. These contradictions highlight that strategic litigation does not occur in an ideal setting but in a complex and often polarised political and social arena.

Beyond legal expertise and financial resources, a primary condition for effective strategic litigation is the institutionalisation of survivor-centred safeguards. To ensure that legal advocacy does not become extractive, litigation strategies involving women and girls must incorporate trauma-informed procedures, strict consent protocols, and confidentiality guarantees. Furthermore, a successful strategy must include pre-established referral pathways for protection, rehabilitation, and socio-economic support, ensuring the pursuit of legal precedent does not compromise the immediate well-being of the survivor.

4.3. Strategic Litigation as a Tool for Social Change in Africa

It is important to acknowledge that the majority of African peoples live in rural areas and consequently rely far more on Alternative Dispute Resolution (ADR) or Traditional Dispute Resolution (TDR) mechanisms than on formal state courts or regional bodies, which typically adopts a "communal" rather than the Western "individualistic" approach[79] These traditional forums, governed by customary and religious law, frequently handle the large number of cases involving women, particularly those related to family, marriage, inheritance, and property. In these settings, the priority often lies with communal harmony and male authority over individual rights.

However, despite this widespread reliance on informal justice systems, the human rights organs remain key because they offer pathways for achieving systemic change that challenges the patriarchal status quo and state resistance.

Strategic litigation in Africa is much more than just a courtroom game; it is an avenue of societal change. Its legal triumphs, though considerable, are important when they trigger transformations in the perception of rights and justice by communities. For instance, when litigation challenges discriminatory laws, it forces states to confront not only their legal obligations but also the moral and political contradictions embedded in their governance.[80] The applicability of strategic litigation in advancing women's rights in Africa is that it may lead to revealing and addressing the structural loopholes in the legal systems that often adversely affect women. Despite the fact that most African states are signatory to international treaties, the disjuncture between the signing, ratification, and enforcement of these treaties remains a recurring theme, casting doubt upon the transformative power of the law when there is no mobilisation in action.[81]

The ability of strategic litigation to raise national discourse on matters that would otherwise remain silenced or ignored by the state is equally crucial. For instance, Sierra Leone and Tanzania have produced successful cases challenging bans on pregnant schoolgirls that have not only found legal relief but also compelled societies

to address deep-rooted cultural taboos on sexuality and education.[82] But the most important question to ask is, are courtrooms the best places to give rise to such societal discourse? Critics have argued that litigation may tend to produce an elite-led discourse that does not necessarily reflect reality on the ground.[83] There is also the high-risk and long-term nature of strategic litigation that poses hindrances to women's rights in Africa.

4.4. The Impact of Strategic Litigation in Africa

Litigation can be a symbolic break in silence, but its transformational quality must be accompanied by long-term advocacy. Otherwise, it will be just a technocratic exercise that resonates little outside the courtroom.

Moreover, incorporating gender equality into judicial reasoning allows the creation of jurisprudence that can be applied in subsequent proceedings and mobilised in advocacy. For instance, the ECOWAS Court rulings on the rights of women have been referenced as authoritative in other parts of West Africa, illustrating the extent to which regional jurisprudence can cut across borders.[84] However, without strong enforcement mechanisms and political will, it is impossible to break deep-rooted patriarchal practices without precedent. The general opposition to legitimising gender-based violence serves as an example of how a triumph in theory can become an empty victory in

practice. Courts can pronounce a law unconstitutional, yet societies rooted in patriarchal cultures can still struggle to implement it, and women will be in danger even though their rights are officially acknowledged.[85] In that sense, litigation would deliver paper victories where states do not have the willpower or resources to implement the verdicts. These symbolic victories, however, are not without value; they produce reference points that civil society can use to advocate further, slowly closing the gap between legal reform and lived realities.

The case studies in various parts of Africa reveal that strategic litigation has a transformative potential and continued challenges. In Uganda, constitutional commitments to gender equality successfully led to the overturn of discriminatory provisions in inheritance laws that denied widows equal property rights.[86] Nonetheless, it has not been uniformly applied as cultural practices in rural regions have continued to marginalise widows even after legal safeguards. In Kenya, litigation of reproductive health rights has had mixed results. On the one hand, some cases have demonstrated how the judiciary can move forward in protecting the rights of women to care; at the same time, others have demonstrated how the judiciary can be conservative on the matter, indicating a wider societal ambivalence towards reproductive autonomy.[87] These instances demonstrate that litigation can destabilise repressive systems, but it does not alter the lives of everyday people unless the legal, political, and cultural powers are effectively coordinated.

Importantly, the history of strategic litigation in Africa reveals a sobering fact: even a successful courtroom battle is no guarantee of breaking down institutional inequality. The gains tend to be undermined by non-enforcement, the resistance of states, and even a cultural backlash, especially on progressive judgments on matters such as marital rape or customary law inheritance.[88] However, the rejection of litigation due to these reasons does not consider its cumulative impact. Every case adds to the jurisprudential archive, reconstituting normative space and arming activists with precedents to take on injustices in the future. Strategic litigation should not be romanticised as a silver bullet, but it should be considered as part of a larger battle towards social change that must be supported by advocacy, coalition-building, and cultural transformation.

In sum, strategic litigation in Africa embodies promise and challenges, offering a pathway to rights recognition while simultaneously confronting the risks of non-enforcement, backlash, and protracted timelines.[89] It cannot, on its own, dismantle the deep-rooted structures of gender inequality that are reinforced by cultural norms, political resistance, and institutional fragility. Nevertheless, to disregard it would be to overlook one of the limited tools that can force states to face their duties and broaden the legal imagination of societies. With long-term advocacy, grassroots groups, and wide coalition-building, litigation is not just a courtroom scuffle but rather a force of social justice and cultural change. Therefore, strategic litigation

must be perceived not only as a legal tool, but as a twofold tool of law and social justice, without which the current multiple efforts to promote the rights of women and the development of inclusive societies in Africa would be impossible.

4.5. Why Strategic Litigation Matters for Women's and Girls' Rights

Strategic litigation is at a pivotal position when it comes to promoting the rights of women, since, instead of being just a legal solution, it serves as a driver of social change. It pushes states and institutions to acknowledge the rights of women and girls as legal, valid, and part of democratic governance, where it challenges discriminatory laws and practices.[90] These litigations expose the plight of marginalised populations such as survivors of gender-based violence, women deprived of reproductive freedom, or schoolgirls locked out on account of pregnancy. It also leads to normative change: through formal judgments that affirm women's rights, courts influence the public discourse and transform the established cultural and social attitudes over time.[91] Strategic litigation is important in this respect because it reframes the narrative of women as passive objects of policy to that of the subjective rights holders, which should be acknowledged and enforced. However, the process of litigation can be lengthy, costly, and unforeseeable, and the success of the effort might be years away, at best.]



PART II

JURISPRUDENCE AND CASE STUDIES

CHAPTER FIVE

JURISPRUDENCE AND CASE STUDIES IN AFRICA

Despite the significant challenges, the AU human rights organs have developed a crucial body of jurisprudence on women's and girls' human rights, providing powerful legal precedents for future cases. These case studies offer critical insights for litigators seeking to navigate Africa's human rights system.

5.1. Selected case studies

5.1.1. Case studies of the African Commission

i. *Case study: Communication 341/2007 - Equality Now and Ethiopian Women Lawyers Association (EWLA) v. Federal Republic of Ethiopia, decided in November 2015*

This case involved a young woman who was abducted and raped, with the state's judicial system failing to provide justice.

Legal Provisions Invoked: Articles 3 (equality before the law), 4 (right to life), 5 (dignity and security of person), 6 (liberty and security of person), 7(1)(a) (right to a fair trial) of the African Charter

Key Arguments: The applicants argued that the victim's rights were violated through the initial act of violence and the subsequent failures of the judicial system. The State asserted that an amicable settlement had been reached.

Outcome: The Commission found that the State violated the victim's rights and recommended compensation and legislative changes, despite the State's claims of a settlement.

Insights: The case emphasises the importance of ensuring that amicable settlements are genuinely consented to by the victim and that they are well-documented. It also highlights systemic issues in addressing gender-based violence and the need for accountability.

ii. Case Study: Communication 734/19 - J (Represented by ISLA & KELIN) v. Namibia, decided in February/March 2024

This landmark case concerned the human trafficking of a 24-year-old woman for sexual exploitation.

Legal Provisions Invoked: Articles 2 (non-discrimination), 5 (dignity and freedom from degrading treatment), and 18(3) (protection of women) of the African Charter as well as Articles 2 (elimination of discrimination) and 4(2)(g) (protection from trafficking) of the Maputo Protocol.

Key Arguments: The applicants argued that Namibia failed to prevent trafficking, investigate and prosecute offenders, and provide remedies. The State denied these claims, asserting that it had legislative measures in place.

Outcome: The ACHPR found Namibia in violation

of its obligations, confirming that violence against women is a form of discrimination and that the State failed to act with due diligence. The Commission directed the state to investigate, prosecute, punish perpetrators, and compensate the victim, referring the determination of damages to local courts.

Insights for Litigators: This landmark decision sets a precedent for states' due diligence obligations in cases of violence against women and shows that the Commission is willing to address complex issues like human trafficking. It underscores the importance of recognizing violence against women as discrimination.

iii. **Case study: Communication 700/18 - *Institute for Human Rights and Development in Africa (IHRDA) and the Association des Femmes Avocates Défenseures des Droits Humains (AFADDH) v. Democratic Republic of Congo***, February/March 2023

Legal Provisions Invoked: Articles 1 (Charter obligations), 4 (right to life), 5 (dignity and security of person), 6 (liberty and security of person), 7 (right to fair trial), 14 (right to property), 15 (right to work), and 16 (right to health) of the African Charter, and Articles 3 (right to dignity), 4 (right

to life and integrity of the person), 8 (access to justice), 11 (right to a peaceful existence), 14 (health and reproductive rights), 24 (special protection in armed conflict), and 25 (remedies) of the Maputo Protocol.

Key Arguments: The complaint, lodged on behalf of 1,016 victims including 837 women, detailed a military campaign by the Congolese Armed Forces (FARDC) in North Kivu. The military campaign resulted in widespread looting, torture, destruction of property, and the rape of wives and daughters. The complainants argued that the domestic military court proceedings against the soldiers were flawed and that the resulting judgment was not subject to appeal, which effectively denied the victims an opportunity for a remedy at the national level. The complainants also claimed that the delay in filing the case with the Commission was due to fear of reprisals.

Outcome: The Commission admitted the Communication, finding that it met the admissibility requirements of the African Charter. It noted that the authors were identified NGOs, that the allegations were compatible with the Charter, and that the domestic remedies were effectively unavailable to the victims since the military court judgment was not subject to appeal. The Commission also acknowledged the complainants'

plea of fear of reprisals as a valid reason to be exempted from the exhaustion of local remedies.

Insights for Litigators: This decision sets a precedent for navigating procedural hurdles by establishing two key exceptions to the exhaustion of local remedies rule. First, it affirms that a domestic judgment that is not subject to appeal is an unavailable remedy. Second, it recognises that a victim's fear of reprisals is a valid reason to waive the rule, providing a crucial avenue for justice in cases where the state's security forces are the perpetrators.

iv. **Case study: Communication 686/18 - *Association of Women Lawyers Human Rights Defenders, Institute for Human Rights and Development in Africa & Equality Now v. Democratic Republic of Congo*, declared admissible by the African Commission on Human and Peoples' Rights (ACHPR) at its 69th Ordinary Session in December 2021.**

Legal Provisions Invoked: Articles 1 (Charter obligations), 5 (dignity and security of person), 6 (liberty and security of person), 7 (right to fair trial), 14 (right to property), 15 (right to work), and 16 (right to health) of the African Charter, and Articles 3 (right to dignity), 8 (access to justice), 12 (right to education and training), 14 (health

and reproductive rights), 24 (special protection in armed conflict), and 25 (remedies) of the Maputo Protocol.

Key Arguments: The complaint, brought on behalf of 53 women and one man, alleged that a military expedition in January 2011 led to numerous human rights violations, including the collective rape of women, theft, and destruction of property. While a domestic court convicted some soldiers and ordered compensation, the complainants argued that the appeal process had been unreasonably prolonged for over five years with no resolution. The victims, living 2,000 km from the appeal court, could not afford to travel to Kinshasa, rendering the domestic remedy ineffective.

Outcome: The Commission declared the Communication admissible, finding that the local remedies had been "abnormally prolonged" and were therefore ineffective for the victims. The Commission also recognised that the geographical inaccessibility of the Military High Court made the remedy functionally unavailable to the victims, thereby justifying an exemption from the local remedies rule.

Insights for Litigators: This decision provides key insights into how to challenge the "exhaustion of local remedies" rule. It establishes that a delay of

over five years in a case involving sexual violence is considered "abnormally prolonged" and that the physical distance and financial burden of accessing a court can render a domestic remedy functionally unavailable to victims.

v. Case Study: Communication 480/14 - Senate Masupha & Others v. the Kingdom of Lesotho, decided in February/March 2024

This case challenged the discriminatory customary laws of chieftainship succession that excluded first-born daughters.

Legal Provisions Invoked: Articles 1 (Charter obligations), 2 (non-discrimination), 3 (equality before the law), 13 (right to participate in government), 17 (right to education and culture), and 18(3) (protection of women and children) of the African Charter, and Articles 2 (elimination of discrimination), 3 (dignity), 8 (access to justice), and 17 (positive cultural context) of the Maputo Protocol.

Key Arguments: The complainants argued that the Chieftainship Act was discriminatory based on sex. The State argued that the laws were based on custom and that the acts of private individuals could not be attributed to the state.

Outcome: The Commission found violations of multiple articles of the African Charter and the Maputo Protocol due to discriminatory practices against first-born daughters. It recommended the amendment of the Chieftainship Act to allow equal succession rights for first-born children and the encouragement of customary practices that include women in leadership.

Insights: This decision highlights the importance of integrating gender equality into customary practices and legal frameworks. It demonstrates that strategic litigation can be a powerful tool to challenge traditional norms and that regional human rights mechanisms are willing to address violations in this context.

vi. Case Study: Communication 564/15 - Community Law Centre and Others v. The Federal Republic of Nigeria, decided in May 2023

This case addressed the high maternal mortality and morbidity rates in Nigeria as a violation of women's rights.

Legal Provisions Invoked: Articles 2 (non-discrimination), 3 (equality before the law), 4 (right to life), 5 (dignity and security of person), and 16 (right to health) of the African Charter

on Human and Peoples' Rights, and Articles 2 (elimination of discrimination), 4 (rights to life and security), and 14 (health and reproductive rights) of the Maputo Protocol.

Key Arguments: The complainants argued that Nigeria's failure to provide adequate maternal healthcare constituted a violation of the rights to health, life, and dignity. The State denied the claims, arguing that the alleged violations were not attributable to it.

Outcome: The Commission declared that it did not find any violation of the African Charter or the Maputo Protocol. While the Commission acknowledged the high rates of maternal mortality and morbidity in Nigeria, it concluded that the complainants had not demonstrated how this was a direct result of a failure by the state to prevent such deaths. The Commission found that the complainants had not proven that the state had sufficient resources to prevent maternal deaths, or that it had failed to take the necessary steps to improve maternal health.

Insights for Litigators: This case provides a critical lesson on the challenges of litigating socio-economic rights before regional human rights bodies. It highlights the significant evidentiary burden placed on complainants to prove a direct

> link between a state's actions or inactions and a rights violation. The Commission's decision suggests that simply demonstrating a high maternal mortality rate is not enough; litigants must also show how the state has failed to dedicate its "maximum available resources" and how a violation is a direct consequence of the state's policies or lack of resources. This makes cases on systemic issues particularly difficult to win on the merits.[92]

5.1.2. Case studies: African Court

The AfCHPR offers the promise of a binding judgment, a powerful remedy that can include orders for compensation, its procedures are regulated by the African Charter, the Protocol establishing the Court, and its own Rules of Court.

i. ***Case Study: Application 046/2016 - Association pour le Progrès et la Défense des Droits des Femmes Maliennes and IHRDA v. Mali, Judgment of 11 May 2018***

This case challenged Mali's Family Code, arguing that it violated the rights of women and children by allowing child marriage, failing to ensure consent, and discriminating against women in inheritance.

> **Legal Provisions Invoked:** Articles 2 (elimination of discrimination), 6 (marriage and family), and 21

(right to peace) of the Maputo Protocol; Articles 1 (right to life), 3 (non-discrimination), 4 (best interests of the child), and 21 (protection from harmful practices) of the African Children's Charter; and Articles 5(a) (sex roles and stereotypes) and 16(1) (marriage and family) of the CEDAW.

Key Arguments: The applicants argued that the Family Code, influenced by religious groups, was regressive and violated multiple international treaties.

Outcome: The Court found Mali in violation of multiple treaties and ordered the state to amend its Family Code and implement public education campaigns.

Insights for Litigators: The Court's enforcement of the Maputo Protocol and the African Children's Charter for the first time marks a significant development, establishing them as powerful tools for future litigation. In this case without a direct victim, the Court recognised the legal standing of NGOs to initiate an objective review of whether a state's domestic laws conform to international human rights standards. The jurisprudence of the Court now allows NGOs to use contentious proceedings to address issues that would typically be handled through advisory proceedings, thereby expanding the scope of their advocacy.

ii. Case Study: Mtikila & Others v. Tanzania, Judgment of 14 June 2013 and reparations ruling on 13 June 2014

While not a women's human rights case, Mtikila holds immense strategic significance for women's rights litigation before the African Court. The case, brought by a reverend and two NGOs, challenged Tanzania's prohibition on independent candidates for public office.

Legal Provisions Invoked: Articles 2 (freedom from discrimination), 10 (freedom of association), and 13(1) (the right to participate in government) of the African Charter.

Key Arguments: The applicants argued that the prohibition on independent candidates violated freedom from discrimination, freedom of association, and the right to participate in government under the African Charter.

Outcome: The procedural victory in *Mtikila* established a vital precedent. The Court found that a state's non-judicial, legislative "consultation" process could not be equated to a legitimate exhaustion of local judicial remedies.

Insights for Litigators: This decision confirmed that the Court would not permit member states to create alternative review processes to

forestall litigation. It provides a blueprint for future applications on a wide range of human rights issues, including those affecting women, by demonstrating that it is possible to overcome significant procedural barriers.

iii. Case Study: Application No. 042/2020 - Tike Mwambipile and Equality Now v. United Republic of Tanzania, Ruling of 1 December 2022

This case, brought by a Tanzanian woman and an NGO, challenged the ban on pregnant girls attending school.

Legal Provisions Invoked: Articles 1 (obligation of states), 2 (freedom from discrimination), 17(1) (right to education), and 18(3) (protection of the family and vulnerable groups) of the African Charter Articles 1 (obligation of states parties), 3 (non-discrimination), 4 (best interests of the child), 11 (right to education), and 24 (protection against harmful social and cultural practices) of the African Children's Charter ; Articles 2 (elimination of discrimination against women) and 12 (right to education and training) of the Maputo Protocol; Articles 13 (right to education) and 23 (rights of girls) of the African Youth Charter; and Articles 1 (definition of discrimination), 2 (exceptions to discrimination), 3 (obligations of states to

eliminate and prevent discrimination), and 4 (policy measures to ensure equality of opportunity and treatment) of the UNESCO Convention against Discrimination in Education.

Key Arguments: A Tanzanian woman and an NGO challenged the ban on pregnant girls attending school, arguing the policy discriminated against girls and violated their right to education.

Outcome: The Court declared the case inadmissible, reasoning that the ACERWC had already ruled on a similar matter in 2022.

Insights for Litigators: This case highlights a risk of fragmentation within the AU human rights system, where overlapping cases can lead to dismissal instead of stronger protection. It showed the value of *amicus curiae* briefs in amplifying advocacy and reinforced the earlier ACERWC decision.

iv. ***Case Study: Application No. 019/2018- CHR, IHRDA & LHRC v. Tanzania, Judgment of 5 February 2025***

While primarily focused on the rights of Persons with Albinism (PWA), this landmark judgment provides a blueprint for the broad remedial powers of the Court that

can be replicated in women's rights litigation. The case challenged the state's failure to protect PWAs from ritual killings, trafficking, and systemic social exclusion.

Legal Provisions Invoked: Articles 2 (freedom from discrimination), 4 (right to life), 5 (right to dignity and freedom from torture), and 7 (right to a fair trial) of the African Charter; Articles 16 (protection against child abuse and torture) and 29 (dignity of the child) of the African Children's Charter; and Article 7 (prohibition of torture) of the International Covenant on Civil and Political Rights (ICCPR).

Key Arguments: The applicants argued that Tanzania's failure to prevent and effectively prosecute ritual attacks, combined with the forced placement of children with albinism in overcrowded and inadequate shelters, constituted a violation of the state's duty to protect life, dignity, and the best interests of the child.

Outcome: The Court found Tanzania liable for multiple violations and issued some of the most far-reaching reparations in its history. These included an order to amend the Witchcraft Act of 1928, establish a national compensation fund for victims, and ensure children in shelters were reunited with families while receiving specialised education and healthcare.

Insights for Litigators: This case is a "gold standard" for reparations. It proves that the Court is willing to order specific legislative and structural reforms, not just monetary awards, to address harmful cultural beliefs and systemic state negligence.

v. Advisory Opinion No 001/2018 On the compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and other human rights instruments applicable in Africa, requested by Pan African Lawyers Union (PALU)

This Advisory Opinion, requested by the Pan African Lawyers Union (PALU), represents a powerful strategic alternative to contentious litigation, allowing for the challenge of discriminatory laws across the entire continent simultaneously.

Legal Provisions Invoked: Articles 2 (non-discrimination), 3 (equal protection), 5 (dignity), 6 (liberty), 7 (fair trial), 12 (freedom of movement), and 18 (protection of the family) of the African Charter; Articles 3 (non-discrimination), 4(1) (best interests of the child), and 17 (administration of juvenile justice) of the African Children's Charter; and Article 24 (special protection of women in distress) of the Maputo Protocol.

Key Arguments: The request sought to determine if colonial-era "vagrancy" laws, which criminalize poverty, homelessness, and "idleness" were compatible with regional human rights. It argued that these laws confer too much discretion on police and disproportionately target the poor and marginalised.

Outcome: The Court unanimously declared vagrancy laws incompatible with all three regional instruments. It held that these laws punish individuals for their socio-economic status rather than specific criminal acts and placed a "positive obligation" on all AU Member States to repeal or amend such laws.

Insights for Litigators: This demonstrates the strategic value of advisory jurisdiction to bypass the "Article 34(6) barrier." NGOs can use this mechanism to obtain a binding interpretation that protects women and children in poverty without needing to litigate against one specific state at a time.

5.1.3. Case studies: ACERWC

The ACERWC provides a specialised and crucial forum for cases concerning the rights of the girl child. Its procedural rules offer unique advantages for litigating violations against minors, as a complaint can be filed on behalf of a

victim "without his/her agreement on condition that the author is able to prove that his/her action is taken in the supreme interest of the child".[93]

i. Case Study: Communication No: 0012/Com/001/2019 - Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v. United Republic of Tanzania, decided in March/April 2022

This communication challenged Tanzania's practices of mandatory pregnancy testing and the expulsion of pregnant and married girls from school.

Legal Provisions Invoked: Articles 1 (Charter obligations), 3 (non-discrimination), 4 (best interests of the child), 10 (protection of privacy), 11 (education), 14 (health and health services), 16 (protection against child abuse and torture), and 21 (protection against harmful, social and cultural practices) of the African Children's Charter.

Key Arguments: The complainants argued that Tanzania's practices of mandatory pregnancy testing and the expulsion of pregnant and married girls from school violated their rights to education and freedom from discrimination.

Outcome: The Committee found that Tanzania's actions violated multiple articles of the African

Children's Charter and the Maputo Protocol. It recommended the prohibition of mandatory pregnancy testing, a review of education regulations, and support for the re-entry of expelled girls.

Insights for Litigators: This decision set a precedent for addressing discriminatory policies targeting schoolgirls and reinforces the importance of legislative reforms to ensure equitable access to education. It highlights the significance of using multiple legal instruments to strengthen a claim.

ii. Case Study: Communication No: 0016/ Com/004/2020 - African Centre for Justice and Peace Studies (ACJPS) v. Republic of Sudan, decided in December 2022

This case involved a child, Umjumah Osman Mohamed, who was raped but was subsequently prosecuted for adultery instead of her perpetrator being held accountable.

Legal Provisions Invoked: Articles 1 (Charter obligations), 2 (definition of a child), 3 (non-discrimination), and 16 (protection against child abuse and torture) of the African Children's Charter.

Key Arguments: The complainants argued that the state violated a child's rights by not effectively

prosecuting her rapist and instead subjecting the victim to prosecution for adultery. The State argued the incident was isolated and the courts acted correctly.

Outcome: The Committee found that the state violated multiple articles of the African Children's Charter by failing to protect the victim and allowing discriminatory practices to continue. It recommended legislative measures, prosecution of the perpetrator, and compensation for the victim.

Insights for Litigators: This case serves as a precedent for holding states accountable for their failure to protect child victims of sexual violence and highlights the need to address systemic discrimination.

iii. Case Study: Communication No: 006/Com/002/2015 - The Institute for Human Rights and Development in Africa v. Republic of Cameroon, decided in May 2018

This communication concerned the state's failure to investigate the rape of a minor, TFA.

Legal Provisions Invoked: Articles 1 (Charter obligations), 3 (non-discrimination), and 16 (protection against child abuse and torture) of the

African Children's Charter.

Key Arguments: The complainants argued that the state failed to effectively investigate the rape of a minor, TFA, which was part of a pattern of systemic discrimination against girls. The state claimed the incident was isolated.

Outcome: The Committee found multiple violations of the African Children's Charter, including a failure to protect the victim, inadequate investigations, and systemic discrimination. It recommended the prosecution of the perpetrator, compensation for the victim, and legislative reforms.

Insights for Litigators: This decision underscores the necessity for robust legal frameworks to safeguard children's rights and emphasises state accountability for violations, particularly when they involve systemic issues. It demonstrates the Committee's willingness to address failures in the legal framework itself.

5.1.4. Lessons from comparative jurisprudence

Case law from sub-regional bodies and other human rights systems also provides valuable strategic insights.

A. ECOWAS Court of Justice: Expanding the Reach of the Maputo Protocol

The ECOWAS Court has established itself as a premier avenue for women's rights litigation in West Africa, largely due to its open access policy which allows individuals to file cases without first exhausting local remedies, making it a court of first instance. By treating the Maputo Protocol as a directly enforceable instrument, the Court has bridged the gap between regional aspirations and judicial enforcement, providing a critical pathway for victims of state-sponsored gender-based violence.

i. Case Study: Dorothy Chioma Njemanze & Ors v. The Federal Republic of Nigeria, Judgment N°: ECW/CCJ/JUD/08/17, decided on 12 October 2017.

This landmark case involved a group of women who were arbitrarily arrested, tortured, and subjected to forced anal examinations by state agents in Nigeria.

Legal Provisions Invoked: Articles 1 (Charter obligations), 2 (non-discrimination), 3 (equality before the law), 5 (dignity and security of person), and 18(3) (protection of women) of the African Charter; Articles 2 (elimination of discrimination), 3 (right to dignity), 4(1)&(2) (rights to life and security), 5 (elimination of harmful practices), 8 (access to justice), and 25 (remedies) of the Maputo Protocol;

Articles 2 (elimination of discrimination), 3 (rights to legal protection), and 15(1) (equality before the law) of the CEDAW; and Articles 2(1) (non-discrimination), 3 (equality of men and women), and 26 (equality before the law) of the ICCPR.

Key Arguments: The applicants argued that they were subjected to illegal arrest, detention, harassment, and various forms of physical and sexual assault by Nigerian state agents. The raids were discriminatory because they exclusively targeted women under the pretext of removing "prostitutes," while men were not harassed for similar activities. The state's defense relied on the claim that the plaintiffs were prostitutes and that the state's agents were simply performing their duty to sanitise public spaces, arguing that the plaintiffs lacked legal standing to bring the complaint.

Outcome: The ECOWAS Court of Justice found Nigeria responsible for the human rights violations, ruling that the treatment the plaintiffs experienced constituted gender-based discriminatory treatment. The Court held that the systematic operation was targeted against women and that labelling women on the streets at night as prostitutes constituted discrimination. It also found that the state's failure to investigate the complaints and hold its agents accountable was a violation of its international obligations. The Court awarded damages to the plaintiffs for the harm and suffering they endured.

Insights for Litigators: This case is a precedent for addressing state-sponsored gender-based violence and discrimination. It was the first case before the ECOWAS Court to cite the Maputo Protocol, establishing it as a vital tool for future litigation. The *Njemanze* case provides three vital strategic lessons:

The Maputo Protocol as a Litigative Sword: It proves that the Maputo Protocol can be used directly in sub-regional courts to hold states accountable, even when the African Court is inaccessible.

Deconstructing Stereotypes: It establishes that state actions based on "moral policing" or gender stereotypes (such as those regarding sex work) are legally actionable forms of discrimination.

The "Narrow Win" Caution: While a major victory, the case also warns litigators that courts may avoid broader systemic issues (like the legality of sex work) to focus on narrower procedural violations.[94] Strategic litigation must therefore balance the need for an immediate win with the goal of long-term legislative reform.

B. East African Court of Justice (EACJ): A Strategic Venue for Rule of Law

The EACJ serves as an essential forum for human rights accountability within the East African Community by anchoring its jurisdiction in the "Foundational Principles" of regional integration. For litigators, the Court's power is derived from the requirement that Partner States adhere to the rule of law, transparency, and social justice as a condition of their membership. This allows for a unique litigation strategy: framing women's and girls' rights violations not just as individual harms, but as systemic failures of a state to uphold the legal standards of the Community.

ii. Case Study: Plaxeda Rugumba v. Secretary General of the East African Community & Attorney General of Rwanda, Reference No. 8 of 2010, decided on 1 December 2011

Legal Provisions Invoked: Articles 6(d) 1 (good governance) and 7(2) (rule of law) of the Treaty for the Establishment of the East African Community (EAC Treaty).

Key Arguments: The applicant, a woman, argued that her brother's arbitrary, incommunicado detention by Rwandan authorities violated the rule of law and human rights principles of the EAC Treaty. She also sued the EAC Secretary General for

failing to investigate Rwanda's conduct.

Outcome: The EACJ ruled it had jurisdiction to interpret the EAC Treaty and declared Rwanda's detention of the applicant's brother unlawful. It dismissed the case against the Secretary General but ordered Rwanda to pay costs.

Insights for Litigators: The *Rugumba* case highlights the strategic role of women as "intermediary litigators." It demonstrates that women can effectively use regional courts to challenge state injustice, even when they are not the direct victims of the physical violation. This "activist standing" proves that the "rule of law" provisions are powerful tools for securing justice when traditional human rights routes are procedurally blocked.

5.1.5. UN and other regional mechanisms

i. Case Study: *Alyne da Silva v. Brazil*, decided on 6 August 2011 (CEDAW)

While decided at the international level by the UN CEDAW Committee, this case is the global "gold standard" for litigating maternal mortality and serves as a primary reference for interpreting state obligations under the Maputo Protocol regarding women's reproductive health.

Legal Provisions Invoked: Articles 1 (definition of discrimination), 2 (obligations to eliminate discrimination), and 12 (right to health and family planning) of the CEDAW.

Key Arguments: The applicant's mother argued that the Brazilian government failed to provide her daughter, a woman of African descent, with the necessary emergency obstetric care. The argument centred on intersectional discrimination, claiming that the state's failure was a result of Alyne's gender, socio-economic status, and race, which together led to a violation of her right to life and health.

Outcome: The CEDAW Committee found Brazil liable for failing to ensure "due diligence" in the provision of healthcare services. It emphasised that states have an enforceable obligation to ensure that all women, regardless of race or income, have access to timely and quality emergency maternal health services.

Insights for Litigators: This case provides a blueprint for using Article 14 of the Maputo Protocol (Health and Reproductive Rights) in the African context. It demonstrates how to link "private" health outcomes to "public" state responsibility, proving that maternal death is not just a medical tragedy but a human rights violation

that requires systemic reform, such as improved training for health professionals and better oversight of private health facilities.

i. Case Study: *Maria Mamerita Mestanza Chavez v. Peru*, decided on 22 October 2003 (Inter-American Commission on Human Rights)

While originating in the Inter-American human rights system, this case serves as a vital comparative precedent for litigating reproductive autonomy and the strategic use of alternative dispute resolution within regional human rights frameworks.

Legal Provisions Invoked: Articles 4 (right to life), 5 (right to humane treatment/integrity), and 11 (right to privacy/dignity) of the American Convention on Human Rights; and Articles 7, 8, and 9 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará).

Key Arguments: The applicants argued that the state was responsible for the forced sterilisation of Ms. Mestanza Chávez as part of a systematic government policy targeting poor, indigenous, and rural women. They contended that the state violated her right to physical integrity and reproductive freedom by using coercion and failing

to provide adequate post-operative care, which ultimately led to her death.

Outcome: The matter resulted in a landmark Friendly Settlement Agreement. Peru accepted international responsibility and committed to systemic reforms, including the amendment of discriminatory reproductive health policies, the training of health personnel on reproductive rights, and the criminal investigation of the perpetrators. The state also provided comprehensive reparations to the victim's family.

Insights for Litigators: This case demonstrates the strategic value of Friendly Settlements as an alternative to lengthy contentious litigation. For litigators before the African Court or Commission, it proves that "amicable settlements" can go beyond mere compensation to secure permanent legislative changes. It also highlights the effectiveness of using specialised women's rights treaties (like the Convention of Belém do Pará, or the Maputo Protocol) to hold states accountable for systemic violence in the "private" sphere of healthcare.

ii. Case Study: *Tysiąc v. Poland*, decided on 20 March 2007 (European Court of Human Rights)

While decided by the European Court of Human Rights, this case provides a foundational precedent

for the positive procedural obligations of states to ensure that laws on paper are accessible in practice, a concept directly applicable to the "litigation deficit" in the African regional system.

Legal Provisions Invoked: Article 8 (Right to respect for private and family life) of the European Convention on Human Rights (ECHR).

Key Arguments: The applicant, Ms. Tysiąc, had a severe pre-existing eye condition. She requested a therapeutic abortion, arguing that pregnancy posed a risk of blindness. Three doctors determined the risk was minimal. She gave birth but her eyesight deteriorated severely. The applicant argued that Poland's restrictive abortion laws, combined with the lack of an effective procedural mechanism to challenge a doctor's refusal to provide a therapeutic abortion, violated her right to physical and psychological integrity. She contended that the state failed to provide a timely, legally binding mechanism to resolve disputes between patients and doctors when her eyesight and thus her "private life" was at risk.

Outcome: The Court found a violation of Article 8, ruling that when a state provides for a legal right to a procedure (such as therapeutic abortion), it must establish an effective procedural framework to adjudicate disputes. The Court held that

retrospective remedies (like suing a doctor after the damage is done) are insufficient because they cannot prevent the underlying violation of bodily integrity.

Insights for Litigators: This case establishes that procedural effectiveness is an inherent component of a substantive right. For litigators, it provides a strategic blueprint for arguing that states must not only ratify treaties but also create "accessible and timely mechanisms" (such as fast-track judicial reviews) to allow women to exercise their reproductive and health rights. It shifts the legal battle from the "morality" of a right to the "functionality" of the state's justice system.

5.2. Trends and Patterns

A review of past decisions reveals several clear trends and patterns that highlight both the potential and limitations of litigating women's rights at the regional level.

5.2.1. Focus on Thematic Clusters

The most frequently litigated issues fall into specific thematic clusters. These include gender-based violence, particularly in cases involving state failure to protect, investigate, or prosecute. A significant number of cases also challenge discriminatory customary practices, such

as chieftainship succession and inheritance laws, as well as the rights of children, with a particular focus on the girl child in contexts like child marriage and the right to education. The African Court's landmark decision in *APDF v. Mali* is a prime example, addressing harmful practices, minimum age of marriage, and inheritance rights in one ruling.

Beyond the cases themselves, a structural weakness in regional jurisprudence is the lingering reliance on "formal equality" or "male-comparator" models. By requiring women to prove they were treated less favourably than a hypothetical male standard to establish discrimination, the system overlooks the fact that gender-based violence is inherently discriminatory. This is further exacerbated by the lack of conceptual clarity and predictability within the Commission's own jurisprudence. For instance, there is a lack of coherence in treating violence against women as a form of discrimination. While cases like *J v. Namibia* adopted a substantive equality framework, others like *Equality Now and EWLA v. Ethiopia* and the *DRC* sexual violence cases reverted to a restrictive "formal equality" or "male comparator" standard. This inconsistency creates a "jurisprudential lottery" that undermines the confidence of litigants and representative institutions in the regional system as an effective avenue for redress. Moving toward a "substantive equality" framework is essential to ensure that regional decisions foreground women as autonomous rights-holders rather than comparing them to a male norm.

5.2.2. Reliance on NGOs

NGOs, both local and international, are the primary drivers of strategic litigation before these organs. The cases are almost universally brought by or with the assistance of NGOs such as IHRDA, Equality Now, and SALC. This pattern underscores the critical role of these organisations in transforming individual grievances into legal claims and navigating the complex procedural landscape, while also highlighting the challenge for individual women and girls who may lack such institutional support. For the girl child, this reliance is even more acute, as her legal standing often necessitates that a non-victim advocate or organisation act in her "supreme interest" to bring a claim before the ACERWC.

Beyond individual grievances, the strategic litigation model often utilises principles of Public Interest Litigation (PIL), or *actio popularis*, as a strategy to bring systemic women's and girls' rights issues before the organs. This approach shifts the focus from an individual wrong to a structural, societal injury, justifying the standing of a non-victim advocate to seek remedies for systemic issues like widespread discrimination or violence against girls. However, this strategy faces several challenges, including the strict standing requirements (locus standi) often maintained by regional organs, which may limit the full acceptance of *actio popularis*. Furthermore, PIL is highly resource-intensive, requiring extensive evidence to prove a systemic violation, and successful judgments often involve

remedies that mandate complex structural changes, which are notoriously difficult to monitor and enforce.

5.2.3. State Non-Cooperation and Hostility

A pervasive pattern is the lack of cooperation from AU Member States. This is often evidenced by a state's failure to respond to communications, a refusal to participate in proceedings, or a wholesale rejection of the organs' authority. This pattern extends to the withdrawal of the Article 34(6) declaration, which grants direct access to the African Court for individuals and NGOs, as seen in the actions of countries like Benin and Tanzania.

5.2.4. Developing Jurisprudence on State Obligations

While decisions often face non-compliance, the jurisprudence itself is developing a stronger normative framework. Decisions from the African Commission in cases like *J v. Namibia* and *Equality Now v. Ethiopia* have established important precedents regarding a state's due diligence obligation to prevent and respond to gender-based violence, even when the initial act is committed by a private individual. Similarly, the ACERWC has established landmark precedents on the state's duty to protect girls from systemic policies such as the expulsion of pregnant schoolgirls, framing these as clear violations of the African Children's Charter.

The jurisprudential landscape for the rights of women and girls in Africa is further enriched by the landmark rulings of sub-regional courts, which often serve as precursors to broader regional standards. Notable contributions from the ECOWAS Court of Justice demonstrate the power of judicial intervention in addressing systemic violations. These include the historic prohibition of domestic slavery in *Hadijatou Koraou v. Niger* (2008), the revocation of discriminatory policies banning pregnant adolescent girls from formal education in *WAVES & CWS SL v. Sierra Leone* (2019), and the mandatory call for legislative sanctions against FGM in *Forum Against Harmful Practices and Others v. Sierra Leone* (2025). Integrating these sub-regional successes into the broader litigation strategy underscores the importance of a multi-layered judicial approach to ending harmful practices and structural discrimination.

5.3. Gaps in Litigation and Protection

Despite these trends, the study reveals significant gaps that impede the full realisation of rights for women and girls in Africa.

5.3.1. The Institutionalisation of Litigation

A stark trend identified in this study is that the vast majority of regional applications are filed by NGOs rather than by individual women. For example, of the 174 pending Communications before the African Commission,

only 16 were filed by individual women, compared to 136 by men. This "institutionalisation" of litigation, whereby women's rights are vindicated primarily through collective representative actions, is a direct response to structural hurdles. The regional human rights system is currently technically complex and financially demanding that individual access is functionally restricted to those with institutional backing. Consequently, the lack of cases filed by women themselves is not merely a lack of grievances, but a reflection of a system that individual female claimants need to navigate safely and effectively.

5.3.2. The Implementation and Enforcement Deficit

This is arguably the most significant gap in the entire regional human rights system. Decisions are frequently not complied with, and the organs lack a robust enforcement mechanism to compel states to implement their rulings. While securing a favorable judgment is a milestone, the "litigation deficit" is compounded by a secondary "implementation gap," a recurring theme in women's and girls' rights where binding decisions frequently remain "paper victories" unimplemented at the national level.

The African human rights organs currently lack a robust, self-executing enforcement mechanism to compel states to align their domestic laws with regional rulings. To address this, litigators must look to the procedural innovations

established in the landmark *Ogiek*[95] case before the African Court as a blueprint for post-judgment monitoring.

i. Case Study: African Commission (Ogiek Community) v. Republic of Kenya, Judgment of 26 May 2017 (Merits) and 23 June 2022 (Reparations)

While primarily focused on indigenous land rights, the *Ogiek* litigation[96] is the primary precedent for the institutionalisation of compliance hearings, a mechanism vital for ensuring that regional judgments for women and girls result in domestic legal change.

> **Legal Provisions Invoked:** Articles 2 (non-discrimination), 8 (freedom of religion), 14 (right to property), 17(2) and (3) (cultural rights), and 22 (right to development) of the African Charter.
>
> **The Compliance Mechanism:** Following the 2017 Merits Judgment and 2022 Reparations Order, the Court scheduled and publicly held compliance hearings in November 2024 and June 2025 to scrutinise Kenya's progress. These hearings forced the government to present documentary proof of implementation and allowed the victims and civil society to challenge state claims of "ongoing consultations" and "legal complexities."

Strategic Insight for Women's Rights: The *Ogiek* case

underscores five critical functions of compliance hearings (PALU, 2025):

1. **Benchmarks:** Creating judicially sanctioned timelines for implementation.

2. **Transparency:** Increasing public scrutiny by requiring documentary evidence and testimony.

3. **Participation:** Allowing victims and civil-society actors to present counter-evidence.

4. **Refinement:** Assisting the Court in shaping realistic, enforceable follow-up orders.

5. **Political Pressure:** Raising the reputational and diplomatic costs of non-compliance.

Application to Women's and Girls' Human Rights Litigation:

- **The "Request at Entry" Strategy:** Litigators should not wait for a judgment to be ignored. Following the Ogiek precedent, initial applications involving the Maputo Protocol should explicitly request that the Court retain jurisdiction and schedule an initial compliance hearing within a fixed period (e.g., six months) following the judgment.

- **Institutionalising the "Girl Child" Perspective:**

In cases involving education or harmful practices, compliance hearings provide a forum for specialised NGOs to provide "shadow reports" on whether girls are actually benefiting from the Court's orders on the ground.

- **Breaking the "Private Sphere" Shield:** By moving the enforcement phase into a public, regional hearing, advocates can prevent states from hiding behind cultural excuses or claiming that violations in the domestic sphere are "beyond their reach."

5.3.3. Under-litigated and Emerging Areas

Strategic litigation before the human rights organs is currently lacking comprehensive focus in several crucial and emerging areas. To future-proof the human rights system and ensure comprehensive protection, litigators must strategically address the following under-litigated themes:

Rights Violations in the Digital Age: The rapid evolution of technology has opened new frontiers of rights violations that are profoundly under-litigated at the regional level. Litigators must address Technology-Facilitated Gender-Based Violence (TFGBV), including cybercrimes, digital harassment, and the violation of reproductive health rights occurring in online spaces. Innovative strategies are required for litigating these novel issues before the AU organs.

The Crisis of Incarcerated Women: There is a growing and urgent trend of incarcerated women that demands a dedicated focus in litigation. These women predominantly originate from economically challenged communities, underscoring a deep intersectional vulnerability. Litigation must move beyond surface-level issues to demand a deeper look at the underlying social and economic factors driving this vulnerability.

Broad Strategic Gaps: Beyond the emerging areas, comprehensive litigation is also needed in the following under-litigated contexts:

- The human rights of girls outside of specific child marriage cases.
- The specific challenges facing older women.
- Women in situations of conflict and displacement.
- The distinct challenges faced by indigenous women.
- The full scope of socio-economic rights, particularly for women and girls with disabilities.

5.3.4. Girls' Human Rights Litigation Deficit

Human rights litigation has historically focused more on women's rights than on girls' rights. This requires an intentional strategic shift, as the ACERWC is the primary and dedicated forum for justice for children at the continental level. A pervasive challenge identified is the lack of understanding of the human rights-based approach, more specifically, the omission of a comprehensive Child Rights-Based Approach (CRBA) within the litigation process. This deficit manifests in two critical areas:

Failure of Survivor-Centred Methodology: There is a frequent lack of understanding regarding trauma-informed redress. Litigation often prioritises legal procedures over the dignity and safety of the child, failing to provide the protective measures necessary to prevent re-traumatisation during testimony or evidence gathering.

Neglect of the Best Interests Principle: A true child rights-based approach requires that the "Best Interests of the Child" (Article 4, ACRWC) be the primary consideration in all legal actions. Currently, litigation strategies often focus on punishing the state or the perpetrator without sufficiently tailoring reparations to the long-term developmental, educational, and psychological needs of the girl victim.

This deficit significantly complicates litigation due to the inherent procedural and ethical sensitivities involved. To

bridge this gap, the regional response must move beyond mere legal procedure. It must institutionalise procedural reforms and specialised training that ensure all litigation processes, from the initial application to post-judgment enforcement, are anchored in the needs, agency, and safety of the child. This involves adopting "child-friendly" justice standards that allow for child participation and ensure that redress is both comprehensive and trauma-informed.

5.3.5. The Inter-Organ Coordination Problem

The intended complementarity between the three principal organs, (ACHPR, AfCHPR, and the ACERWC), is not a seamless, supportive process; rather, it often creates a significant procedural hurdle for litigants.

This challenge is critically illustrated by the rule against prior adjudication. Under Article 56(7) of the African Charter, which is applied by all organs, a communication or application may be declared inadmissible if it deals with a matter that has been settled or is pending before another competent AU mechanism. The case of *Tike Mwambipile and Equality Now v. United Republic of Tanzania* highlights this issue starkly. The AfCHPR declared the application inadmissible on the basis that the ACERWC had already ruled on a similar matter concerning Tanzania's policy of banning pregnant girls from school. While rules generally prevent hearing the exact same case twice (to prevent forum shopping), this application of *res judicata* or prior adjudication can be overly broad, effectively denying

victims an avenue of redress if a related legal principle has been previously considered by a different organ.

The issue is further complicated by two factors:

Scope and Subject Matter: While rules prevent double-hearing, different aspects of a case or issues involving a subject matter within the specific mandate of one organ (e.g., the ACERWC's specialised focus on children) might legitimately be admissible before different bodies. Navigating these overlapping mandates requires expert legal judgment from applicants.

Transitional Status: The challenge of coordinating becomes acute when a child applicant transitions to adulthood during the course of litigation. While mechanisms exist for the transfer of cases between the Court and the Commission under specific procedural rules, often invoked in a spirit of collaboration, these processes are not always clearly defined, universally applied, or easy for external litigants to navigate, potentially jeopardising the victim's access to justice.

Therefore, while the mechanisms are designed to complement one another, the absence of clear, consistent protocols for case transfer and the application of prior adjudication rules introduce ambiguity that complicates access to remedy and risks undermining the system's efficiency.

5.3.6. Data and Documentation Gaps

There is a persistent lack of comprehensive, disaggregated data on the prevalence of women's rights violations and the outcomes of litigation. This hinders effective advocacy and policy formulation. It makes it difficult to track the long-term impact of a court decision on the ground, identify successful and unsuccessful interventions, or provide evidence-based recommendations that are not based on anecdotal evidence.

The following table synthesises the key lessons and best practices from this jurisprudence, providing a clear reference for practitioners on how to enhance the effectiveness of future litigation.

Table 3: Strategic Lessons from Jurisprudence

Best Practices	Lessons from Pitfalls
Framing Arguments with an Intersectional Lens: Craft legal arguments that address the compounded forms of injustice faced by women and girls, articulating how factors like gender, poverty, and age intersect to create multi-layered rights violations.	**The Disconnect Between Victory and Implementation:** A legal victory does not guarantee a tangible remedy. Without a robust implementation and enforcement strategy, a judgment can become a "paper victory" that fails to change lived realities

Leveraging Jurisdictional Precedents to Overcome Procedural Barriers: Actively use precedents like those in the *DRC* cases to challenge the "exhaustion of local remedies" rule and overcome state-imposed procedural barriers.	**The High Evidentiary Burden for Socio-Economic Rights:** Litigating for socio-economic rights can be difficult due to the need to prove a direct link between a state's actions or inactions and a rights violation.
Utilising a Child Rights-Based Approach (CRBA): Elevate litigation beyond a general victim-centered approach by applying a CRBA that prioritises the "Best Interests of the Child." This involves using trauma-informed methodologies to prevent re-traumatisation during the legal process.	**Conceptual Omission of Child-Specific Needs:** Litigation often subsumes the girl child under adult-centric women's rights categories. This leads to a lack of specialised redress for the unique developmental and educational needs of girls.
Institutionalising Post-Judgment Supervision: Follow the *Ogiek* precedent by systematically requesting Compliance Hearings in initial applications to ensure the Court retains jurisdiction until the state proves implementation.	**The Risk of Forum Overlap and Fragmentation:** Overlapping jurisdiction between the three AU organs can lead to cases being dismissed, as seen in *Tike Mwambipile v. Tanzania*. Litigators must strategically choose a forum to avoid procedural conflicts.

Differentiating Legal Claims: To bypass the "settled matter" rule, litigators must identify and argue distinct legal violations or present a different class of victims than those in the previous action. This requires a precise surgical approach to the pleadings to ensure the Court sees a "new" dispute rather than a request to review a previous organ's work.	**The Finality of Article 56(7):** As seen in *Tike Mwambipile*, the Court applies the "non-duplication" rule strictly. Arguing for the Court to step in where another organ has already acted is viewed as a challenge to established law, leading to a "jurisdictional dead-end" where the Court is legally unable to offer further relief.
Building a Broad Advocacy and Implementation Alliance: Integrate legal action with long-term advocacy and community mobilization. This ensures that court judgments are followed up and translated into tangible policy and cultural changes, thereby avoiding "paper victories."	**The Pervasive Threat of Political Backlash:** Litigators must anticipate that a successful case may lead to political reprisal from a state, which may include the withdrawal of declarations that grant direct access to the Court.

Requesting Systemic and Transformative Remedies: Move beyond monetary compensation to demand "Guarantees of Non-Repetition," such as legislative reform, mandatory gender-sensitivity training for state agents, and the creation of specialised public services.	**The Limitation of Narrow/ Individual Relief:** Focusing solely on damages for a single victim often leaves the underlying discriminatory law or policy intact. Without systemic prayers, a victory remains an isolated event that fails to prevent future violations against other women and girls.
Utilising Advisory Opinions for Legal Clarification: Proactively seek Advisory Opinions from the Court to clarify the interpretation of the Maputo Protocol on systemic issues. This allows for the establishment of legal benchmarks across all member states without the high evidentiary burden of a contentious case.	**Reactive vs. Proactive Litigation:** Waiting for a violation to occur before litigating keeps advocates in a "reactive" cycle. A failure to utilise advisory mandates means that ambiguous or discriminatory laws remain unchallenged until they cause tangible harm to a specific victim.



PART III

THE ROADBLOCKS TO JUSTICE: SYSTEMIC, PROCEDURAL, AND SOCIO-CULTURAL BARRIERS

CHAPTER SIX

OBSTACLES TO GENDER JUSTICE

The struggle for women's rights litigation in Africa is intertwined with numerous challenges that span systemic, procedural, and socio-cultural levels. While progressive legal frameworks exist, the actual enforcement of women's rights through litigation is crippled by this pervasive network of obstacles, creating the central focus of analysis for this study before the three AU human rights organs, as discussed below.

6.1. The Political and Economic Barriers

6.1.1 The crisis of political will and State non-compliance

Political will and state cooperation are perhaps the most decisive factors shaping the fate of women's rights litigation.[97] States tend to engage in what can be described as "symbolic obedience," ratifying human rights instruments to signal compliance to the international community without the corresponding executive and bureaucratic willingness to implement them. This creates a disjuncture between legal reform and lived reality. Progressive judgments are issued but not enforced, leaving litigants vulnerable and the public with little trust in the legal system.[98] This lack of cooperation stems from the fact that litigation can threaten deeply entrenched interests, such as patriarchy, uneven power balances, or interests of political elites, thereby inviting backlash. State sovereignty is frequently invoked as a shield, allowing governments to dismiss regional human rights judgments as an unacceptable imposition of "Western-imported" agendas, thereby providing the political justification for symbolic obedience by ratifying treaties while refusing substantive enforcement. In response, they may restrict civil society, limit NGO activities, or underfund enforcement institutions.[99]

The crisis of state non-compliance manifests in several ways, creating a self-reinforcing cycle of institutional erosion. The crisis of State non-compliance is actively

enforced through political and jurisdictional barriers that block direct access to the African Court. Out of 34 State Parties to the Protocol, only 12 have ever deposited the declaration under Article 34(6) granting individuals and NGOs direct access to the Court. Today, seven of these states—Burkina Faso, Ghana, Guinea-Bissau, Malawi, Mali, Niger, and The Gambia—maintain their declarations. Conversely, five Member States have revoked the Article 34(6) Declaration: Rwanda (2016), Tanzania (2019), Benin (2020), Côte d'Ivoire (2020), and most recently, Tunisia (2025).

Third, the enforcement of decisions remains a major weakness. While the African Court's judgments are legally binding, state compliance is exceptionally poor, rendering the Court's pronouncements largely aspirational and undermining the entire system's ability to provide concrete redress.[100] The case of Burkina Faso, noted as the only country to have fully complied with a Court judgment in a recent period for 2 cases, underscores the symbolic nature of the Court's "binding" authority.[101] As of end of 2024, 87 cases against 9 AU Member States were pending full implementation.[102] The consequence is that a litigator's success is not determined solely by the strength of their legal arguments but is fundamentally dependent on navigating an unstable and often hostile political landscape, where even a victory on the merits may not translate to a meaningful outcome for the victim. However, contemporary analysis suggests that while compliance and effectiveness remain clearly desirable objectives, the

impact of litigation must be judged by broader criteria that extend beyond mere state compliance.[103] Litigants increasingly use their participation in these international venues to achieve other objectives, such as amplifying political disputes, educating the public about their cause, galvanising resistance, and building movement capacity, confirming that these courts are vital platforms for waging political and social struggles.

While the decisions of the Committee are issued in the form of recommendations, their binding nature is firmly rooted in the treaty obligations undertaken by States Parties upon ratification of the African Children's Charter. Despite this legal foundation, the Committee faces significant practical challenges in ensuring that these recommendations translate into tangible domestic reforms. These hurdles include a lack of dedicated national follow-up mechanisms, limited political will, and a general lack of awareness regarding the Committee's specific implementation guidelines. However, the use of amicable settlements has emerged as a critical enabler of implementation. Statistics indicate that 11 communications before the Committee have been successfully resolved through amicable settlements, which often facilitate greater State cooperation and more sustainable outcomes for children by fostering a non-adversarial path toward compliance. Strengthening the mandate of the Committee's Working Group on the Implementation of Decisions remains essential to bridging the gap between regional pronouncements and local enforcement.

Based on the ACERWC'S Revised Guidelines for the Consideration of Communications and Monitoring Implementation of Decisions, the Committee can also refer cases of non-compliance to the African Union's Executive Council and Assembly.[104] The Committee has started using this approach by including information on non-compliant states in its activity reports, which are then submitted to the Executive Council. In February 2022, the Executive Council adopted Decision EX.CL/Dec.1155(XL), which urged member states to fulfil their obligations under the Charter by responding to the Committee's requests and implementing its decisions.[105] This method of referring specific cases presents a valuable opportunity for the Committee to compel compliance. The African Commission has also used this strategy, highlighting specific instances of state non-compliance in its activity reports to the Executive Council. For example, in its activity report, the Commission specifically noted the case of *Kenneth Good v. Botswana*,[106] bringing Botswana's refusal to implement the Commission's decision to the Council's attention for "appropriate action."

In addition, a pivotal challenge lies in the lack of clear delineation of roles and responsibilities among different State organs, particularly concerning the legislature. The political will required to uphold rights is ultimately translated into budgetary allocations, policy priorities, and the enactment of laws that domesticate regional and international obligations. Without strong political commitment from Parliament, the legal protections for

women and children remain hollow.

6.1.2. Capacity Gaps and Resource Constraints

Capacity shortfalls within justice institutions, including insufficient numbers of trained judges and prosecutors, a lack of gender-sensitive training, underfunded legal aid, sparse forensic and translation services, and clogged court dockets, function collectively to neutralise formal rights.[107] A pervasive obstacle is judicial stereotyping, whereby judges, magistrates, and other legal officials hold deeply ingrained, biased beliefs about the roles, credibility, and experiences of women and girls.[108] Such stereotypes can negatively influence judicial reasoning, evidentiary standards, and sentencing, perpetuating discrimination within the justice system. This underscores the critical need for continuous, specialised training for judicial officials on gender-sensitive adjudication.

Evidence illustrates how these inadequacies are evident at every stage of litigation, from investigation to enforcement.[109] The case of *Mildred Mapingure*[110] serves as a domestic example: a positive judicial ruling was rendered meaningless due to a lack of administrative capacity to enforce the remedy. Despite her attempts to access reproductive healthcare after being attacked and raped, systemic failures undermined her right to reproductive justice.[111] These institutional shortcomings do not affect all litigants equally; they disproportionately harm poor and rural women, re-victimise survivors, and expose

claimants to retaliation.[112] This challenge is not limited to domestic courts.

The Commission and the Committee suffer from limited human resources and chronic underfunding. This leads to significant delays in handling Communications, conducting fact-finding missions, and processing country reports. For example, since the establishment of the Secretariat of the Committee and move to the Kingdom of Lesotho in 2020, it has seen a dramatic increase in the number of recommendations and decisions it makes. The need to monitor the implementation of these decisions has also grown exponentially. However, the Committee's financial and human resources have not kept pace with the rising number of state reports and Communications it must handle.[113] Consequently, the slow pace of these bodies can discourage victims and advocates, undermining the system's effectiveness. The Court also faces a profound capacity deficit driven by several operational constraints, including the lack of full-time judicial engagement (as Judges only convene for periodic sessions), chronic underfunding that prevents the development of robust IT infrastructure and a centralised knowledge management strategy, and a reliance on largely manual-based processes, all of which contribute to the lengthy and cumbersome nature of regional litigation.[114]

There is also a critical capacity deficit due to the insufficient investment in training human rights lawyers specifically focused on litigating cases before AU Human

Rights Organs.

6.2. Procedural and institutional complexities

6.2.1. Access to Legal Representation and Community Barriers

The barriers to gender justice originate at the community level, long before a matter reaches regional mechanisms. Many women and girls lack the basic information, financial resources, and access to legal representation required to initiate the legal process. Furthermore, there is a critical shortage of lawyers willing or able to take on human rights cases, creating a "representation gap" that stops meritorious claims before they can even enter the domestic justice system.

This "representation gap" is not merely a logistical hurdle but a manifestation of systemic and structural exclusion embedded within legal and institutional systems. The current reliance on NGO-led strategic litigation often obscures the deep-seated "access deficit" facing individual women, who are frequently filtered out of the justice system due to limited legal literacy and the procedural complexity of regional mechanisms.

Access to legal representation remains a major hurdle for women seeking to use the law to defend their rights. This is evident in the lack of lawyers in rural areas and

the high costs of legal services in cities, making litigation an option for only a select few.[115] Even when legal aid is available, it is often underfunded and cannot provide sustained support through a full litigation cycle for a case. This is a structural issue, not just a matter of supply and demand, as it filters which cases even get to court. The quality of representation is also critical. Many lawyers lack specialised training in gender-sensitive advocacy, and substandard representation can lead to the dismissal of valid claims on technical grounds.[116] The challenges are amplified by geography and poverty; rural women face obstacles like travel costs and childcare needs, making consistent collaboration with a lawyer nearly impossible.[117] The concentration of specialist lawyers in urban centres means fewer cases are brought from rural areas, limiting the development of jurisprudence on women's rights. Donor-funded programs offer temporary relief but often focus on high-profile wins rather than building a sustainable, state-funded legal aid system.[118] This perpetuates a dual system where NGOs fill a gap that the state should be responsible for.[119]

This reliance on donor-funded initiatives creates a risk of 'symbolic compliance,' where States fail to institutionalise the state-funded legal aid systems necessary for the practical implementation of ratified human rights instruments. Consequently, the lack of direct accessibility for individual women reinforces a siloing of women's rights, where justice becomes a niche concern for specialised NGOs rather than an essential, integrated

component of the broader national human rights struggle.

These domestic challenges are mirrored at the regional level. Using the African Court as an example, Viljoen discusses how the few cases find their way to the Court system and are linked to the socio-economic and cultural context of most African States, captured by the 'dispute pyramid', in terms of which only a small percentage of sociological 'problems' are, in most of these States, ever conceptualised as 'legal disputes.[120] Access, therefore, needs to be improved by addressing impediments to justice to enhance and foster vibrant domestic legal cultures; and improving the effective functioning of legal systems.

However, what may appear as "baseless" cases are often the result of structural enforcement failures and a lack of gender-sensitive procedural guidance. Without simplified submission templates and procedural protocols tailored to non-specialist litigants, individual women and girls face nearly insurmountable technical barriers to entry. These "procedural traps" ensure that meritorious claims are often dismissed on technical grounds long before their substantive merits can be examined.

Moreover, Viljoen describes how approximately 55 per cent of the cases submitted to the African Court in its first five years of its existence had no legal basis.[121] According to him, because of this lack of legal basis, it should have been clear that there was no prospect of success. Obstacles

are evident where court cases are either brought by lay persons without legal counsel, or on the advice of extremely uninformed or unprofessional lawyers. Viljoen's point is also that because these baseless cases are time-consuming, they leave little or no meaningful access for validly submitted cases.

To address this issue, the African Court has established a *Roster of Counsels*. This roster is crucial because it can help bridge the representation gap for marginalised women. By providing a list of legal experts, the roster can facilitate access to competent counsel who have specialised knowledge and can properly frame women's rights cases. It ensures that valid claims are not dismissed due to procedural errors or poor legal arguments. The ongoing effort by the Commission to create its own roster, in addition to the PALU initiative as mentioned above, further underscores the recognition that providing competent legal aid is essential for transforming legal rights into meaningful protections. However, these rosters alone are not a complete solution. For them to be truly effective, they need to be part of a broader, sustained, and publicly funded legal aid system that supports lawyers working with vulnerable populations. These rosters must be supported by gender-sensitive evidentiary standards and internal capacity building for legal staff.

Even in instances where legal representation is secured and a violation is found; the internal logic of the resulting decision can act as a barrier to transformative justice. A

prime example is *Curtis Francis Doebbler v. Sudan* (2003), which concerned the flogging of female students under public order laws. While the Commission found that the flogging violated Article 5 of the African Charter as degrading and harmful treatment, the reasoning remained gender neutral. By framing the violation solely as torture and failing to recognise it as a targeted assault on women's bodily autonomy or a form of gender-based discrimination, the Commission missed the opportunity to interrogate the underlying patriarchal legal framework. This failure to foreground women as autonomous rights-holders demonstrates how 'neutral' judicial reasoning can obscure the structural nature of violations, ultimately limiting the development of a gender-responsive jurisprudence.

These jurisprudential limitations persist as evident in *Communication 686/18 - Association des femmes avocates défenseurs des droits humains & Equality Now v. Democratic Republic of Congo* (2023). Despite being a recent decision arising from widespread sexual violence by armed forces, the Commission failed to treat sexual violence as a distinct and structural form of gender-based harm, instead subsuming it within a broader catalogue of abuses. Most critically, the decision utilised a patriarchal narrative that referred to victims as "wives or daughters," which displaces women as autonomous rights-holders and frames the harm through a lens of male injury. By failing to interrogate the underlying power structures of militarised masculinity, the Commission produced a decision that acknowledges violations but lacks the gender-responsive

measures necessary for transformative change. This underscores a persistent institutional capacity gap that continues to deter the confidence of victims in the regional system

6.2.2. Exhaustion of local remedies

A foundational procedural requirement in the African human rights system is the exhaustion of domestic remedies. This principle requires a complainant to pursue all available legal avenues for redress within their national legal system before bringing a case to a regional body. The doctrine is rooted in the principle of subsidiarity, which grants states the primary responsibility and opportunity to address human rights violations before they are subjected to international scrutiny. For all three organs, admissibility guidelines include exhaustion of local remedies. Analysis reveals critical exceptions to this rule that are particularly relevant for women's rights litigation.[122]

Furthermore, the application of the procedural requirement to exhaust local remedies warrants a re-evaluation in the context of conflict-affected regions. In environments characterised by systematic mass violence, domestic judicial infrastructures are often not merely "prolonged" but are fundamentally compromised, unavailable, or ineffective. Where the State is an alleged complicit actor in violations, including conflict-related sexual violence (CRSV), sexual slavery, and gang rape, the domestic legal system lacks the requisite independence

and safety to offer a genuine pathway to justice.

These complexities also have a direct impact on litigation before the African human rights organs, especially concerning procedural requirements like the "reasonable period" for submitting a case. While the African Court has shown flexibility by taking into account that a claimant is a layperson unaware of its existence, this leniency may not fully compensate for the underlying intersectional barriers.

The application of Article 56(6) reveals a stark disparity in access. Unlike cases that were allowed to proceed to a substantive determination, *Priscilla Njeri Echaria* (represented by Federation of Women Lawyers, Kenya and Interights) *v. Kenya* serves as a cautionary example of how procedural doctrine can operate as a structural barrier. Despite the Commission acknowledging that local remedies had been exhausted, the communication was declared inadmissible solely because it was filed 31 months after exhaustion. a timeframe the Commission deemed "unreasonable" based on a strict 6-month benchmark established in *Michael Majuru v Zimbabwe* Communication 308/05 (2008). This procedural "filtering" prevented the Commission from ever examining substantive issues of gender equality and women's economic rights, highlighting a lack of flexibility that effectively punishes litigants for the regional system's own lack of visibility.

6.2.3. Confidentiality and the Trust Deficit

The confidentiality requirement under Article 59(1) of the African Charter is a major procedural impediment for Communications before the African Commission. Article 59 stipulates that actions undertaken by the Commission under the Communications procedure are to be kept confidential until authorised for disclosure by the AU Heads of State and Government. The Commission's interpretation extends this confidentiality to include all related records and legal submissions by involved parties. This rule creates a "trust deficit" for litigants who are unable to speak about their cases publicly, which in turn hampers the ability of CSOs to generate public awareness, coalition-build, and secure funding for ongoing litigation. This expansive interpretation also limits the fundamental right to access information. This creates a default position of confidentiality that deviates from the presumption of openness found in other regional and international human rights systems.

Crucially, this restrictive approach is directly linked to systemic delays in the transmission of decisions. Even after a decision is adopted, the requirement for authorisation under Article 59 results in substantial lapses, sometimes spanning several years, before the parties or the public can access the ruling. Notable examples include:

> *Egyptian Initiative for Personal Rights and Interights v. Egypt*: Decision adopted in 2023 but

not transmitted until 2025.

J v. Namibia: Decision adopted in March 2024 but only transmitted to the victim in June 2025.

Communication 686/18 (DRC Case): Decision adopted in March 2023 but not sent until May 2025.

These delays render justice effectively denied for women and girls, as favourable decisions that are not promptly transmitted cannot be enforced, used in advocacy, or relied upon as up-to-date jurisprudence.

In order to ensure a more systematic and transparent approach for managing Communications, some strategies to explore include the possibility of the Commission publishing short, anonymised summaries of pending cases. This practice would be in line with the restrictive confidentiality rule while allowing for broader awareness and potentially increasing the number and quality of amicus curiae briefs submitted.

6.2.4. Evidentiary Burdens and Standards

Evidentiary rules in women's rights litigation often act as a barrier to justice. These rules, which appear neutral, can be biased against the types of harm women experience in private settings, such as domestic violence and rape. Since these crimes rarely leave behind formal or timely

records, high evidentiary burdens become a procedural trap. Courts frequently demand third-party corroboration or forensic evidence that is often unavailable, making compelling witness accounts inadequate. [123]

The challenges women face in producing evidence at the domestic level directly impact their ability to seek justice from African human rights bodies. Since these regional bodies often require the exhaustion of domestic remedies, they review the same case files and evidence presented at the national level. If a woman's claim was dismissed by a domestic court due to a lack of "formal" evidence such as a medical report or third-party corroboration, the regional body may face a similar deficit. The dismissal of the *Community Law Centre v. Nigeria case at the African Commission*[124] is an example. The failure to prove a direct link between state failure and maternal deaths, provides a critical lesson on the significant evidentiary burden placed on complainants for systemic issues. This procedural limitation, in which the ACHPR currently restricts the review or appeal procedure strictly to the discovery of new evidence became a focal point during the seminal maternal mortality decision against Nigeria. This is seen as a deliberate safeguard against an influx of review requests and is designed to align with the practices of domestic supreme courts, which typically do not re-open cases on points of law.

To address the de facto exclusion of many claims, regional bodies such as the Commission must adopt gender-

sensitive evidentiary standards that recognise the specific realities of gender-based violence, which frequently occurs in private settings and lacks formal documentation.

It is important to note that broader interpretive grounds are evident for the ACERWC. This constraint raises a strategic dilemma: it highlights the Commission's perceived reluctance to fully interrogate core state policy decisions, such as national budget allocations, when litigating systemic issues. While litigation before the Commission is inherently a liberating act, the prospect of securing a favourable review remains uncertain when a case hinges on compelling a state to fundamentally reorient its fiscal and political priorities, making the expansion of the review scope, through interpretive means or rule revision, a critical area for advocacy.

6.2.5. Lack of clarity on amicable settlements

The practice of amicable settlements, while valuable for achieving victim-centred resolutions and securing systemic reforms without protracted litigation, is hampered by a lack of jurisprudential clarity, particularly regarding enforcement and the nature of the agreement. The Commission's jurisprudence needs greater clarity on the practice of amicable settlements, particularly those involving partial settlements. It is noted that the lack of clear guidance on what constitutes a successful settlement if only partial agreement is reached, creates a dilemma about how the Commission navigates settlements that

address some, but not all, of the violations alleged in a Communication. In addition, the Commission's previous deference to states in recognising settlements, as seen in cases like *Equality Now v. Ethiopia*, must be balanced with ensuring that settlements are genuinely consented to by the victim and well-documented.[125]

6.2.6. Limited Awareness and Knowledge

Limited awareness and legal illiteracy among women in Africa act as significant barriers to justice. This is not merely a knowledge gap, but a structural problem rooted in limited education, language barriers, and political choices. Many women, especially in rural areas, lack the basic legal literacy to understand their rights or navigate complex legal procedures, such as filing deadlines and evidence rules.[126] This is compounded by the fact that court proceedings and documents are often in colonial languages, which systematically disadvantages women who only speak local languages.[127] Without awareness that a harm is legally actionable, rights remain theoretical.[128] This linguistic and educational barrier transforms courts into being functionally inaccessible to many women. The *Mapingure* case highlighted this disjunction: judicial recognition of rights did not translate into uptake because beneficiaries lacked both knowledge and navigational support to obtain the services the court had affirmed.[129] While paralegal programs can help, they are often insufficient, creating a danger of raising expectations without the institutional capacity to deliver enforceable

remedies.[130] This can ultimately lead to cynicism rather than justice. It has been posited that there is a need to reframe awareness as a public good requiring financing and policy design: mandated language services in courts, curricular integration of civic legal education, community legal clinics with sustained funding, and litigation strategies that include outreach and enforcement planning.

At the regional level, using lawyers from these rosters to assist NGOs and victims can help fill the gap created by a lack of state and donor funding for legal aid. The legal experts on these rosters can help women navigate the complexities of litigation, frame their claims appropriately, and ensure their cases are not dismissed due to procedural errors or a lack of understanding. This approach directly tackles the lack of awareness by providing expert support, ensuring that valid claims are not lost simply because a woman lacks legal knowledge or access to resources.

Awareness-raising campaigns must target both states and potential litigants to empower them with knowledge of their rights and the available continental avenues for redress. This lack of awareness directly contributes to forum shopping, where litigants, unsure of the appropriate judicial body, approach the wrong forum, leading to dismissed cases. To counter this, the spirit of complementarity between the AU organs should be systematised; for instance, litigants could proactively request referrals to the AfCHPR as applicable, to ensure cases are heard on their merits and in the right forum.

6.2.7. Language Barriers

Language is not a neutral tool in African courts; it is a mechanism that can either grant or deny access to justice. The dominance of colonial languages (English, French, Portuguese) in legal procedures systematically excludes women who are monolingual or have limited literacy in these languages.[131] This is not accidental; the very legal system assumes a level of linguistic and bureaucratic familiarity that many marginalised women lack. Without trained legal interpreters or translated documents, access to justice becomes a symbolic gesture rather than a genuine right.[132] This problem is compounded for women who are already disadvantaged by factors like geography, poverty, age, disability, or lack of formal schooling.

The quality of interpretation is also critical. Ad hoc interpreters, who are untrained in legal terminology, can provide inaccurate or biased translations, distort evidence, and influence judicial decisions. This transforms courts into functionally inaccessible spaces for many women. To address this, language barriers must be seen as a public policy problem requiring systemic solutions, not just an unfortunate reality. This includes creating funded interpreter programs, translating key legal documents, and providing community legal education in local languages.[133]

This challenge is recognised at the regional level, where there have been efforts to improve language access. Both the African Court (under Rule 27), the African Commission

(under Rule 38), and the African Committee (under Section XI/5 of its Guidelines) explicitly accept African languages in their proceedings. This is a crucial step that distinguishes these bodies from many domestic courts. By allowing claimants to testify and submit documents in their local languages, these regional bodies reduce a significant barrier to entry. However, this policy is not a complete solution. The effectiveness of this rule still depends on the availability of competent legal counsel who can work in these languages and the capacity of the institutions to provide high-quality interpretation, ensuring that the legal nuances of a case are not lost in translation.

6.2.8. Lengthy and Cumbersome Procedures

Procedural complexities act as a major barrier to justice for women in Africa. Long, drawn-out litigation processes, complex filing requirements, and high costs all discourage women from seeking legal redress.[134] For women who rely on daily wages for survival, the time and cost of attending hearings, including travel, lost income, and childcare, make litigation functionally impossible.[135]

While regional human rights bodies may not have domestic barriers like court fees, they present their own procedural complexities that hinder access for women. Cases can take years to resolve, causing significant delays that discourage potential claimants. The Commissioners of the African Commission, who handle Communications work on a

part-time basis, limiting the time they have to thoroughly examine all the cases presented to them. The process is described as lengthy, inefficient, and bureaucratic.

Additionally, the specialised procedures of these bodies can be daunting for laypersons due to the need for a specific understanding of their rules and guidelines. The requirement to exhaust all domestic remedies before a regional body will hear a case creates another procedural hurdle, especially when the domestic system is corrupt or inefficient. These factors collectively transform the regional system into a slow, multi-layered process that can exhaust or deter even the most determined litigant.

Furthermore, the process for submitting an Amicus Curiae brief to the ACERWC requires greater transparency and clarity. There is a need to better articulate the criteria for acceptance, requiring the submitting party to demonstrate a specific interest and focus on the matter.

6.3. The Socio-Cultural and Practical Barrier: The Fear of Claims-Making

Beyond the legal and institutional hurdles, powerful socio-cultural and practical factors act as a profound deterrent to women's and girls' rights litigation. The stigma associated with disclosing sexual violence, seeking a divorce, or challenging male-dominated inheritance norms operates at the interpersonal, communal, and

institutional levels.[136] The effect is chilling: many women and girls calculate that the social cost of disclosure, such as family shame or ostracism, is heavier than the uncertain benefits of litigation, leading many meritorious claims to go unreported.

This fear of reprisal and victimisation functions as a structural deterrent that systematically removes many females from the realm of enforceable rights. The threat of social ostracism, economic retaliation, and escalating violence is a calculated risk that many women cannot afford to take, especially in the absence of robust state-provided protections such as funded shelters and witness protection programs. The litigation process itself can magnify these social risks by requiring recurrent public appearances or cross-examinations, which publicly pits a woman against entrenched power structures. These risks are compounded for rural women, older women, or those who are economically dependent, as they lack the mobility or alternative housing options to escape retaliation. Without a universally applied survivor-centred and trauma-informed approach, the judicial process can re-traumatise minor victims, acting as a direct deterrent to pursuing justice. Girls lack the mobility, financial independence, or alternative housing options to escape retaliation, making the threat of social ostracism an insurmountable barrier without state-provided protections like funded shelters. This dependency is a structural deterrent that removes many girls from the realm of enforceable rights, as they calculate that the social cost of disclosure, such as family

shame or displacement, outweighs the uncertain benefits of litigation. In this sense, weak protections make litigation riskier, which in turn reduces cases and depresses the development of protective institutional norms.

While patriarchal structures are the primary inhibitors of gender justice across the continent, the report acknowledges that matriarchal and matrilineal systems, such as those found in parts of Ghana and other West African societies, present unique litigation dynamics. In these contexts, women may possess higher levels of social or economic agency; however, this does not always translate into increased regional litigation. These systems can sometimes create different types of internal communal pressures that favour traditional mediation over formal judicial conflict, potentially reinforcing the reluctance to seek redress in "individualistic" regional forums.

6.3.1. The complexities of intersectional discrimination

The African human rights system, much like other systems globally, struggles to address the complexities of intersectional discrimination. A key challenge in litigating women's rights is that discrimination rarely stems from a single factor but often arises from overlapping and cumulative conditions. Yet the legal framework, which tends to address distinct grounds, such as sex or age in isolation, is not well designed to respond to intersectional situations, where gender, poverty, age, disability, or other

grounds combine to create compounded forms of injustice. A girl who is a victim of a harmful traditional practice like FGM or child marriage may face compounded forms of injustice based on her gender, age, and social or ethnic status. A legal framework designed to prosecute a single-ground violation may not adequately address this complex situation. This is particularly relevant in cases related to economic and social rights, where the deprivation of a right is tied to both the victim's gender and their socio-economic status. The vulnerabilities of the girl child are a crucial manifestation of intersectional discrimination and are a key focus of litigation before the African Committee, which is discussed below.

This landscape becomes even more complex when viewed through an intersectional lens. While the Maputo Protocol offers broad protections, the practical litigation environment remains largely binary and heteronormative, often rendering gender-diverse women "legally invisible," given the issue of criminalisation of same-sex relationships in the majority of African countries. For survivors in these contexts, the act of reporting any violation, even one unrelated to their identity, presents a profound risk of harassment or arrest.

6.3.2. Geographical and Economic Barriers

Geographical distance and economic hardship are significant barriers to justice for women in Africa, effectively acting as filters that determine who can

access the legal system. Most justice infrastructure, as noted above, including courts and legal aid clinics, is concentrated in urban centres.

These domestic barriers are magnified at the regional level, limiting women's ability to access the African Court and African Commission. The very act of taking a case to these bodies requires significant resources, including travel to their headquarters, which are located in only a few select cities (e.g., Arusha, Tanzania, for the African Court, Banjul for the Commission, and Maseru for the Committee) for oral hearing.

Even without the travel costs, the procedural complexities are immense. The need to first exhaust all domestic remedies means that a woman must navigate a potentially corrupt and backlogged national legal system before even approaching a regional body. Once submitted to the body, the case can take years to resolve, with proceedings stretching over multiple sessions. This protracted timeline, combined with the specialised legal expertise required to navigate the regional system's rules, can deter even the most determined litigants.

6.3.3. Cultural, Religious, and Traditional Norms

Cultural and traditional norms could function as an obstacle to litigation. The pluralism and tripartite nature of law, which can be in statutory, customary, and religious forms, implies that a large number of cases involving

women are adjudicated in fora in which communal harmony, social order of the patriarchate, and male authority over individual rights predominate. For instance, CEDAW recognises the coexistence of plural justice systems and the fact that it may limit women's access to justice by perpetuating and reinforcing discriminatory social norms. It reminds states of their obligation to ensure that women's rights are equally respected and that women are protected against violations of their human rights by all components of plural justice systems and makes recommendations to that effect, including to "Provide safeguards against violations of women's human rights by enabling review by state courts or administrative bodies of the activities of all components of plural justice systems, with special attention to village courts and traditional courts".[137] Similarly, the Human Rights Committee[138] points out that such courts cannot hand down binding judgments unless some requirements are met.

In their cases, when women seek redress in statutory courts, they not only face procedural barriers but also face communal pressure to relinquish traditional resolution systems, which often replicate gendered hierarchies.[139] The consequence is that human rights provisions that guarantee access to justice are undermined by the culturally embedded norms that determine who is an acceptable claimant and what remedies are available.

More importantly, the traditional norms are pursued by means of social institutions that are not easily subject to

judicial pronouncements. Traditional leaders and religious authorities have normative power that influences local expectations of dispute-resolution; their instructions can have the immediate force of the social stigma of ostracism, denial of access to collectively owned land, or reputational damage that cannot easily be overridden by the courts.[140] This is best seen through inheritance and marriage matters: the rules of equal inheritance put in place by statute clash with local customs that put land and marital power in the hands of male relatives, which practically deny rights even in cases where courts order otherwise.[141]

There is also an institutional dimension to how culture operates: traditional adjudicative spaces frequently lack female representation and procedural safeguards, producing outcomes that are not only patriarchal but also procedurally biased. Where customary forums are publicly privileged, as when states defer to "community-based" dispute resolution, the absence of gender-sensitive procedures and of mechanisms to appeal into statutory systems entrenches inequality. Besides, the inability or unwillingness of the state to reconcile the norms of custom with the constitutional requirements is commonly a matter of political calculation: the existence of customary authority maintains peace or patronage connections, but at the cost of the rights of women, which have to be enforced by law. [142]

Thus, culture becomes a governance choice, not an

immutable obstacle. A critical response must therefore combine doctrinal, institutional, and community strategies. Doctrinal reform, which clarifies the supremacy of constitutional gender guarantees and creates enforceable limits on customary practices that infringe fundamental rights, is necessary but insufficient. Institutional reforms must include integrating customary leaders into rights education, creating hybrid dispute-resolution processes with appellate safeguards, and increasing female representation in both customary and formal adjudicative bodies.

Beyond customary practices, religious norms and institutional structures exert a profound and distinct influence on the realisation of women's and girls' rights across Africa. Where religious interpretations are applied rigidly or used to justify discriminatory practices such as restricting reproductive autonomy, limiting inheritance, or enforcing unequal marital rights, they severely constrain women's ability to claim their rights. In pluralistic legal systems, religious family codes, particularly regarding marriage, custody, and inheritance, often operate to restrict women's legal autonomy. The intersection of religious doctrine with traditional patriarchal norms creates complex social barriers, where asserting statutory rights is frequently framed as a violation of religious duty. Addressing these barriers requires engaging with religious authorities and highlighting positive, rights-affirming interpretations that safeguard women's dignity.

Consequently, community-level interventions, including sustained civic education, engagement with religious and faith leaders to foster positive socio-cultural change, and support for women's collective agency, are essential to shift normative expectations. Without this multi-level strategy, litigation will continue to collide with resilient cultural orders that reproduce gender inequality despite progressive legal texts.

6.4. The rural-urban divide and the social dynamics of voice

The lived reality for women in rural Africa is governed by an informal "social constitution" that often overrides statutory law, creating a profound gap between progressive legislation and persistent social norms. In these settings, the act of rights-claiming is frequently viewed as a betrayal of communal harmony rather than an exercise of legal entitlement, framing justice as a choice between individual rights and social belonging. This tension creates significant intra-familial litigation barriers, as social study evidence highlights that for a girl or woman to take a male relative to court, particularly in sensitive inheritance or property disputes, she must overcome the immediate threat of social stigma, which carries the weight of ostracism and reputational damage.

Furthermore, geographic isolation serves as a functional silencing tool; because justice infrastructure is heavily

concentrated in urban centres, rural women must physically and financially "leave their community" to seek redress. This necessity for travel and external engagement often results in permanent displacement or secondary victimisation if the community reacts with hostility, effectively removing many rural women from the realm of enforceable human rights.

To bridge the persistent gap between continental standards and local realities, the Study proposes the institutionalisation of structured collaboration between the human rights organs, NHRIs, and community-based organisations. Such a partnership is essential to translate complex regional norms into simplified, localised justice pathways that are capable of identifying and feeding grassroots violations into regional litigation processes, thereby ensuring that the African human rights system is accessible to the most marginalised women and girls.

6.4.1. Social stigma in claim-making

In protecting litigants' lay claims, especially women in Africa, the necessity of embedded policies for psychological support cannot be overemphasised. This is especially crucial in cases involving women's rights violations, where profound social stigma can deter victims from pursuing justice at the domestic level, let alone internationally. Stigma can also dissuade survivors from reporting, from participating in litigation, or from complying with court processes; it also aggravates trauma

and can create secondary victimisation during hearings and investigations.

Many women and girls calculate that the social cost of disclosure, such as family shame or ostracism, is heavier than the uncertain benefits of litigation. This fear and the aggravation of trauma can actively deter victims from pursuing justice at the domestic level, let alone before continental bodies. Consequently, many meritorious claims go unreported, limiting the volume of cases and inhibiting the development of protective institutional norms.

To address this, litigation strategies should routinely incorporate psychosocial support as part of the case plan: intake screening for trauma, referral pathways to counselling and health services, confidential case-handling protocols, and community engagement to reduce backlash. Embedding such support improves victim well-being, increases the likelihood that complainants will proceed through to enforcement stages, and enhances the legitimacy and durability of legal remedies. Evidence from multi-country analyses shows that stigma and fear of repercussions remain leading reasons why survivors do not seek formal justice, and that integrated support models improve reporting and participation.

CHAPTER SEVEN

RECOMMENDATIONS AND CONCLUSION

Based on the analysis of the challenges and strategic opportunities within the AU's human rights system, the following recommendations are provided to strengthen the litigation of the rights of women and girls.

7.1. Recommendations

7.1.1 Recommendations: Phased Integration Roadmap

The recommendations are designed to be strategic, practical, and rigorously prioritised based on urgency and

feasibility. The study adopts a phased approach, Short-Term (Immediate Action), Medium-Term (Institutional Reform), and Long-Term (Systemic Change) to provide a clear, actionable roadmap for stakeholders.

Table 4: Prioritised Recommendations Integration Plan

Stakeholder	Recommendation Focus	Actionable Strategy	Priority
AU Member States	Direct Court Access (Art. 34(6))	Initiate a diplomatic campaign to encourage states to ratify or reinstate the Article 34(6) declaration.	Short-Term
AU Member States	Legislative & Budgetary Accountability	Mandate Parliament to ensure domestication laws are enacted and budgetary allocations align with AU decisions.	Short-Term

AU Member States	Strengthening National Coordination for Judicial Compliance	Advocate for a national coordination framework that designates a high-level focal point agency such as a specialised unit within the Ministry of Justice or an Inter-Ministerial Committee, to manage inter-institutional protocols across the three branches of government, maintain customised compliance trackers for regional judgments and decisions, and ensure the decentralised execution of women's and girls' rights orders at the local and provincial levels.	Medium-Term

AU Organs	Technology & Transparency	Develop digital platforms for e-filing, virtual hearings, and public case-tracking dashboards. Ensure compatibility with Universal Human Rights Instruments (UHRI) reporting to enable holistic follow-up	Short-Term
AU Organs	Compliance Monitoring & AU-UN Task Forces	Establish an AU-level Compliance Monitoring Unit to support the Executive Council; and initiate joint AU-UN implementation task forces for landmark decisions	Medium-Term

AU Organs	Institutionalising Compliance	Adopt implementation hearings (Inter-American model feasibility study) and encourage litigants to request compliance hearings in initial submissions.	Medium-Term
AU Organs	Judicial Training	Recommend mandatory gender-sensitive training for judges and legal officers, including training specifically on judicial stereotyping.	Short-Term
NHRIs	Amicus Curiae and Focal Points	Mandate specialised focal points on women's/girls' rights; actively encourage submission of Amicus Curiae briefs.	Short-Term

CSOs/ Litigators	Sustainable Financing	Propose a model for a dedicated African Women's Rights Litigation Fund and collaborative litigation networks. Recommendations must include a feasibility and costing analysis for this fund.	Medium/ Long-Term
CSOs/ Litigators	Jurisprudence Building	Conduct targeted research on under-litigated areas to build novel legal arguments. Emphasise the need for comprehensive disaggregated data on litigation and implementation outcomes.	Short-Term

7.1.2. Recommendations for African Union Member States

Member States of the African Union are recommended to:

Ratify and implement human rights instruments: States that have not yet done so should immediately ratify the Maputo Protocol, the African Children's Charter and the Protocol establishing the Court. Member States are also urged to deposit the declaration under Article 34(6) of the Court Protocol, which is an essential legal gateway

allowing individuals and NGOs with observer status to bring cases directly to the Court.

Expand access to the Court: States that have previously withdrawn their Article 34(6) declarations are strongly encouraged to reinstate them. The current trend of withdrawal creates a significant "justice gap," leaving victims of human rights violations without an effective regional forum for redress.

Enhance Compliance with AU Organs: To bridge the domestic implementation gap and tackle state non-compliance, AU Member States, in collaboration with AU organs, NHRIs with affiliate status and NGOs holding observer status, should establish flexible national coordination frameworks integrated within domestic institutional structures. These frameworks must designate a high-level focal point agency to manage inter-institutional protocols, maintain customised compliance trackers for regional judgments, and ensure the decentralised execution of decisions related to the rights of women and girls at all levels of governance. Furthermore, Member States should support the establishment of an institutionalised compliance framework, including clear follow-up mechanisms and escalating administrative or political measures, to deter resistance and give full effect to regional decisions.

Harmonise legal systems to uphold the rights of women and girls: States should adopt a functional harmonisation framework that prioritises the substantive protective

capacity of a rule, that is, its ability to safeguard the individual over its formal source. By reconceptualising legal pluralism as an integrated ecosystem, states must invest in a people-centred justice system that validates indigenous institutions while simultaneously ameliorating the formal judiciary. This strategy ensures that all adjudicatory forums are assessed and strengthened based on their efficacy in providing accessible, restorative, and non-discriminatory justice at the community level.

Invest in justice systems: The AU member states should allocate resources to fund legal aid, translation services, and gender-sensitive institutional capacity building, directly addressing the financial and practical barriers faced by women.

Establish National Implementation Offices: Mandate that each state party to the African human rights instruments establishes a dedicated, publicly funded "Human Rights Implementation Office" within their Ministry of Justice. This office would be responsible for coordinating with all government departments to implement judgments from AU organs and would serve as a single point of contact for the organs and victims.

Mandating Legislative Accountability: Member States should clarify the distinct role of Parliament to ensure legislative accountability. Specifically, States should mandate that Parliament dedicate resources and oversight to 1) Ensuring budgetary allocations align with human

rights obligations; and 2) Prioritising the timely enactment of domestic laws that give effect to Maputo Protocol provisions and AU human rights judgments.

Establish a Sustainable Litigation Support Framework: In order to address the prohibitive financial and logistical resources required for sustained strategic litigation, the establishment of the African Women's Rights Litigation Fund is vital. This fund must be championed by the AU Commission and supported by Member States' contributions, International Partners and Philanthropic Organisations to secure stable and long-term financing.

Incentivise and institutionalise engagement with Traditional and Religious Leaders: States should develop national programmes to integrate traditional and religious authorities into the human rights architecture. Given their role as primary gatekeepers of justice especially in rural areas, these leaders should be tasked with:

> *Dismantling Socio-Cultural Barriers*: Actively discouraging the social ostracism, stigma, and fear of reprisal that currently deter women and girls from pursuing litigation.
>
> *Bridging Legal Pluralism*: Serving as a bridge between customary/ religious mediation and statutory law, ensuring that communal harmony is not achieved at the cost of a woman's individual right to legal redress.

Promoting Positive Cultural Values: Championing the right to live in a "positive cultural context" as defined by the Maputo Protocol, specifically challenging harmful practices such as discriminatory inheritance and child marriage.

7.1.3. Recommendations for the African Human Rights Organs

The ACHPR, AfCHPR, and ACERWC are recommended to:

Promote and facilitate Inter-Organ Collaboration: To address the risk of fragmentation and duplicative efforts, the ACHPR, AfCHPR, and ACERWC should develop and implement a formal mechanism for systematic information sharing and case referral. This eliminates procedural ambiguity and delays, particularly when a child litigant turns 18.

Increase outreach and build capacity for gender justice: The organs should develop and implement accessible resources, such as simplified guides and training programs, to demystify their processes for NGOs, CSOs and legal professionals. They should also create and disseminate specific guidelines for judges and prosecutors on how to handle gender-based violence cases, interpret evidentiary rules flexibly, and ensure due diligence. The Legal Aid Fund specifically targeting indigent female complainants and minor victims should be operationalised, so that

the AU Human Rights Bodies are provided with the comprehensive funding to assist victims to get justice.

Institutionalise Implementation Hearings: Adopt the procedural innovation of the Inter-American System to systematically use public and private implementation hearings to actively monitor state compliance with decisions. This practice institutionalises the mechanism and pressures the Court and Commission to monitor follow-up from the outset, as seen in the *Ogiek* case.

Operationalise Fast-Track Interim and Emergency Protection Procedures: The AU human rights organs should establish clear, fast-track procedural protocols for granting provisional and emergency protective measures in cases involving imminent harm to women and girls (such as gender-based violence, forced displacement, or imminent expulsion from educational institutions). These procedures must ensure that emergency requests are adjudicated rapidly without waiting for lengthy admissibility determinations.

Leverage Technology for Access and Transparency: Explicitly promote the development of digital platforms by AU organs for e-filing of Communications, virtual participation in hearings, and public case-tracking dashboards to mitigate geographical and financial barriers.

Appoint a Full-Time Compliance Officer: The African Court and the African Commission's recent hiring of a senior

legal officer for compliance and monitoring is a critical step. The Committee and other sub-regional bodies should follow this example to create dedicated roles for coordinating with AU policy organs, states, and victims on implementation. A permanent compliance officer at the AU level could serve as a powerful liaison for all human rights organs.

Systematise Case Summaries: Given the confidentiality requirement in line with the restrictions of Article 59 African Charter, the Commission should publish short, anonymised summaries of pending cases to encourage more Amicus Curiae briefs, thereby enriching the deliberative process.

Develop a Gender and Child-Sensitive Due Diligence Framework: The AU human rights organs should work jointly to issue a Guideline that clarifies a state's "due diligence" obligations in cases of violations of the rights of the child, particularly the girl child. This is intended to consolidate existing jurisprudence rather than create entirely new standards. The Committee has already articulated clear due diligence obligations in its jurisprudence, notably in cases involving Cameroon and Sudan. By integrating these established norms into a unified Guideline, the AU human rights organs can provide consistent standards for addressing the compounded discrimination girls face due to gender, age, and other intersecting vulnerabilities. To ensure that this framework translates into practical institutional change,

the guidelines should detail the state's duty to prevent, investigate, and punish acts of GBV, and mandate that all judicial procedures are trauma-informed and survivor-centred, thereby preventing secondary victimisation and judicial stereotyping when dealing with violations such as FGM or the expulsion of pregnant schoolgirls. This provides clear guidance on duties to prevent, investigate, prosecute, and provide comprehensive remedies for these specific violations.

Enhance Physical and Institutional Access: The organs must prioritise direct, physical, and digital pathways to justice:

- The Commission is urged to establish a physical helpdesk during its sessions, enabling potential litigants to receive direct guidance and submit Communications. There is need to strengthen the role of the Working Group on Communications to promote transparency, accessibility, and procedural reform.

- The Court should operationalise the proposal to establish a dedicated gender desk or rapporteur within its Registry, potentially through seconding a subject-matter expert via existing Memoranda of Understanding with CSOs. The Court is also encouraged to increase the number of women advocates on its roster of legal counsel.

- The Committee should implement concrete procedural measures to strengthen its communications procedure, including the institutionalisation of simplified, multilingual submission templates.

There remains a general need to expand access to advisory opinions and civil society participation to support accountability and progressive jurisprudence.

Institutional Capacity and Representation: Measures must be taken to address human capital constraints and internal biases. The Court is also encouraged to increase the number of women advocates on its roster of legal counsel to address the gendered professional gap in litigation. The Committee should make intentional efforts to boost its visibility and reach and ensure that litigation strategies focus on addressing girls' specific vulnerabilities and violations, maximising its protective mandate.

Institutionalise Guidance and Monitoring for Amicable Settlements: To address the lack of jurisprudential clarity, particularly concerning partial settlements, the ACHPR must leverage its existing framework under Rule 90 to institutionalise guidance and develop compliance benchmarks. This includes drawing inspiration from the Inter-American Commission by establishing a dedicated internal group (e.g., a "Friendly Settlement Group") tasked with analysing and improving the procedure. This group would provide the specialised focus needed to resolve

ambiguities, such as how to address partial settlements that only cover some violations.

While Rule 90(8) mandates that the Commission monitor the implementation of the agreement, clearer procedural thresholds are necessary. The Commission must develop specific benchmarks and timelines for compliance to improve enforcement, especially given the varied nature of reparations (monetary compensation versus legislative reform). Clear guidance is needed to determine the status of compliance when only partial agreement is achieved. The Commission must also actively sensitise parties (including states and applicants) to the benefits and requirements of the amicable settlement procedure to enhance its use and ensure that settlements are genuinely consented to by the victim and well-documented.

7.1.4. Recommendations for NHRIs with affiliate status

NHRIs are recommended to:

Establish specialised focal points: Mandate the establishment of specialised focal points or units on women's and girls' rights within each NHRI, particularly those with affiliate status with the Commission, to focus specifically on litigation and compliance issues. This ensures continuity and specialisation in handling complex, intersectional gender claims.

Submit Amicus Curiae Briefs: Actively encourage NHRIs to submit Amicus Curiae briefs and monitor state compliance. This leverages their unique quasi-state position to lend legitimacy and technical expertise to cases, thereby strengthening gender-sensitive jurisprudence.

Bridge the implementation gap: Act as liaison bodies between AU organs and national justice systems, ensuring that regional decisions are translated into national languages, disseminated locally, and integrated into community sensitisation programs.

Monitor and report on compliance: Systematically monitor and report on state compliance with AU decisions, including publishing compliance scorecards. This exerts political pressure, centralises data on the implementation deficit, and facilitates dialogue between courts, ministries, and communities on follow-up.

Institutional Strengthening: Collaborate with the African Commission's Special Rapporteur on Women's Rights and the ACERWC's Special Rapporteurs to ensure synergy.

7.1.5. **Recommendations for NGOS** with observer status **and Litigators**

NGOS with observer status and Litigators are encouraged to:

Adopt a Strategic Sequenced Litigation and Jurisdictional

Maximisation: Instead of viewing the African Union (AU) organs as separate silos, litigators should adopt a Strategic Sequenced Litigation approach that maximises the potential of each available jurisdiction:

- Build a Domestic Record: Strategically initiate and litigate a case at the national level with the explicit goal of building a robust evidentiary and legal record for future regional or international litigation. This helps strengthen the eventual claim by providing clear proof of exhaustion of local remedies or demonstrating that domestic remedies are ineffective or abnormally prolonged.

- Leverage Decisions Across Forums: Use a positive judgment or decision in one forum to create pressure and leverage in another. For instance, an ACERWC decision can be used to compel a state to comply with a binding African Court's judgment, or vice versa, thereby enhancing the implementation and enforcement of both.

- Coordinate Regional Action: This strategy involves ensuring synergy across the various regional and sub-regional bodies (e.g., ECOWAS Court, EACJ) to achieve the most favourable and enforceable outcome, rather than simply moving the case once (which often results in

forum shopping fatigue).

Develop a Victim-Centred Approach: Effective strategic litigation must be centred on the victim's needs, wishes, and safety. It is crucial to alleviate harm through medical and psychological support and to provide ongoing support throughout the often years-long process.

Strategically select the right forum: NGOs with observer status should conduct a thorough analysis of each organ's specific advantages before bringing a case. This involves considering the ACERWC for cases concerning the girl child, the ACHPR as a foundational venue for developing jurisprudence, and the AfCHPR for cases against states that allow direct access, where a binding judgment is possible.

Utilise and expand jurisdictional precedents: Litigators should actively leverage precedents like *Mtikila v. Tanzania* to challenge state-imposed procedural barriers, specifically by arguing that non-judicial "consultation" processes are not a valid substitute for the exhaustion of local judicial remedies.

Frame arguments with an intersectional lens: NGOs/CSOs and litigators should craft legal arguments that address the compounded forms of injustice faced by women. This means moving beyond single-ground claims to articulate how factors like gender, poverty, disability, and age intersect to create multi-layered rights violations, thereby leading to more comprehensive legal outcomes.

Build a broad advocacy and implementation alliance: Litigators must recognise that a legal victory is just the first step. They should integrate legal action with long-term advocacy and community mobilisation, forming alliances with media, healthcare professionals, and local groups. This ensures that court judgments are followed up and translated into tangible policy and cultural changes, thereby avoiding "paper victories." In addition, supporting partners and CSOs are encouraged to establish community-level dissemination strategies for regional decisions affecting women and girls. Working through faith-based actors, traditional authorities, and local leadership structures, these strategies should prioritise the translation of complex legal rulings into accessible formats and local languages.

Deepening partnerships with professional bodies: Litigators and CSOs must establish stronger relationships with national bar associations and female lawyers' associations to support the creation of specialised legal teams and bolster pro bono services dedicated to women's rights cases both at the national and regional levels. Specialised trainings are essential to improve the quality and volume of cases brought forward and avoid dismissals due to technical or procedural errors.

Create an African Regional Network to monitor implementation: Drawing inspiration from the European Implementation Network (EIN), the establishment of a dedicated African network would close information gaps,

publish resources, and coordinate advocacy to influence state compliance.

7.2. Conclusion

The analysis demonstrates that while the African human rights system has established a progressive and robust legal framework for the protection of women's and girls' rights, the effectiveness of litigation is heavily constrained by political and institutional realities. The single most significant obstacle is the persistent lack of political will from Member States, which manifests as abysmal compliance with legal obligations, restricted access to the Court, and the financial starvation of the human rights organs. This creates a challenging environment for litigators, where a legal victory may not lead to a tangible remedy for the victim.

The path forward requires a concerted and multi-faceted effort. Member States must honour their commitments by ratifying the relevant instruments, reinstating direct access to the Court, and enforcing judgments. The human rights organs must continue to build on their collaborative efforts and increase their outreach to demystify their processes. Finally, civil society organisations must continue to innovate with strategic litigation, leveraging key jurisdictional precedents and adopting an intersectional approach that reflects the complex realities of discrimination. The true battle for justice for women

in Africa is fought not only in the courtrooms of Arusha, Banjul and Maseru, but also in the political capitals of Member States. The future of litigating the human rights of women and girls depends on a collective effort to close the profound and persistent gap between progressive law and daily reality. The challenge is not of law, but political will to enforce it, and litigation is just one tool in a broader struggle requiring political advocacy and grassroots mobilisation.

ANNEX 1

CONSOLIDATED LIST OF CASES

African Court on Human and Peoples' Rights

1. *Association pour le Progrès et la Défense des Droits des Femmes Maliennes and the Institute for Human Rights and Development in Africa (IHRDA) v. Mali*

2. *Tike Mwambipile and Equality Now v. United Republic of Tanzania*

3. *African Commission on Human and Peoples' Rights v. Republic of Kenya*

4. *Aminata Soumare v. Republic of Mali*

African Commission on Human and Peoples' Rights

1. *Communication 341/2007 - Equality Now and Ethiopian Women Lawyers Association (EWLA) v. Federal Republic of Ethiopia*

2. *Communication 323/06: Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt*

3. *Communication 443/13 - Safia Ishaq Mohammed Issa v. Republic of Sudan*

4. *Communication 734/19: J v. Namibia*

5. *Communication 480/14 - Senate Masupha & Others v. the Kingdom of Lesotho*

6. *Communication 780/22: Chapter One Foundation and Young Women in Action v. The Republic of Zambia*

7. *Communication 564 /15: Community Law Centre and three Others v. The Federal Republic of Nigeria*

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

1. *Communication No: 006/Com/002/2015 The Institute for Human Rights and Development in Africa and Finders Group Initiative v. Cameroon*

2. *Communication No: 0012/Com/001/2019 Legal and Human Rights Centre and Centre for Reproductive Rights v. United Republic of Tanzania*

3. *Communication No: 0013/Com/001/2020 L'Association pour le Progrès et la Défense des Droits des Femmes (APDF) et l'Institut pour les Droits de l'Homme et le Développement en Afrique (IHRDA) v. Mali*

4. *Communication No: 0016/Com/004/2020 African Centre for Justice and Peace Studies (ACJPS) v. Republic of Sudan*

Pending Communications, all have been declared admissible and in the next phase of the merits currently:

5. *Communication No: 0019/Com/001/2022 Institute for Human Rights and Development in Africa and Mr. Solomon Joojo Cobbinah v. Republic of Ghana*

6. *Communication No: 0021/Com/003/2022 People Serving Girls at Risk and Equality Now v. Republic of Malawi*

7. *Communication No: 0024/Com/001/2023 Institute for Human Rights and Development in Africa v. Republic of Botswana*

ANNEX 2

MEMBERS OF THE TECHNICAL REFERENCE GROUP (TRG)

No.	Name	Designation	Organisation
	Donald Deya	Chief Executive Officer	Pan African Lawyers Union (PALU)
	Sophie Ebby	Coordinator	African Court Coalition
	Matilda Lasseko-Phooko	Women's Rights Unit Manager	Centre for Human Rights – University of Pretoria

	Deborah Nyokabi	Program Officer	Equality Now/Solidarity for African Women's Rights (SOAWR)
	Catherine De Preux De Baets	Regional Gender Adviser - Gender & Youth Team Lead	UN Office of the High Commissioner for Human Rights, Regional Office for East Africa
	Ikechukwu Uzoma	Africa Staff Attorney, International Advocacy & Litigation	Robert F. Kennedy Human Rights
	Tondi Mulaudzi	Legal Programme Manager, Waging Justice for Women	Clooney Foundation for Justice
	Isabel Mwangi	Policy and Advocacy Manager	African Renaissance
	Wanjiru Kamanda	Senior Advocacy Advisor for Africa	Center for Reproductive Rights
	Isabel Magaya	Programme Manager, Children and the Law	African Child Policy Forum

	Japhet Biegon	Africa Regional Advocacy Coordinator	Amnesty International
	Dr. Tarisai Mutangi	Head of Post Graduate Programmes	Faculty of Law, University of Zimbabwe
	Chris Muthuri	Deputy Director of the Nairobi Office	RWI
	Tike Mwambipile	Executive Director	Tanzania Women Lawyers Association
	Michael Nyarko	Deputy Executive Director	IHRDA
	Sophia Gallina	Head of Project - AWARE	GIZ
	Melusi Simelane	Civic Rights Cluster Programme Manager	Southern Africa Litigation Centre
	Moussa Bienvenu Haba	Avocats Sans Frontiers	Director of Legal Affairs
	Foluso Adegalu	Programme Officer: Regional Mechanisms & SDGs	NANHRI

	Leticia Mwavishi	Program Officer- Policy and Advocacy Programme	FIDA

ANNEX 3

VALIDATION WORKSHOP MEETING ATTENDANCE LIST (23-24 SEPTEMBER 2025), ACCRA, GHANA

No.	Name	Organisation
	Hon. Janet Ramatoulie Sallah-Njie	ACHPR
	Hon. Aver Gavar	ACERWC
	Ms. Hussienatou Manjang	ACERWC
	Mr. Yassine Driane	ACHPR
	Madam Irene D. Mbengue	ACHPR
	Mr. Pedro Rosa Co	ACHPR
	Mr. Reginald Mere	ACHPR

	Ms. Mosupatsila Nare	ACHPR
	Mr. Maulo Nfinda Dombaxi	AfCHPR
	Ms. Beza Girmai	GIZ
	Ms. Hiwot Lishan	GIZ
	Mr. Erick Mundia	Ipas Africa Alliance
	Dr. Satang Nabaneh	Consultant
	Mr. Chris Muthuri	RWI
	Ms. Mumbi Maina-Murimi	RWI
	Ms. Matilda Lasseko-Phooko	Centre for Human Rights – University of Pretoria
	Ms. Deborah Nyokabi	Equality Now/Solidarity for African Women's Rights (SOAWR)
	Ms. Esther Muigai	Pan African Lawyers Union (PALU)
	Ms. Husna Zacharia	Pan African Lawyers Union (PALU)
	Ms. Sophie Ebby	African Court Coalition
	Ms. Catherine De Preux De Baets	UN Office of the High Commissioner for Human Rights, Regional Office for East Africa
	Mr. Ikechukwu Uzoma	Robert F. Kennedy Human Rights
	Ms. Isabella Wanjira	African Renaissance
	Ms. Wanjiru Kamanda	Center for Reproductive Rights
	Ms. Isabel Magaya	African Child Policy Forum
	Dr. Japhet Biegon	Amnesty International

	Dr. Tarisai Mutangi	Faculty of Law, University of Zimbabwe
	Ms. Tike Mwambipile	Tanzania Women Lawyers Association
	Mr. Michael Nyarko	IHRDA
	Mr. Foluso Adegalu	NANHRI
	Ms. Leticia Mwavishi	FIDA
	Ms. Faizat Badmus-Busari	Strategic Initiative for Women in the Horn of Africa (SIHA) Network
	Ms. Judy Gitau	Equality Now Africa



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- African Charter on the Rights and Welfare of the Child (African Children's Charter).

- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol).

- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (Older Persons Protocol).

- AU Convention on Ending Violence Against Women and Girls (CEVAWG).

- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

- International Covenant on Civil and Political Rights (ICCPR).

- UN Convention on the Rights of Persons with Disabilities (UN CRPD).

- European Convention on Human Rights (ECHR).

- Inter-American Convention on Protecting the Human Rights of Older Persons.

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- *Chapter One Foundation and Young Women in Action v. The Republic of Zambia* (Communication 780/22).
- *Communication 323/06: Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt*.
- *Communication 341/2007 - Equality Now and Ethiopian Women Lawyers Association (EWLA) v. Federal Republic of Ethiopia* (decided November 2015).
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- *Communication No: 0013/Com/001/2020 L'Association pour le Progrès et la Défense des Droits des Femmes (APDF) et l'Institut pour les Droits de l'Homme et le Développement en Afrique (IHRDA) v. Mali*.

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ENDNOTES

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