

**UNIVERSITY OF PRETORIA
FACULTY OF LAW**



**THE IMPACT OF WOMEN'S REPRESENTATION ON DECISIONS OF
THE AFRICAN UNION'S HUMAN RIGHTS BODIES**

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DEDICATION

In memory of my mother, Gladys Atimango and sister, Charlene Velma Anirwoth.

ACKNOWLEDGMENT

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LIST OF ABBREVIATIONS

ACDEG	African Charter on Democracy, Elections and Governance
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Commission on Human and Peoples' Rights
ACJPS	African Centre of Justice and Peace Studies
ACRWC	African Charter on the Rights and Welfare of the Child
ACtHPR	African Court on Human and Peoples' Rights
African Charter	African Charter on Human and Peoples' Rights
African Court Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights
APDF	Association pour le progrès et la défense des droits des femmes maliennes
AU	African Union
AUHRB	African Union's Human Rights Bodies
Beijing Declaration	United Nations Beijing Declaration and Platform for Action
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHR	Commission on Human Rights
ECOSOC	Economic and Social Council
EIPR	Egyptian Initiative for Personal Rights
EWLA	Ethiopian Women Lawyers Association
FJP	Feminist Judgment Project
IAWJ	International Association of Women Judges
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia

IHRDA	The Institute for Human Rights and Development in Africa
LRA	Lord Resistance Army
Maputo Protocol	Protocol to the African Charter in Human and Peoples' Rights on the Rights of Women in Africa
NGO	Non-Governmental Organisation
OAU	Organisation of African Unity
PALU	The Pan African Lawyers Union
PLACE	The People's Legal Aid Centre
PSC	Peace and Security Council
Rome Statute	Rome Statute on the International Criminal Court
Rules of ACHPR	Rules of Procedure of the African Commission on Human and Peoples' Rights
Rules of ACtHPR	Rules of Court, African Court on Human and Peoples' Rights
UDHR	Universal Declaration on Human Rights
UN	United Nations

Chapter 1 Introduction

1.1 Background

Law, in its development and application, is historically patriarchal.¹ The effects of the historical exclusion of women from positions of leadership have led to a phenomenon in which women are still underrepresented in decision-making bodies.² New approaches and critiques of law are moving towards exposing ways in which the law erases the experiences of women. These critiques are preoccupied with opposing the notion that law, is neutral and immutable.³ The African woman faces a peculiar form of oppression different from that faced by other historically marginalised groups such as white women and African men.⁴ Hook articulates the experiences of black women thus:⁵

As a group, black women are in an unusual position in this society, for not only are we collectively at the bottom of the occupational ladder, but our overall, social status is lower than that of any other group.

Through colonialism, religion, and culture, institutions were established that perpetuated the subjugation of the African woman.⁶ The exclusion of women led to the pursuance of a politics of inclusion, equality, and development.⁷ Women's liberation and equality remain a site of negotiation and struggle to date.⁸ While some gains have been made, gender equality has remained elusive, despite policy improvements, and advances towards gender parity.⁹ Women, who make up almost 50% of the population¹⁰ are still grossly underrepresented in global institutions.¹¹

¹ K Appiagyei-Atua 'Ethical dimensions of third world approaches to international law (TWAAIL): A critical review (2015) 8 *African Journal of Legal Studies* 209.

² MW Kamunyu 'The gender responsiveness of the African Commission on Human and Peoples' Rights' A thesis submitted in fulfilment of the requirements for the degree of Doctor of Laws (LLD), University of Pretoria (2018) 13.

³ E Durojaye & O Oluduro 'The African Commission on Human and People's Rights and the woman question' (2016) 24 *Feminist Legal Studies* 315.

⁴ S Tamale *Decolonization and afro-feminism* (2020).

⁵ B Hooks *Feminist theory from margin to center* (2015).

⁶ Tamale (n 4).

⁷ K Crenshaw 'Mapping the margins: Intersectionality, identity politics, and violence against women of color' (1991) 43 *Standard Law Review* 1241.

⁸ M Eltahawy *Headscarves and hymens: Why the Middle East needs a sexual revolution* (2016).

⁹ Department of Economic and Social Affairs 'Achieving gender equality, women's empowerment and strengthening development cooperation' (2010). [https://www.un.org/en/ecosoc/docs/pdfs/10-50143\(e\)\(desa\)dialogues_ecosoc_achieving_gender_equality_women_empowerment.pdf](https://www.un.org/en/ecosoc/docs/pdfs/10-50143(e)(desa)dialogues_ecosoc_achieving_gender_equality_women_empowerment.pdf) (accessed 25 August 2021).

¹⁰ As on 9 August 2021, according to the World Bank, female population in the world was 49.5%. <https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS> (accessed 9 August 2021).

¹¹ E Edroma 'Promoting gender equality in the judiciary' 5 July 2019 United Nations Development Programme. <https://www.undp.org/blogs/promoting-gender-equality-judiciary> (accessed 9 August 2021).

The African Union (AU) and its member states recognise the historical discrimination faced by women and has proactively taken steps towards promoting gender parity in the African human rights system.¹² The African human rights system is made up of treaties, principles, and independent organs established under the auspices of the AU for the promotion and protection of human rights on the continent.¹³ The three human rights organs of AU are the African Court on Human and Peoples' Rights (ACtHPR),¹⁴ the African Commission on Human and Peoples' Rights (ACHPR),¹⁵ and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC).¹⁶

The African human rights system has been applauded for making great strides towards gender parity in comparison to its European counterparts. The ACtHPR is celebrated for achieving gender parity on its bench in only 12 years after its establishment unlike for instance the European Court for Human Rights which took over 40 years.¹⁷ Currently, all the three organs are at gender parity, that is, of the 11 members of the ACtHPR, six are women,¹⁸ similarly, of the 11 commissioners of the ACHPR, also six are women¹⁹ and of the 11 experts of the ACERWC, six are women.²⁰

Applying a feminist lens to regional decisions is timely and relevant given this background. The dispensation of justice is sometimes limited by rigidity of the legal system and judges (feminists) have had to seek alternative avenues in which to express their views.²¹ There is evidence of feminist judges responding creatively to restrictive parameters of the law by reaching beyond

¹² AU Strategy for gender equality & women's empowerment 2018-2028. https://au.int/sites/default/files/documents/36195-doc-52569_au_strategy_eng_high.pdf (accessed 24 October 2021).

¹³ Global Network for the right to food and nutrition briefs, 'African human rights system' https://www.righttofoodandnutrition.org/files/achpr_formatted_en.pdf (accessed 23 August 2021).

¹⁴ The ACtHPR was established through the Protocol on the Establishment of an African Court on Human and Peoples' Rights and adopted in Ouagadougou, Burkina Faso, on 9 June 1998 and entered into force on 25 January 2004. Guide to the African Human Rights System- Celebrating 40 years since the adoption of the African Charter on Human and Peoples' Rights 1981- 2021 (2021) *Pretoria University Law Press*, 57.

¹⁵ The ACHPR was inaugurated on 2 November 1987 in Addis Ababa, Ethiopia. Guide to the African Human Rights System- See, Celebrating 40 years since the adoption of the African Charter on Human and Peoples' Rights 1981- 2021 (2021) *Pretoria University Law Press* 15.

¹⁶ ACERWC was constituted on 11 July 2001. Guide to the African Human Rights System- See, Celebrating 40 years since the adoption of the African Charter on Human and Peoples' Rights 1981- 2021 (2021) *Pretoria University Law Press*, 81.

¹⁷ Institute for African Women in Law 'Beyond the numbers: Gender parity on the African court- A lesson for African judiciaries'. <https://www.africanwomeninlaw.com/post/beyond-the-numbers-gender-parity-on-the-african-court-a-lesson-for-african-judiciaries> (accessed 26 October 2021).

¹⁸ ACtHPR 'Current judges'. <https://www.african-court.org/wpa/cf/current-judges/> (accessed 26 October 2021).

¹⁹ ACHPR 'Current commissioners'. <https://www.achpr.org/currentcommissioners> (accessed 26 October 2021).

²⁰ ACERWC 'Experts'. <https://reporting.acerwc.africa/CommitteeExperts> (accessed 26 October 2021).

²¹ L Hodson and T Lavers (eds.) *Feminist Judgments in International Law* (2019).

these confines to address crimes and gross human rights violations against women.²² This research attempts to determine whether increased representation of women has a direct impact on achieving gender justice in cases of gross human rights violations against women.

1.2 Research problem

Given the historical exclusion of women, they are underrepresented even in the institutions set up to protect and promote human rights.²³ The problem is that the African woman suffers the most in this exclusion.²⁴ The form of exclusion is two-tiered and relates to the right to access to justice.²⁵ Firstly, socio-economic limitations have worked together to keep women from accessing justice.²⁶ Secondly, the public-private dichotomy has ensured that women are relegated to the domestic sphere.²⁷

The research proposes to study the impact of women's representation within the African Union's Human Rights Bodies (AUHRB) in cases of gross human rights violations against women.²⁸ It is important to draw a relationship, if any, between having gender representation on decision-making bodies and the nature of decisions in cases involving gross human rights violations against women. This study also attempts to highlight the impact of gender parity in the composition of African human rights bodies and whether it encourages gender responsiveness in practice and reasoning.

1.3 Research questions

The main research question is:

Whether the inclusion of more women within AUHRB facilitates the adoption of more gender-sensitive decisions.

The sub-questions are as follows:

²² As above.

²³ UN 'Women's rights are human rights' (2014) HR/PUB/14/2. <https://www.ohchr.org/documents/events/whrd/womenrightsarehr.pdf> (accessed 25 August 2021).

²⁴ JJ Dawuni 'African women on international courts: Symbolic or substantive gains?' (2018) 47 *University of Baltimore Law Review* 199.

²⁵ General Recommendation No. 33 on women's access to justice 2015 C/GC/33.

²⁶ UN '2009 World survey on the role of women in development'. <https://www.unwomen.org/-/media/headquarters/media/publications/un/en/worldsurvey2009.pdf?la=en&vs=959> (accessed 27 September 2021).

²⁷ R Yamada 'Feminism in radical democracy and Japanese political theory: Mouffe, Pateman, Young and "Essentialism"' (2021) 1 *Comparative Political Theory* 8.

Public-private has been defined as 'a gendered division between the sphere of the family from the larger political and economic order'. Tamale (n 4) 287.

²⁸ Scholars like JJ Dawuni, A Kuenyehia, U Schultz & G Shaw, among others have debated whether gender influences judgments.

See, JJ Dawuni & H.E A Kuenyehia (eds) *International courts and the African woman judge: unveiled narratives* (2018).

- i. How do the legal, institutional, and policy frameworks ensure women's representation on AUHRB in the African human rights system?
- ii. Whether increased participation of women at the level of AUHRB facilitates asking the African woman question in cases involving gross violations of women's rights.
- iii. How can the practice in AUHRB be reimagined to promote women's rights as well as maintain gender parity on the AUHRB?

1.4 Methodology

The dissertation adopts a qualitative research methodology with a desk review of the existing literature surrounding feminist judging and an analysis of selected cases within the African human rights system. It employs a feminist socio-legal methodological approach in making an in-depth analysis of the impacts of feminist judging, and the legal framework that enables this. The dissertation approaches the problem from a social perspective to understand the context within which the decisions are adopted.

Primary sources include selected cases at the AUHRB. The study relies also on secondary sources including books, journal articles, dissertations, policies of the AU, documents of the AUHRB, and commentaries.

1.5 Theoretical framework

1.5.1 Feminist democratic theory

The theoretical basis for the research is feminist democratic theory. Feminist critiques materialised to question rules that entrench power structures against women in democratic theory.²⁹ The study relies on the definition of feminism as; 'not a 'natural' excretion of [woman's] experience but a controversial political interpretation and struggle, by no means universal to women'.³⁰ This definition is idyllic because it avoids the complication that results from viewing feminism as universal to all women, rather than a tool of critical analysis.

Democratic theory theorises the process of democracy premised on principles of legitimacy, accountability, representation, and legitimate coercion.³¹ Philosophers like Hobbes, Locke, and Rousseau contributed to the development of democratic theory through the concept of the social contract. According to Hobbes, for man to leave the state of nature and join civil

²⁹ KT Bartlett 'Feminist legal methods' (1990) 103 *Harvard Law Review* 829.

³⁰ Bartlett (n 29) 833.

³¹ R Dean et al 'What is democratic theory?' (2019) 6 *Democracy Theory: An interdisciplinary Journal* 5.

society, he must agree, with fellow man, to bestow power upon a lawmaker. The agreement is between each man and the sovereign.³² This propels men to obey the sovereign's law out of fear.³³

For Locke, there is no such thing as government authority, rather, only duty bestowed upon man by a supreme being that subsequently results into the rights to life, liberty, and property.³⁴ These rights, he states, are only accrued to man when he respects God's law/natural law. According to Locke, failure to obey the laws would amount to sin.³⁵ These theories are premised on the belief that human beings are free and equal with the capacity to agree with a government to be bound by its law for the sake of the survival of civil society.

For civil society to organise, the principles of citizenship and democratic participation which link to a distinct identity must be in existence.³⁶ Citizenship has been defined as a 'mediating practice that links the individual to the state in addition to establishing a common identity among individuals with common interests'.³⁷ According to Pateman, these concepts, that is, citizenship and the social contract, are rooted in patriarchy. To her:³⁸

the fraternal pact among men, and political and civil society is constructed by confining women, who are regarded as the cause of the political disorder, to the private, domestic sphere.

As a result of the patriarchal understanding of the social contract, women lacked formal citizenship and could not engage in participatory democracy like voting or pass along their citizenship to their children³⁹ since the free individual envisioned by the social contract is male.⁴⁰ Pateman further argues that underlying the social contract is the 'sexual' contract through which men possess women.⁴¹ Feminist critiques of the democratic theory grew prominent in the 1980s with scholars like Pateman challenging the patriarchal principles upon which the theory rested.⁴² She contends that there is the need for democratic theory and practice to undergo radical transformation for women to enjoy citizenship as equal beings who are sexually different from men.⁴³

³² LH Kuhn (2009) *Social control and human nature: What is it we are controlling?* 7.

³³ Kuhn (n 32) 7.

³⁴ Kuhn (n 32).

³⁵ Kuhn (n 32) 8.

³⁶ Yamada (n 27).

³⁷ B Doherty & M de Geus (eds.) (1996) *Democracy and green political thought: Sustainability, rights and citizenship*.

³⁸ Yamada (n 27).

³⁹ Yamada (n 27).

See also, *Attorney General v Unity Dow*, Appeal Court 1994(6) BCLR 1.

⁴⁰ C Pateman (1988) *The sexual contract*.

⁴¹ Pateman (n 35).

⁴² Yamada (n 27).

⁴³ Yamada (n 27).

Feminist democratic theory is relevant to this dissertation since one of the major arguments in the promotion of gender parity in AUHRB has been the promotion of democratic legitimacy. Applying a feminist lens to these traditionally patriarchal theories paves way for firstly, critiquing power structures that are inherently disadvantageous to women. Secondly, reimagining these concepts promotes the meaningful inclusion of women in all spheres of democratic life.⁴⁴ The inclusion of women in decision-making institutions rests upon viewing women as equal and free individuals as their male counterparts.⁴⁵

1.5.2 The African woman question

The research involves asking the African woman question. The woman question identifies ‘the gender implications of rules and practices which might otherwise appear to be neutral or objective’.⁴⁶ It acknowledges the gender implications of rules, policies and institutions that are seemingly gender neutral.⁴⁷

Questions that constitute the woman question include whether ‘women have been left out of consideration. If so, in what way; how might that omission be corrected? What difference would it make to do so?’ The dissertation employs the African woman question as a theoretical framework in the analysis of the decisions adopted by AUHRB to determine the impact of the inclusion of women in the African context. The African woman question obliges AUHRB to place women at the centre of any decision bearing in mind the disadvantageous position of women in African society.⁴⁸

1.5.3 Intersectional approach

Intersectionality refers to the ‘simultaneous ways that oppressed people experience multiple oppressions based on their multiple identities’.⁴⁹ It has been used as a theoretical tool to expose how race, class, age, and gender shape the experiences of African women.⁵⁰ The application of an intersectional approach to gender discrimination requires the recognition of the impact of multiple and intersecting forms of discrimination, both structural and historical.⁵¹ The dissertation takes an

⁴⁴ ‘Gender and judging in the Middle East and Africa: Emerging scholarship and debates’ *Oñati International Institute for the Sociological of Law* <https://www.iisi.net/eu/workshops/gender-and-judging-middle-east-and-africa-emerging-scholarship-and-debates> (accessed 26 October 2021).

⁴⁵ Yamada (n 27).

⁴⁶ Bartlett (n 17) 837.

⁴⁷ R Hunter & E Rackley (eds.) (2010) *Feminist judgments: From theory to practice* 35.

⁴⁸ Durojaye & Oluduro (n 3).

⁴⁹ Tamale (n 4) 65.

⁵⁰ Crenshaw (n 7).

⁵¹ Report of the Human Rights Advisory Committee ‘Current levels of representation of women in human rights organs and mechanisms: Ensuring gender balance’ at the 47th session of the Human Rights Council 21 June - 9 July 2021 (A/HRC/47/51).

intersectional analysis to explore the manner of subordination of African women as well as to provide an analytical framework for answering the research questions.⁵²

Intersectionality raises debates within the scope of contemporary identity politics and the politics of inclusion and exclusion.⁵³ Identity politics is where marginalised groups with similar interests mobilise to agitate for recognition of equal freedom, civic equality, and opportunity within mainstream political organisation.⁵⁴ In applying an intersectional approach to the analysis of cases before AUHRB, it is important to keep in mind that identity politics within democratic governance has been criticised, by egalitarian theorists, among others, as being preoccupied with seeking benefits for marginalised groups regardless of the merits of the case and at times at the cost of other groups.⁵⁵ The dissertation seeks to expound the concept of identity of women within the African context and the impact of their inclusion on the jurisprudence of women's rights.

1.6 Scope and limitation of the study

1.6.1 Scope of the study

The scope of this research is limited to determining whether the representation of African women on AUHRB facilitates the adoption of decisions from a gender perspective. The primary focus of analysis in the dissertation is several selected cases before AUHRB decided on merit as well as Advisory Opinions from the ACtHPR. The dissertation interrogates whether women can influence feminist jurisprudence in cases involving gross violations of women's rights.

1.6.2 Limitation of the study

The study is limited by inadequate existing research in legal feminist theory and jurisprudence in regional human rights bodies in Africa. The dissertation will be limited to only three AUHRB that is, the ACtHPR, the ACHPR, and the ACERWC. Decisions of domestic and sub-regional courts and tribunals are beyond the scope of this study.

The study is limited to selected cases from the AUHRB. The cases are chosen based on those most likely to induce a gender difference in the opinions of members of the AUHRB. They cover a range of gender-specific issues like domestic violence, cases of a sexual nature as well those tackling gender-based discrimination. The composition of the bench that heard the cases is also a vital part of the selection.

⁵² Tamale (n 4) 65.

⁵³ Crenshaw (n 7) 1245.

⁵⁴ A Gutmann (2009) *Identity in democracy*.

⁵⁵ Gutmann (n 54).

1.7 Literature review

The representation of the African woman in various institutions in Africa has attracted a level of interest among scholars and policymakers and much work has been done towards advocating for women-friendly legislation and policy.⁵⁶ However, there is limited research on the representation of women and their contribution to the judiciary at an international level.⁵⁷ The judiciary is responsible for interpreting these laws and vindication of rights therein. Judicial decisions have legal, social, and economic ramifications for women on the African continent. Thus, it is important to interrogate the impact of women's representation in AUHRB and whether their inclusion facilitates decision-making through a feminist perspective with the view to achieving gender justice.⁵⁸

To determine whether decisions at the AUHRB are influenced by gender, the dissertation relies on four types of representation as articulated by Pitkin that is:⁵⁹

substantive representation (where 'women act for women'); formalistic representation ('bestowing authority on women'); descriptive representation ('women resemble those they represent'); symbolic representation ('figurehead representation with no authority').

The dissertation focuses on symbolic and substantive representation. Pitkin reasons that a judge who rules in favour of a party cannot be said to be representative of that party. That, for a judge it is possible to ascribe normative consequences without invoking representation.⁶⁰ According to her, in as far as a (national) judge is expected to act within the confines of abstract justice, he/she cannot be said to be a representative of a group. Nonetheless, she argues that on international tribunals, a judge may have more room to 'represent justice'. She articulates that there is no reason for a judge, even one whose discretion is narrowly defined to not represent justice. The dissertation is concerned with representation as the guiding principle for decision-making.⁶¹

To conceptualise the social positioning of women in society, Tamale explores the relationship between male dominance and female subordination and elucidates how these two

⁵⁶ Dawuni (n 24).

⁵⁷ Dawuni (n 24).

⁵⁸ JJ Dawuni 'Beyond the numbers: Gender parity on the African Court on Human and Peoples' Rights- A lesson for African Regional Courts' 28 August 2018 *INTLAWGRRLS*.

⁵⁹ HF Pitkin (1967) *The concept of representation* cited in KL King et al 'Deborah's voice: The role of women in sexual assault cases at the International Criminal Tribunal for the Former Yugoslavia (2016) 98 *Social Science Quarterly* 548.

⁶⁰ Pitkin (n 59) 52

⁶¹ Pitkin (n 59) 118.

systems are sustained.⁶² Her argument is that there is a link between systems of law, culture, and religion as tools used in patriarchal-capitalist societies. For instance, institutionalisation of women's exploitation and the gendering of private/public realms ensures that women are kept in subordinate positions. Where a woman is employed in the public sphere, the capitalist economic system justifies lower wages as compared to their male counterparts. This analysis is significant in facilitating an understanding of the context within which the African woman judge operates.

In 1990, Wilson posed the question 'Will women judges really make a difference?', almost a decade after her appointment to the Supreme Court of Canada.⁶³ As a premise, she subscribes to the proposition that judicial impartiality is unattainable given the socialisation of judges. She argues in favour of evidence of female and male judges coming to different decisions especially in specific areas of law and she attributes it to underlying sexism and socialisation from the societies to which these judges belong.⁶⁴ Wilson contends that women judges view the world from a different perspective which introduces a major contribution to decisions. The ultimate contribution of women judges, according to Wilson is keeping public trust in the judiciary.⁶⁵ The public is bound to trust the judiciary's fairness and impartiality where it represents the diversity in the society.⁶⁶

Wilson essentialises the experiences of women judges and uses gender attributes assigned to women to rationalise the different perspectives they bring to judging. She asserts that men, by the nature of their socialisation and upbringing, are more likely to view themselves as autonomous of others and this affects the nature of judgments leading to what she terms as 'masculine' judging.⁶⁷ For women, she argues that their femininity is rooted in attachment and the formation of relationships which makes them naturally caring and nurturing. Various scholars have rejected the gender essentialism arguments for increasing the participation of women in the judiciary⁶⁸

Elliot responds to the essentialisation of the experiences of female judges by propounding that the differences made by women in the judiciary need not be based on stereotypical notions

⁶² S Tamale 'Exploring the contours of African sexualities: Religion, law and power' (2014) 14 *African Human Rights Law Journal* 150.

⁶³ B Wilson 'Will women judges really make a difference?' (1990) 28 *Osgoode Hall Law Journal* 507.

⁶⁴ Wilson (n 63) 512.

⁶⁵ Wilson (n 63).

⁶⁶ Wilson (n 63).

⁶⁷ Wilson (n 63).

⁶⁸ LM Dzubinski & AB Diehl 'The problem of gender essentialism and its implications for women in leadership' (2018) 12 *Journal of Leadership Studies* 56.

that women are innately differently wired from men in the way of decision-making.⁶⁹ Instead, she argues that it simply is because men and women experience life differently and this informs their judging. Additionally, she states that the fact that laws are made and applied by men ultimately places women at a disadvantage.⁷⁰

Feenan explores the under-representation of women in judicial office and the arguments put forward by the proponents of increased female representation on the bench.⁷¹ He contextualises the exclusion of women through the narrative around the masculinisation of the judge throughout European history. The gendered criteria of appointment, judicial paraphernalia meant to deny femininity, the exclusionary social networks that perpetuate ‘big boys’ clubs’ are some of the factors that have kept the bench unwelcoming and sometimes hostile to women judges.⁷² A study by the International Commission of Jurists supports the assertion that the low representation of women in the judiciary is often due to gender stereotyping.⁷³ Feenan nevertheless argues that the diversity argument is not sufficient reason for the increased representation of women in the judiciary.⁷⁴ That diversity for the sake of it is unimpactful unless this diversity of views is reflected in judgments rendered.

Ruiz claims that for the judiciary to gain public trust, it must rid itself of exclusivity and elitism that make it unaware of the needs of the vulnerable in society.⁷⁵ She advocates that in addition to enhancing court legitimacy and promoting rule of law, female judges on the bench ensure delivery of quality judgments informed by the diversity of their lived experiences. Her conclusion is that judges should bring a gender perspective to adjudication.⁷⁶ She seems to agree with Wilson in stating that judges by the nature of their socialisation have biases. For this reason, she believes that the diversification of the life experiences of judges increases the probability of checking these biases.⁷⁷

⁶⁹ H Elliot ‘The difference women judges make: Stare decisis, norms of collegiality, and feminine jurisprudence- A research proposal’ (2001) 16 *Wisconsin Women’s Law Journal* 41.

⁷⁰ Elliot (n 69).

⁷¹ D Feenan ‘Women Judges: Gendering judging, justifying diversity’ (2008) 35 *Journal of Law and Society* 490.

⁷² Feenan (n 71).

⁷³ International Commission of Jurists Annual Report 2013 3.

⁷⁴ Feenan (n 71).

⁷⁵ V Ruiz ‘The role of women judges and a gender perspective in ensuring judicial independence and integrity’ 31 January 2019 UNODC: The Doha Declaration: Promoting a culture of lawfulness. <https://www.unodc.org/dohadecclaration/en/news/2019/01/the-role-of-women-judges-and-a-gender-perspective-in-ensuring-judicial-independence-and-integrity.html> (accessed 28 July 2021).

⁷⁶ Ruiz (n 75).

⁷⁷ Ruiz (n 75).

Dawuni acknowledges the need to go beyond advocating for women judges based on essentialist sentiments.⁷⁸ She focuses on the contributions of African women judges on the ACtHPR and the International Criminal Court (ICC). According to her, because African women face intersecting discrimination based on gender, sex, class, and race both regionally and globally, documentation and study of their contributions is relevant to critical legal scholarship.⁷⁹ Dawuni argues that despite the various institutional and legal frameworks developed to increase women's representation, the numbers of African women judges remain low partly due to the persistent masculinisation of the selection processes which exclude women.⁸⁰ The rise of African women to the bench contributes to judicial diversity and is vital in improving the quality of judgments as well as legitimatising the judiciary.⁸¹

Even so, the article is limited in scope as it firstly does not offer recommendations on how the judicial practice in the ACtHPR, and the ICC may be reimagined to promote gender justice in the future. Secondly, the paper only analyses feminist judging on the ACtHPR and the ICC, leaving work to be done in examining other AUHRB such as, ACHPR and the ACERWC.

Some scholars like Rackley advocate for transformative diversity rather than inclusive diversity.⁸² She reasons that:⁸³

while inclusive diversity is concerned simply with bringing a wider variety of backgrounds or attributes to the bench, transformative diversity seeks to ensure that those diverse characteristics and experiences are actually tapped into, that they lead to diversity in judging.

Durojaye and Oluduro address the African woman question within the context of the ACHPR.⁸⁴ They propound that asking the woman question entails, 'examining how the law fails to reflect the experiences and values that seem more typical of women than of men'.⁸⁵ They further state that the woman question enables judges to consider peculiar life experiences of women in, for instance, divorce or rape cases before arriving at decisions.⁸⁶ Furthermore, the African woman question requires judges to wear a gender lens that prevents them from treating the law as neutral but rather to question how laws work to entrench injustices against women.⁸⁷ The article also recognises the

⁷⁸ Dawuni (n 24).

⁷⁹ Dawuni (n 24).

⁸⁰ Dawuni (n 24) 209.

⁸¹ Dawuni (n 24) 226.

⁸² E Rackley 'Rethinking judicial diversity' in U Schultz and G Shaw (eds) (2013) *Gender judging* 501.

⁸³ Rackley (n 82) 512.

⁸⁴ Durojaye & Oluduro (n 3).

⁸⁵ Durojaye & Oluduro (n 3) 318.

⁸⁶ Durojaye & Oluduro (n 3) 323.

⁸⁷ As above.

non-homogeneity of the experiences of women in the world. AUHRB should avoid falling in the essentialism trap in deliberating cases as part of asking the African woman question.⁸⁸

Oyewumi debunks the notion that African culture disadvantages women. She exemplifies African women in history that held positions of power in certain cultures.⁸⁹ However, Mutua has warned against sanitising African culture to promote Afrocentrism.⁹⁰ It is important to acknowledge harmful practices, such as widow inheritance and female genital mutilation, that culture has meted out on African women.⁹¹

The literature around gender and judging is largely limited to essentialist arguments for the increment of women in decision-making bodies. This creates a gap regarding the study of quantifiable impact of the increment of women on AUHRB. The impact of inclusion of women is understudied as regards the contribution made by African women. This dissertation seeks to contribute to the existing literature by studying the ways in which African women have contributed to the development of international human rights law and why such representation matters beyond generic arguments such as legitimacy and diversity. Further, the dissertation seeks to fill this gap by recommending how to improve gender responsiveness of the AUHRB.

1.8 Structure of chapters

Chapter one introduces the research and provides a general introduction to the scholarship around the representation of women in decision-making bodies. It identifies the problem, provides a historical background, develops a theoretical basis of the research and explores the gaps existing in the literature.

Chapter two analyses the extent to which global and regional structures are facilitating the inclusion of women and their issues into mainstream human rights discourse. It questions whether achieving gender parity on a regional level translates into the adoption gender sensitive reasoning and decisions.

Chapter three adopts a critical analysis of selected cases before AUHRB to assess the impact of inclusion of more women. The selected cases are focused on gross violations of women's rights and cases that have an implication for the jurisprudence of women's rights. The chapter further analyses the interpretation of norms and procedures in AUHRB as to facilitate the promotion and protection of the rights of women in Africa as well as to address the African

⁸⁸ Durojaye & Oluduro (n 3) 330-331.

⁸⁹ O Oyeronke *The invention of women: Making an African sense of western gender discourses* (1997).

⁹⁰ M Mutua 'Banjul Charter and the case for an African cultural fingerprint: An evaluation of the language of duties' (1995) 35 *Virginia Journal of International Law* 339.

⁹¹ As above.

woman question. It draws conclusions from the key findings on what the impact women's representation in AUHRB is and whether gender parity on these bodies has achieved the goals for which it was articulated

Chapter four draws recommendations from the key findings in the preceding chapter. It includes suggestions on how stakeholders in the African human rights system such as member states, NGOs can encourage the reimagining of practices on the AUHRB to encourage women's representation as well as enable gender justice in cases involving gross violations of women's rights.

Chapter 2 Institutional, legal, and policy framework and women's representation

2.1 Introduction

Institutions, laws, and policies have historically been conceptualised without considering the roles played by women or having women represented.⁹² Chapter two analyses the institutional, legal, and policy framework, at global and regional levels, that advocate for the meaningful participation of women in decision-making bodies. It seeks to determine whether the norms, structures, and mechanisms created are sufficient to cause a shift in the current phenomenon of underrepresentation of women. Frameworks have been developed to articulate women's rights.⁹³ At the global level, these frameworks failed to effectively address the issues faced by African women.⁹⁴ This led to the development of a framework within the African human rights system to advance women's rights through laws and policies that reflected African women's experience.⁹⁵

Gender parity has been established as the yardstick with which to assess whether states are complying with their obligations to ensure the participation of women in public life without discrimination.⁹⁶ It is defined as having 'no less than 50 per cent of a given body consisting of one gender'.⁹⁷ This chapter highlights the extent to which the African woman is represented in these structures and whether women's issues are visible therein.

The advancement of gender parity on international courts and tribunals is evident in several founding statutes for instance, article 36(8)(a) of the Rome Statute on the International Criminal Court (Rome Statute) encourages state parties to be cognisant of fair representation of male and female judges during the selection process of members of the ICC.⁹⁸ The Resolution adopted thereafter provides for a 50% quota of women on the bench.⁹⁹ The European Court of Human Rights fosters gender representation through the adoption of Resolutions that make

⁹² RE Brooks 'Feminism and international law: An opportunity for transformation' (2002) 14 *Yale Journal of law and Feminism* 345 at 346.

⁹³ N Abdulmelik & T Belay 'Advancing women's political rights in Africa: The promise and potential of ACDEG' (2019) 54 *Africa Spectrum* 147 at 149.

⁹⁴ As above.

⁹⁵ As above.

⁹⁶ Report of the Working Group on the issue of discrimination against women in law and in practice (A/HRC/35/9, para 31).

⁹⁷ A Papenfua & S von Schorlemer, 'Organs, Article 8' in B Simma et al. (eds.) *The Charter of the United Nations: A Commentary* (2012) 426.

⁹⁸ Rome Statute on the International Criminal Court 1998.

⁹⁹ Resolution: Procedure for the nomination and election of judges of the International Criminal Court ICC-ASP/3/Res.6.

gender balance in the nomination of judges mandatory.¹⁰⁰ Similarly, because of the large number of female victims as a result of atrocities committed in Rwanda and the former Yugoslavia, the statutes of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) were amended to include more female *ad litem* judges.¹⁰¹

The AU has demonstrated commitment towards the principle of gender parity as enshrined in international instruments.¹⁰² In 2002, before gender parity had been achieved within any regional organisation, the AU decided on gender parity and elected five female commissioners and five male commissioners of the AU Commission.¹⁰³ The AU adopted a non-binding declaration, the AU Solemn Declaration on Gender Equality in Africa (the Declaration) in which it recognises the low levels of women's representation in social, economic, and political decision-making structures and encourages member states to take appropriate steps towards remedying this. Through the Declaration, AU member states committed to making annual reports regarding steps taken to promote gender mainstreaming.¹⁰⁴ In the subsequent sections, the dissertation analyses the global legal framework for women's representation.

2.2 International normative framework

In 1945, at the formation of the United Nations (UN), only four independent African states were at the negotiation of a global framework of human rights.¹⁰⁵ During the twentieth century, globalisation created an integration and relevance of the international human rights regime in Africa.¹⁰⁶ Currently, of its 193 member states, 54 are African countries, making 28% of the UN membership African.¹⁰⁷

The UN Charter enshrines fundamental human rights and freedoms in relation to the dignity, integrity of the person as well as equal rights of men and women.¹⁰⁸ It recognises the promotion of international cooperation and assistance in the realisation of human rights and freedoms without distinction as to, among others, sex.¹⁰⁹ Article 8 of the UN Charter prohibits

¹⁰⁰ Parliamentary Assembly of the Council of Europe: Resolution 1366 (2004), as modified by Resolutions 1426 (2005), 1627 (2008), 1841 (2011), 2002 (2014) and 2278 (2019).

¹⁰¹ A Samardzija 'The future is female: Gender representation in international courts and tribunals' 10 December 2012 *Leiden Law Blog*. <https://www.leidenlawblog.nl/articles/the-future-is-female-gender-representation-in-international-courts-and-tribunals> (accessed 27 October 2021).

¹⁰² AU strategy (n 12).

¹⁰³ Preamble to the AU Solemn Declaration on Gender Equality in Africa 2014.

¹⁰⁴ Declaration 12 The Declaration.

¹⁰⁵ F Viljoen *International human rights law in Africa* (2007) 45.

¹⁰⁶ As above.

¹⁰⁷ UN 'Member States'. <https://www.un.org/en/about-us/member-states> (accessed 1 September 2021).

¹⁰⁸ Charter of the United Nations 1945.

¹⁰⁹ Art 13(1) Charter of the United Nations.

restrictions on the eligibility of women and men to participate in its organs. This provision has been interpreted to apply to employment in the UN as well as in international institutions.

Several instruments have been adopted within the UN system to improve women's representation such as the Vienna Declaration and Programme of Action which discusses the need for equality between men and women and advocates for the integration of women into the UN system.¹¹⁰ A UN Resolution suggested an increase in the proportion of women at decision-making levels to 30% by 1995 and 50% by 2000. 30% has been adopted as a benchmark for meaningful inclusion of women in institutions.¹¹¹

The conceptual basis for the 30% threshold was developed by a feminist scholar, Rosabeth Moss Kanter who believed that for a minority group to influence decision-making in any institution, the critical mass of 30% had to be achieved.¹¹² The UN Beijing Declaration and Platform for Action (Beijing Declaration) obligates governments to ensure that all UN policies and programmes as well as regional and international institutions reflect gender perspectives.¹¹³ Goal 5 of the Sustainable Development Goals is also dedicated to achieving gender equality for economic growth and a sustainable future.¹¹⁴

2.2.1 The Universal Declaration of Human Rights (UDHR)¹¹⁵

The UDHR is a primary instrument in the protection of rights and makes up part of the body of the International Bill of Rights. It guarantees equality before the law and enjoyment of human rights without distinction including sex.¹¹⁶ The UDHR declares the freedom and equality of everyone.¹¹⁷ It affirms that everyone should act in a spirit of 'brotherhood' towards each other.¹¹⁸ The choice of the word 'brotherhood' has been criticised as a gendered language that reflects the exclusion of women at the time of the adoption of the UDHR.¹¹⁹ Besides Eleanor Roosevelt who chaired the Commission on Human Rights' (CHR) drafting committee responsible for the UDHR,

¹¹⁰ Art 37 Vienna Declaration and Programme of Action 1993.

¹¹¹ UN Economic and Social Council (ECOSOC) Resolution: Equality: Equality in political participation and decision-making 1990 E/CN.6/1990/2.

¹¹² Information paper 'UN Targets for proportion for women in leadership and decision-making positions' LC Paper No. CB (2)1636/02-03(01).

¹¹³ Art 38 United Nations Beijing Declaration Platform for Action 1995.

¹¹⁴ Goal 5 Gender equality Sustainable Development Goals. https://www.undp.org/sustainable-development-goals?utm_source=EN&utm_medium=GSR&utm_content=US_UNDP_PaidSearch_Brand_English&utm_campaign=CENTRAL&c_src=CENTRAL&c_src2=GSR&gclid=Cj0KCCQjw1dGJBhD4ARIsANb6OdmgFsbNzS1IuAv-bTNFfGH1QALHrjgbVXXymgy4cmnMo56Ca7seHc0aAkpjEALw_wcB#gender-equality (accessed 5 September 2021).

¹¹⁵ Universal Declaration of Human Rights 1948.

¹¹⁶ Art 1 UDHR.

¹¹⁷ As above.

¹¹⁸ As above.

¹¹⁹ Kamunyu (n 2).

the rest of the members were men.¹²⁰ This dynamic underscores the underrepresentation of women in decision-making bodies.

2.2.2 The International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹²¹

The CEDAW and its Optional Protocol¹²² are the only global instruments devoted to women's rights.¹²³ CEDAW defines discrimination against women and prohibits any exclusion based on sex.¹²⁴ Of 54 (55 AU) African states, 52 have ratified the CEDAW except for Sudan and Somalia though ratification of the Optional Protocol is not as universal.¹²⁵ These governments are required to protect women from violations of rights in both the private and public spheres through creating opportunities for them to represent their governments at the international level as well as to facilitate their participation in international organisations pursuant to article 8 of CEDAW.¹²⁶

The CEDAW Committee has interpreted this provision to apply to regional and international bodies.¹²⁷ No General Recommendation has been drafted to articulate the provision however, the appropriate measures to be taken by states to ensure women's representation have been interpreted to include transparent criterion that encourages appointment of women to relevant positions in addition to the adoption of special measures to encourage substantive equality for women.¹²⁸

2.2.3 The International Covenant on Civil and Political Rights (ICCPR)¹²⁹

The ICCPR is one of the instruments that make up the International Bill of Rights.¹³⁰ It received overwhelming support from African states with South Sudan being the only state that has taken

¹²⁰ H Charlesworth 'The mid-life crisis of the Universal Declaration of Human Rights' (1998) 55 *Washington and Lee Law Review* 781 at 782.

¹²¹ International Convention on the Elimination of All Forms of Discrimination Against Women 1979.

¹²² Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women 1999.

¹²³ Amnesty International 'Reservations to the Convention on the Elimination of All Forms of Discrimination against Women weakening the protection of women from violence in the Middle East and North Africa region' (November 2004). <https://www.refworld.org/pdfid/42ae98b80.pdf> (accessed 27 October 2021).

¹²⁴ Art 1 CEDAW.

¹²⁵ Ratification status for CEDAW. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en (accessed 26 October 2021).

¹²⁶ Art 8 CEDAW.

¹²⁷ International Human Rights Law Clinic Working Paper Series No.4 'Achieving gender parity on international judicial and monitoring bodies' October 2017. <https://www.law.berkeley.edu/wp-content/uploads/2015/04/Working-Paper-4-Achieving-Gender-Parity-171002-3.pdf> (accessed 26 September 2021).

¹²⁸ CEDAW General Recommendation (n 25) at paras. 38, 50 and 43 and CEDAW General Recommendation No.23: Political and public life 1997 A/52/38.

¹²⁹ International Covenant on Civil and Political Rights 1966.

¹³⁰ BR Roth 'The CEDAW as a collective approach to women's rights' (2002) 24 *Michigan Journal of International Law* 187.

no action to ratify it.¹³¹ It contains a general non-discrimination clause that provides for sex as one of the grounds upon which one should not be subjected to discrimination.¹³² It enjoins states to ensure equal rights between men and women as regards the enjoyment of civil and political rights.¹³³ Article 26 provides for equality before the law, without discrimination, based on sex, among other factors.

The ICCPR encourages the participation of women in all activities of a civil and political nature by prohibiting discrimination against women in the public sphere.¹³⁴ The ICCPR obliges states to ensure gender parity in nomination and appointment processes for international judicial and treaty monitoring bodies.¹³⁵

2.2.4 The International Covenant on Economic, Social and Cultural Rights (ICESCR)¹³⁶

The ICESCR is an international treaty that is the other component of the International Bill of Rights. Like the ICCPR, the ICESCR received considerable support from the African continent. Only 3 African countries have not taken any action as regards the treaty.¹³⁷ It obliges state parties have to ensure the enjoyment of economic, social, and cultural rights by men and women.¹³⁸ In addition, the ICESCR provides for fair and equal remuneration for work without distinction between men and women for work of equal value.¹³⁹ It also acknowledges the maternal function of women and accords special protection such as paid leave after childbirth.¹⁴⁰ These provisions are aimed towards reducing the gender gap that creates a difference in standard of living between men and women.¹⁴¹

The ICESCR focuses on the protection of rights around property ownership, right to work as well as other social and cultural rights.¹⁴² The language therein articulates rights that enable women to gain agency and financial independence. For substantive representation of women to occur, economic, social, and cultural factors that propel and sustain women in decision making bodies are necessary. This is because women's emancipation and subsequent representation comes

¹³¹ Status of ratification, ICCPR. <https://indicators.ohchr.org/> (accessed 26 September 2021).

¹³² Art 2 ICCPR.

¹³³ Art 3 ICCPR.

¹³⁴ Art 25 ICCPR.

¹³⁵ International Human Rights Law Clinic (n 127).

¹³⁶ International Covenant on Economic, Social and Cultural Rights 1966.

¹³⁷ Status of ratification, ICESCR. <https://indicators.ohchr.org/> (accessed 26 September 2021).

¹³⁸ Art 3 ICCPR.

¹³⁹ Art 7(a)(i) ICCPR.

¹⁴⁰ Art 10(2) ICCPR.

¹⁴¹ D Elson & J Gideon 'Organising for women's economic and social rights: How useful is the International Covenant on Economic, Social and Cultural Rights?' (2004) 8 *Journal of Interdisciplinary Gender Studies* 133.

¹⁴² As above.

partly through access to education, justice, economic security, and freedom from harmful cultural practices.¹⁴³

2.3 The African Union human rights architecture

2.3.1 Substantive human rights instruments in the African regional system

The Constitutive Act of the African Union (Constitutive Act)

The Constitutive Act was adopted as the framework under which the AU is operationalised. Its preamble cites, as inspiration, the ideas which guided the ‘founding fathers’ of the Organisation of African Unity (OAU) and subsequently the AU.¹⁴⁴ Such wording is gendered and reflects the erasure of women who took part in the independence struggle and democratisation wave on the continent in the 1950s and 1960s.¹⁴⁵ Women are recognised in paragraph 7 of the Constitutive Act, in addition to the youth, civil society and the private sector as one of the groups with which governments need to build a partnership to foster solidarity and cohesion.

Article 4(l) lays down one of the principles of the AU as the promotion of gender equality. The Act further provides that the AU is committed to the promotion of democratic principles and institutions such as popular participation¹⁴⁶ The Constitutive Act represents a progressive shift from its predecessor instrument, the OAU Charter¹⁴⁷ which failed to expressly commit to human rights or gender issues.¹⁴⁸

The African Charter on Human and Peoples’ Rights (African Charter)¹⁴⁹

While the African Charter does not expressly address women’s rights, parts of it have been inferred as applicable to women.¹⁵⁰ Its general clauses on non-discrimination and equality under article 2 and article 18(3) particularly call upon state parties to eliminate discrimination based on sex as well as other grounds. Since the African Charter does not explicitly provide for gender equality, articles 2 and 18(3) have been used widely by AUHRB in the prosecution of gross violations against women especially for countries that have not ratified the instruments that provide specific protections for women.¹⁵¹

¹⁴³ As above.

¹⁴⁴ Constitutive Act of the African Union 2000. Adopted by the thirty-sixth ordinary session of the Assembly of Heads of State and Government on 11 July 2000.

¹⁴⁵ Kamunyu (n 2).

¹⁴⁶ Art 4(g) Constitutive Act of the African Union 2000.

¹⁴⁷ The Organisation of African Unity Charter 1963.

¹⁴⁸ Abdulmelik & Belay (n 93) 150.

¹⁴⁹ African Charter on Human and Peoples’ Rights 1981.

¹⁵⁰ W Langley ‘The rights of women, the African Charter, and the economic development of Africa’ (1987) 7(2) *Boston College of Third World Law Journal* 215 at 216.

¹⁵¹ See, *Egyptian Initiative for Personal Rights and Interights v Egypt* (Communication No.334/2006) [2011] ACHPR 110.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003 (Maputo Protocol)

The Maputo Protocol is a legally binding instrument that was adopted with the aim of promoting the rights of women and girls in Africa. Of the 55 countries of the AU, 49 have signed the Maputo Protocol, with 42 ratifications.¹⁵²

The Maputo Protocol has made efforts towards progressively promoting and protecting the rights of women at the regional level and, nationally through giving rise to the promulgation of equally progressive legislation, policies, and other institutional frameworks.¹⁵³ Article 9(2) of the Maputo Protocol directs state parties to ensure participation of women at all levels of decision-making bodies. The Protocol further safeguards the equal representation of women within the judiciary and other law enforcement organs.¹⁵⁴ It is no wonder that the new Rules of ACtHPR enjoins states to ensure gender representation while nominating judges.

The African Charter on the Rights and Welfare of the Child (ACRWC)¹⁵⁵

The ACRWC has been well received with 50 ratifications of the 55 countries on the continent.¹⁵⁶ It is the only comprehensive instrument on the rights of the child in Africa.¹⁵⁷ The ACRWC contains a provision on non-discrimination in the enjoyment of rights of the child based on sex, in addition to other grounds.¹⁵⁸ There is an interrelatedness between children's rights and women's rights.

The ACRWC makes specific provisions for the protection of the rights of female children against socio-economic, cultural, political, and civil factors. The right of access to education,¹⁵⁹ protection against harmful social and cultural practices,¹⁶⁰ and the obligation upon state parties to offer protection to children during armed conflict.¹⁶¹ Of particular importance is the obligation

¹⁵² List of countries which have signed, ratified/acceded to the African Charter on the Rights of Women in Africa. <https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf> (accessed 27 October 2021).

¹⁵³ AU 'Maputo Protocol on Women's Rights in Africa' (2020). <https://au.int/en/newsevents/20201117/maputo-protocol-womens-rights-africa> (accessed 31 August 2021).

¹⁵⁴ Art 8(e) Maputo Protocol.

¹⁵⁵ African Charter on the Rights and Welfare of the Child 1990.

¹⁵⁶ List of countries which have signed, ratified/acceded to the African Charter on the Rights and Welfare of the Child. <https://reporting.acerwc.africa/RatificationsTable> (accessed 27 October 2021).

¹⁵⁷ BD Mezmur 'The African Children's Charter @ 30: A distinction without a difference?' (2020) 28 *The International Journal of Children's Rights* 693.

¹⁵⁸ Art 3 ACRWC.

¹⁵⁹ Art 11(3)(e) ACRWC.

¹⁶⁰ Art 21 ACRWC.

¹⁶¹ Art 22 ACRWC.

upon states to protect children against abuse and torture, including that of a sexual nature.¹⁶² These provisions are relevant to this study as they form the body of justiciable rights that trigger the jurisdiction of the ACERWC.

The African Charter on Democracy, Elections and Governance (ACDEG)¹⁶³

ACDEG was inspired by the Constitutive Act and is the AU's main normative instrument to set standards for better governance on the continent. Of the 55 countries on the continent, 46 have signed the ACDEG, with 34 ratifications.¹⁶⁴ ACDEG, in line with promoting the principles of democracy and good governance calls upon state parties to protect the rights of women, ethnic minorities, migrants, persons with disabilities, among other vulnerable groups.¹⁶⁵ AU member states are enjoined to create conducive conditions to enhance the participation of women in democracy and governance.

2.3.2 The African Union's human rights bodies

The African Commission on Human and Peoples' Rights (ACHPR)

The ACHPR is an autonomous treaty organ established under the African Charter in November 1987.¹⁶⁶ It is a quasi-judicial institution with dual mandate to promote and protect human and peoples' rights in Africa.¹⁶⁷ The ACHPR receives and considers cases in which there are allegations of human rights violations and thereafter makes 'quasi-judicial recommendations'.¹⁶⁸ The recommendations issued by the ACHPR are not binding on member states.¹⁶⁹ All state parties to the African Charter are subject to its compulsory jurisdiction. The ACHPR consists of 11 commissioners elected for a renewable term of six years.¹⁷⁰ Currently, there are ten commissioners following the death of the 11th.¹⁷¹ However, there had been a representation of six women and

¹⁶² Art 16(1) ACRWC.

¹⁶³ African Charter on Democracy, Elections and Governance 2007.

¹⁶⁴ List of countries which have signed, ratified/acceded to the African Charter on Democracy, Elections and Governance. <https://au.int/sites/default/files/treaties/36384-sl-AFRICAN%20CHARTER%20ON%20DEMOCRACY%20AND%20ELECTIONS%20AND%20GOVERNANCE.PDF> (accessed 7 September 2021).

¹⁶⁵ Art 8 ACDEG.

¹⁶⁶ Arts 30 & 45 African Charter.

¹⁶⁷ Viljoen (n 105).

¹⁶⁸ M Ssenyonjo 'Responding to human rights violations in Africa: Assessing the role of the African Commission and Court on Human and Peoples' Rights (1987-2018)' (2018) 7 *International Human Rights Law Review* 1.

¹⁶⁹ Human Rights & Grievance Mechanisms Programme 'African Commission on Human and Peoples' Rights brochure'. <https://www.somo.nl/wp-content/uploads/2018/07/ACHPR-brochure-final.pdf> (accessed 27 October 2021).

¹⁷⁰ Art 31 African Charter and Rule 4(1) Rules of ACHPR.

¹⁷¹ ACHPR 'Statement on the passing of Honourable Ndiame Gaye Commissioner'. <https://www.achpr.org/pressrelease/detail?id=571> (accessed 27 October 2021).

five men including the Chairperson.¹⁷² This accounted for a more than 50% gender parity on the ACHPR.

The Rules of ACHPR do not provide for a gender quota in the appointment of commissioners.¹⁷³ It is therefore instructive that in its 33-year existence, the ACHPR has had about 52 commissioners and only 18 of these have been women with the first woman being appointed in 1993, almost half a decade after its formation.¹⁷⁴

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC)

The ACERWC draws its mandate from the ACRWC.¹⁷⁵ The ACERWC was established in 2001 as an autonomous body whose functions include the interpretation of the Charter's provisions.¹⁷⁶ It is made up of 11 experts elected by the Assembly of Heads of State and Governments of the AU for a non-renewable term of five years.¹⁷⁷ Currently, the ACERWC is at gender parity with six of its 11 members being women, one of whom is the second Vice Chairperson.¹⁷⁸ This is despite the fact that the ACRWC does not provide for gender consideration in the appointment of experts. The ACERWC receives communications, that is, complaints alleging a violation from any person, group or NGO recognised by the AU, by a member state or the UN relating to any matter contained in the ACRWC.¹⁷⁹ The recommendations of the ACERWC upon considering a communication are not legally binding upon states.¹⁸⁰ However, the ACERWC has developed a procedure for the implementation of recommendations.¹⁸¹

Since its inauguration in 2002, the ACERWC has had about 42 experts. Of these, 24 have been women.¹⁸² It is the body which has had the largest representation of women in its history

¹⁷² ACHPR (n 19).

¹⁷³ Rules of procedure of the African Commission on Human and Peoples' Rights 2020.

¹⁷⁴ O Ojigbo 'Does female representation at the African Commission on Human and Peoples' Rights matter?' *Institute for African Women in Law*. <https://www.africanwomeninlaw.com/post/does-female-representation-at-the-african-commission-on-human-and-peoples-rights-matter> (accessed 27 September 2021).

¹⁷⁵ Arts 32 to 46 ACRWC. It was adopted by the Heads of State and Government of the OAU on 11 July 1990. It came into force on 29 November 1999. See, ACERWC 'Mandate'. [ACERWC - African Committee of Experts on the Rights and Welfare of the Child](https://www.acerwc.africa/mandate) (accessed 27 October 2021).

¹⁷⁶ Art 42 ACRWC.

¹⁷⁷ Art 37(1) ACRWC.

¹⁷⁸ ACERWC (n 20).

¹⁷⁹ Art 44 ACRWC.

¹⁸⁰ Justice for Children Briefing No.1 (2008) 'African Committee of Experts on the Rights and Welfare of the Child and fair and effective criminal justice for children'. <https://cdn.penalreform.org/wp-content/uploads/2012/08/justice-for-children-briefing-1-v7.pdf> (accessed 21 October 2021).

¹⁸¹ Sec XXI ACERWC Revised Guidelines for the Consideration of Communications 2014.

¹⁸² ACERWC 'Former members'. <https://www.acerwc.africa/former-members/> (accessed 1 October 2021).

with more than half of its total membership being held by female experts of all the three AUHRB.¹⁸³

The African Court on Human and Peoples' Rights (ACtHPR)

The ACtHPR was established by the African Charter and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the African Court Protocol).¹⁸⁴ It was established to complement the protective mandate of the ACHPR.¹⁸⁵ The African Court Protocol has been ratified by 31 states.¹⁸⁶ Article 34(6) of the Protocol stipulates that states are required to make a declaration accepting the competence of the ACtHPR to receive cases. Only six states have accepted the competence of the ACtHPR to submit Applications directly.¹⁸⁷

The ACtHPR can also receive cases from the ACHPR, a state party which has lodged a complaint or against which a complaint has been lodged, or one whose citizen is a victim of human rights violation, African Intergovernmental Organisations¹⁸⁸ Relevant Non-Government Organisations (NGOs) with observer status may also submit cases to the ACtHPR.¹⁸⁹ Decisions of the ACtHPR are final and binding on states that have ratified the African Court Protocol.

The judges who sit on the ACtHPR do so upon election by the Assembly from a list of candidates nominated by states parties to the African Court Protocol.¹⁹⁰ They are elected for a period of six years and are eligible once for re-election.¹⁹¹ The levels of promoting gender representation on the ACtHPR are twofold. In the first instance, during the nomination process of the three candidates, state parties are required do so with due consideration of gender representation.¹⁹² In the second, the Assembly, during its election of judges has the obligation to ensure that there is gender representation.¹⁹³

¹⁸³ As above.

¹⁸⁴ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 1998. It was adopted on 9 June 1998 and came into force on 25 January 2004 upon ratification by more than 15 countries.

¹⁸⁵ Art 2 The African Court Protocol.

¹⁸⁶ List of countries which have signed, ratified/acceded to the African Court Protocol. <https://au.int/sites/default/files/treaties/36393-sl-protocol-to-the-african-charter-on-human-and-peoplesrights-on-the-estab.pdf> (accessed 11 September 2021).

¹⁸⁷ JT Gathii (ed.) *The performance of Africa's international courts: Using litigation for political, legal, and social change* (2020).

¹⁸⁸ Art 5(1) The African Court Protocol.

¹⁸⁹ Art 5(3) The African Court Protocol.

¹⁹⁰ Art 14(1) The African Court Protocol.

¹⁹¹ Rule 2(3) Rules of ACtHPR.

¹⁹² Art 12(2) The African Court Protocol.

¹⁹³ Art 14(3) The African Court Protocol.

Rules of ACtHPR provide for gender parity in other aspects, for example, the Bureau of the Court, Registry, and Committees and Working Groups.¹⁹⁴ The ACtHPR is made up of 11 judges, six of these are women with the current President being Lady Justice Imani Daud Aboud.¹⁹⁵ Gender parity on the ACtHPR currently stands at 54%. However, the number of women who have historically served on the bench is still less compared to their male counterparts. Between 2006¹⁹⁶ to 2021, there have been about 30 judges and only nine of these have been women.¹⁹⁷ It was only in July 2016 that the ACtHPR exceeded two female judges on the 11-member bench. However, as in the ACHPR, this representation has failed to translate into women's representation in the ACtHPR leadership, that is, only three women have served in the ACtHPR Bureau versus nine men.¹⁹⁸ The Bureau of the ACtHPR is made up of the President and Vice President, who are elected by the judges, for a term of two years.¹⁹⁹ Even with the affirmative action taken in favour of enhancing gender presentation, the progress is slow.

2.4 Conclusion

Gender disparities in global and regional institutions undermine states' obligations as to ensure equality and non-discrimination.²⁰⁰ Although international law has evolved to include norms against gender discrimination, there is no mechanism against a state for failure to ensure gender parity in institutions.²⁰¹ The UN has asserted itself as to the benefits of appointing more women to decision-making bodies.²⁰² The African human rights system has also taken measures to promote gender parity through the adoption of legal and policy interventions.

However, from the foregoing discussion, these efforts are sporadic and ununiformly implemented across these bodies. In the next chapter, this assertion is put to the test through critically comparing cases decided before and after achieving gender parity and determining whether AUHRB address more gender-specific concerns with increased women's representation.

¹⁹⁴ Rules 10(2), 16(2) and 26(1) Rules of ACtHPR.

¹⁹⁵ ACtHPR (n 18).

¹⁹⁶ The first judges of the ACtHPR were elected on 22 January 2006, at the eighth ordinary session of the Executive Council of the AU. <https://www.african-court.org/wpafc/welcome-to-the-african-court/> (accessed 28 September 2021).

¹⁹⁷ ACtHPR 'Former judges'. <https://www.african-court.org/wpafc/former-judges/> (accessed 28 September 2021).

¹⁹⁸ ACtHPR (n 197).

¹⁹⁹ Rule 9(1) Rules of ACtHPR.

²⁰⁰ International Human Rights Law Clinic (n 127).

²⁰¹ Brooks (n 92) 350.

²⁰² Art 182 Beijing Declaration (n 113).

Chapter 3 Critical analysis of the impact of women's representation in selected cases before African Union's human rights bodies

3.1 Introduction

There is evidence of a shift brought to institutions by including more women.²⁰³ Women advocated to ensure that international law acknowledged that crimes against women constituted crimes against humanity and war crimes.²⁰⁴ Consequently, the founding statutes of the ICC,²⁰⁵ ICTY,²⁰⁶ the Special Court for Sierra Leone²⁰⁷ and the ICTR classified rape during conflict situations as an act of genocide.²⁰⁸

Africa has the highest number of international courts and tribunals of all the regional human rights systems in the world.²⁰⁹ Therefore, it is important to interrogate the composition of these institutions for the representation of women. This chapter explores the relationship, if any, between women's representation within AUHRB and its impact on decisions. It aims to determine whether the composition of AUHRB with gender parity results in substantive outcomes for women's rights. The dissertation adopts a feminist analysis of decisions adopted by AUHRB overtime to investigate whether decisions taken by these bodies would or may be different if their composition were different.

As judges, experts, and commissioners, women on AUHRB have no obligation to represent women's interests. However, the theory of substantive representation, upon which the dissertation relies, raises issues of decision-making done with the interests of a particular group considered.²¹⁰

3.2 Justification for selected cases

Cases involving gross violation of the rights of women brought before the ACERWC, ACHPR and ACtHPR are the primary subject of analysis in this dissertation. Violations of women's rights cover aspects of child marriage, sexual and gender-based violence and sex trafficking, among others.²¹¹ The dissertation focuses on cases that were heard on merit as well as requests for Advisory Opinions before the ACtHPR. Cases involving gross violations of women's rights

²⁰³ U Schultz & G Shaw (eds.) *Women in the world's legal professions* (2003) 313.

²⁰⁴ Brooks (n 92) at 352.

²⁰⁵ Arts 7(g) & 8(2)(b) (xxii) Rome Statute (n 98).

²⁰⁶ Art 5(g) of the Updated Statute of the International Criminal Tribunal for the Former Yugoslavia 2009.

²⁰⁷ Art 2(g) of the Statute of the Special Court for Sierra Leone 2002.

²⁰⁸ *The Prosecutor v Jean-Paul Akayesu (Akayesu Case)* (Case No. ICTR-96-4-T).

²⁰⁹ Gathii (n 187).

²¹⁰ F Baetens *Identity and diversity on the international bench* (2020).

²¹¹ Beijing Declaration (n 113) para 113(a).

provide an opportunity for women sitting on the AUHRB to contribute to jurisprudence that ensures a dignified life for African women, thus engaging in substantive representation. The staggering figures of victims of sexual and gender-based violence, harmful cultural practices, armed conflicts are indicative of the pervasiveness of violations of rights of women in Africa.²¹² Of significance is the role women have previously played in the prosecution of sexual and gender-based violence on international criminal tribunals.²¹³ For example, the only female judge on a bench of nine male judges at the ICTR, Judge Navanethem Pillay, recognised indicators of sexual violence in the *Akayesu* case²¹⁴ and invoked judicial questioning that caused the amendment of the indictment to include rape charges²¹⁵

The analysis is split into two categories, that is, decisions adopted by AUHRB before achieving 50% gender parity and those adopted after. This is in line with the UN Resolution which recommended an increase in the proportion of women at decision-making levels to 50% by 2000 for meaningful inclusion.²¹⁶ The impact of women in this dissertation is determined by whether they raise women's perspectives and experiences hence asking the African woman question as well as pursuing a pro-care agenda through the court process, case outcome, judicial reasoning and 'extra-curricular' activities'.²¹⁷ The key findings are analysed to assess whether women need to hold majorities to shape substantive representation.

3.3 Selected cases before the ACHPR

The dissertation centres on the protective mandate of the ACHPR which captures the communications procedure through which litigation is triggered. Litigation provides the clearest way to assess the contribution of women in the ACHPR through analysing the nature of decisions adopted.

3.3.1 Decisions of the ACHPR before achieving 50% gender parity

***Malawi African Association and Others v Mauritania*²¹⁸**

a) Summary of the case

²¹² Kamunyu (n 2).

²¹³ M Sterio 'Women as judges at international criminal tribunals' (2020) 29 *Transnational Law & Contemporary Problems* 219.

²¹⁴ *Akayesu* case (n 208).

²¹⁵ V Oosterveld 'Gender-sensitive justice and the International Criminal Tribunal for Rwanda: Lessons learned for the International Criminal Court' (2005) 12 *New England Journal of International and Comparative Law* 119.

²¹⁶ UN ECOSOC Resolution (n 111).

²¹⁷ Schultz & Shaw (n 203).

²¹⁸ *Malawi African Association and Others v Mauritania* (Communication No. 54/91-61/91-96/93-98/93-164/97_196/97-210/98).

This was a consolidation of communications filed following events in Mauritania that resulted into incidents of grave and massive violations of human rights of Black Mauritians. These included extra-judicial killings, detentions, enslavement between 1986 and 1992. The communications alleged violations of articles 2, 3, 4, 5, 6, 7, 16 and 26 of the African Charter. In describing the torture endured by the victims, the ACHPR stated that, ‘As for the women, they were simply raped’.²¹⁹ This was after the ACHPR had undertaken a state visit to Mauritania in 1997 and met with organisations dealing with the specific concerns of women. The ACHPR acknowledged the violations of article 5 of the African Charter on freedom from cruel, inhuman, and degrading treatment it however, made no finding of the violation of article 18(3) of the African Charter but found proof of torture and rape.²²⁰ The ACHPR made general recommendations for a ‘compensatory benefit to the widows and beneficiaries of the victims’.²²¹

b) Critique of the decision

Of the 11 commissioners, four were women and seven, men making the gender parity 36%.²²² In addition to using insensitive language to describe sexual violence against women, the ACHPR’s attitude belittled the physical and psychological effects of rape therefore failing to ask the African woman question.²²³ This attitude is reflected in the recommendations made by the ACHPR. That is, the recommendations were not specific enough to encourage the Mauritanian government to hold perpetrators accountable nor did they prescribe reparations to the women who had been raped.²²⁴ The ACHPR did not challenge the phrasing of rape as a simple matter regardless of the existing international criminal law instruments that existed at the time that classified rape as a crime against humanity.²²⁵

Doebbler v Sudan²²⁶

a) Summary of the case

²¹⁹ Above at para 20.

²²⁰ Above at para 118.

²²¹ Above at para 143.

²²² Thirteenth Annual Activity Report (1999-2000).

²²³ Litigating before the African Commission on Human and Peoples’ Rights: A practice manual. https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/712/attachments/original/1537202856/Litigation_Before_ACHPR_Manual_FINAL.pdf?1537202856 (accessed 22 October 2021).

²²⁴ Above at para 143.

²²⁵ Rome Statute (n 98).

²²⁶ *Doebbler v Sudan* (Communication 236/2000).

The complainant alleged the violation of article 5 of the African Charter on the right to dignity and freedom from torture by the respondent state. The facts were; University students sought permission to hold a picnic and then went ahead to have one. They were however arrested for allegedly violating ‘public order’ contrary to the Criminal Law of 1991 and charged for dressing inappropriately or acting in a manner considered to be immoral.²²⁷ The acts for which they were arrested comprised kissing, female students wearing trousers, dancing with men, crossing legs with men, sitting, and talking with men.²²⁸ The eight students arrested were all women and were convicted and sentenced to fines and lashes on their bare backs. The respondent state argued that the punishment was justified.²²⁹

The ACHPR found that the state has no right to apply physical violence to individuals for offences. The ACHPR adopted the broadest definition of prohibition of torture to include physical and mental abuses and recommended the amendment of the impugned Criminal law to bring it in conformity with the African Charter, the abolishment of the penalty of lashes and compensation of the victims.²³⁰

b) Critique of the decision

The 11 commissioners consisted of eight men and three women making gender parity 27%.²³¹ The decision had shortcomings in that it failed to rely on international instruments on women’s rights such as the CEDAW that would have provided more protection to the victims pursuant to article 61 of the African Charter. It limited its inquiry to the application of the African Charter to the legal system of the respondent state rather than the interpretation of Shari’a Law in Sudan’s Criminal Code.²³² Asking the African woman question approach would have drawn a nexus between religion and law highlighted how they intersect to oppress women. It would have recognised that women’s bodies are perceived legally as ‘legitimate objects of corporal punishment’.²³³ The ACHPR did not raise the fact that the arrests only targeted female students thereby making it clear that the codification of Shari’a Law into the Criminal Code and disproportionately affected women.

²²⁷ Above at para 2.

²²⁸ Above at para 3.

²²⁹ Above at para 34.

²³⁰ Above at para 45.

²³¹ Final communique of the 33rd ordinary session of the African Commission on Human and Peoples’ Rights.

²³² *Doebbler v Sudan* (n 226) para

²³³ C Smart (1989) *Feminism and the power of the law* 93.

Thus, the three female commissioners who were part of the deliberations seem to have endorsed a decision which, though was in favour of the victims, failed to adopt a reasoning that would encourage structural change in states' oppression of women through law and religion.

Democratic Republic of Congo v Burundi, Rwanda, and Uganda (DRC Case)²³⁴

a) Summary of the case

The communication was filed by the Democratic Republic of Congo (DRC) against Burundi, Rwanda, and Uganda. DRC alleged grave and mass violations of human and peoples' rights by armed forces from the three countries pursuant to articles 2, 4 and 23 of the African Charter. According to DRC, the respondent states were involved in military occupation of the Eastern province characterised by a series of massacres, rape, mutilation, mass transfers of populations and looting.²³⁵ The troops allegedly raped female victims who were then 'slashed open from the vagina up to the abdomen' as well as engaged in the systemic spread of Human Immunodeficiency Virus (HIV).²³⁶ Still, at the ACHPR, no issue was framed regarding the sexual violence against women. It was instead consolidated into the issue of grave and massive violations of human rights.²³⁷

The ACHPR relied on the CEDAW, the African Charter and the first Protocol Additional to the Geneva Conventions of 1949 on the respect and protection of women and girls against rape, prostitution, and indecent assault and found violations of the rights of women during the armed conflict.²³⁸ It recommended for adequate reparations be paid to DRC without specification of what is adequate.

b) Critique of the decision

Of the 11 commissioners, seven were male and four were female placing the gender parity at 36%.²³⁹ The decision represents a few problems for women's rights jurisprudence. The failure to frame a standalone issue regarding the sexual violence of women and girls indicated a lack of gendered consciousness by the ACHPR. This led the ACHPR to handle the issue of sexual violence in passing while it concentrated on occupation of DRC by the respondent states. It made sweeping reference to the CEDAW and African Charter rather than fleshing out provisions that would have protected the victims more substantially. The gendered nature of the attack on women and girls presented an opportunity for the ACHPR to decide on discrimination based on sex. There

²³⁴ *Democratic Republic of Congo v Burundi, Rwanda and Uganda* (Communication 227/99).

²³⁵ Above at para 69.

²³⁶ Above at para 5.

²³⁷ Above para 69.

²³⁸ Above at para 86.

²³⁹ Final communique (n 231).

was also no mention of the provision of psychological support for women and girls who had been raped. The Inter-American Court of Human and Peoples' Rights has held that, in gender-sensitive cases, it is the duty of the Court to critically analyse violation beyond the prayers of the victims on reparations but also on 'general human rights sensitivities' especially those based on gender-based violence.²⁴⁰

In 2007, the ACHPR, chaired by a female Commissioner, Honourable Sanji Mmasenono Monageng adopted a Resolution addressing the right to remedy and reparation for women and girls who are victims of sexual violence.²⁴¹ Her commitment to the protection of women and children's rights has received global recognition.²⁴² The ACHPR, at the time of the adoption of the Resolution, had a gender parity of 63%, that is, of the 11 commissioners at the time, seven were female and four were male.²⁴³ The ACHPR was more sensitive to sexual violence against women and girls than it had been in the *DRC case*.

3.3.2 Decisions of the ACHPR after achieving 50% gender parity

3.3.2.1 Egyptian Initiative for Personal Rights (EIPR) and Interights v Egypt²⁴⁴

a) Summary of the case

The complainants brought this communication on behalf of the victims, four journalists, alleging violations of articles 1, 2, 3, 5, 7(1)(a), 16, 18(3) and 26 of the African Charter by the respondent state for failure to protect them. The four victims had joined a demonstration to show their dissatisfaction with proposal to amend the Constitution.²⁴⁵ Shortly afterwards, violence broke out between the supporters of President Mubarak and members of the Egyptian Movement for Change. The police did not intervene. All the four victims reported assault of a sexual nature by fellow demonstrators and by security and police officers. The acts of assault included fondling private parts, pulling of hair, undressing, and having their pubic regions kicked and punched. The respondent state submitted that the perpetrators had been tried for battery since there was no evidence of criminal intention for the crimes against the victims to amount to sexual molestation.²⁴⁶

²⁴⁰ *Gonzalez et al. v Mexico* ("Cotton Field") Inter-American Court on Human of Rights (ser. C) No.205 (16 Nov. 2009).

²⁴¹ Resolution on the right to a remedy and reparation for women and girls victims of sexual violence (ACHPR/Res.111(XXXXII)07).

²⁴² In 2014, she received a Human Rights Award from the International Association of Women Judges. https://asp.icc-cpi.int/iccdocs/asp_docs/Elections/ACN2021/ICC-ASP20-EACN-BWA-CV-ENG.pdf (accessed 3 October 2021).

²⁴³ Final communique of the 42nd ordinary session of the African Commission on Human and Peoples' Rights.

²⁴⁴ *Egyptian Initiative for Personal Rights and Interights v Egypt* (Communication No.334/2006) [2011] ACHPR 110.

²⁴⁵ Above at para 3.

²⁴⁶ Above at para 93.

The ACHPR used the ‘male comparator’ standard to determine whether discrimination had occurred. That is, whether male and female protesters had faced similar treatment at the scene under the same circumstances. The ACHPR found that indeed the victims had been discriminated against based on sex given that the verbal assaults used against the victims such as ‘slut’ and ‘whore’ are words not typically used against men.²⁴⁷ It also recognised the gender-specific nature of the assault like fondling the victims’ breasts or touching their pubic regions could only be directed at women. It found that the respondent state had failed to meet its obligations in the investigation and punishment of the perpetrators for the inhuman and degrading treatment of the victims.²⁴⁸

b) Critique of the decision

This decision has been lauded for a progressive outlook in the jurisprudence for the protection and promotion of gender-based violence as discrimination against women as well as states’ obligations to end it.²⁴⁹ The gender consciousness of the ACHPR in recognising derogatory language used to perpetuate violence against women creates sound precedent in women’s rights jurisprudence. At the time of adopting the decision, the ACHPR had elected its first female Chairperson, Honourable Catherine Dupe Atoki. The 11 commissioners were made up of seven female commissioners and four male ones, making gender parity of 63%.²⁵⁰

The progressive interpretation may, partly, be attributed to the past experiences of many of the female commissioners whose work involved the protection and promotion of women’s rights. Honourable Soyata Maiga, who was involved in the determination of this communication, has previously described herself as ‘a militant women’s rights activist’ and was actively involved in all phases of the Maputo Protocol from its draft to its eventual adoption.²⁵¹

The decision also had some shortcomings namely, the ACHPR did not refer to the Maputo Protocol in its decision because Egypt was not a party to it, yet it is empowered to draw inspiration from international law.²⁵² The African Charter, on which the ACHPR relied, fails to protect the specific interests of women thus creating a narrow framework for enforcing the rights of the

²⁴⁷ Above at para 143.

²⁴⁸ Above at para 156.

²⁴⁹ Centre for Women, Peace + Security ‘EIPR and Interights v Egypt’. <https://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/eipr-and-interights-v-egypt/> (accessed 23 October 2021).

²⁵⁰ Final communique of the 10th extraordinary session of the African Commission on Human and Peoples’ Rights.

²⁵¹ International Federation for Human Rights ‘Women’s rights in Africa: Interview with Soyata Maiga, Special Rapporteur of the African Commission on Human and Peoples’ Rights (ACHPR)’ 10 July 2013. <https://www.fidh.org/en/international-advocacy/african-union/13645-women-s-rights-in-africa-interview-with-soyata-maiga-special-rapporteur-of> (accessed 27 October 2021).

²⁵² Art 60 African Charter.

victims. The use of the male comparator in defining equality has also been criticised for it assumes equality is the norm and discrimination the exception which is not an accurate depiction.²⁵³

The ACHPR failed to order reparation and rehabilitation of the victims. It merely awarded damages for the violation of the rights of the victims. Asking the woman question would have recognised the need for the victims of gender-based violence to be provided with psychological and medical care for the trauma suffered.²⁵⁴ The reluctance to order for reparation in cases involving sexual violence, even with a female majority composition exposes ACHPR as not fully gender non-responsive in this case.²⁵⁵

Equality Now and Ethiopian Women Lawyers Association (EWLA) v Federal Republic of Ethiopia (Equality Now case)²⁵⁶

a) Summary of the case

The complaint was filed on behalf of Woineshet Zebene Negash (the victim), a minor, who had been abducted, raped, and forced into a marriage by abduction by a one Aberew Jemma Negussie (Aberew) and his accomplices. The communication alleged violations of articles 3, 4, 5, 6 and 18(3) of the African Charter. The facts of the case are that Aberew abducted the victim, who was 13 years old at the time, and raped her together with his accomplices. Upon his arrest, she was rescued, and a medical report confirmed the rape.²⁵⁷ Aberew was granted bail after which he abducted the victim again for a month and forced her to sign a marriage contract. She escaped and reported to the police after which Aberew and his accomplices were sentenced to ten years and eight years respectively. On appeal, they were released on grounds that the sexual relations that occurred between Aberew and the victim had been consensual.²⁵⁸

The ACHPR read into articles 4, 5 and 6 of the African Charter to declare rape as an affront to human dignity, integrity, and personal security. It also found that Ethiopia had violated its international obligations to prevent violation of the rights in the African Charter by failing to hold private actors accountable for these violations. The ACHPR relied on the Maputo Protocol and CEDAW in defining discrimination. However, it found no discrimination in this case thus stating that ‘not all violence against women necessarily amounts to or ought to be termed as

²⁵³ KE Mahoney ‘Canadian approaches to equality rights and gender equity in the courts’ in RJ Cook (ed) *Human rights of women: National and international perspectives* (2012).

²⁵⁴ Kamunyu (n 2) 118.

²⁵⁵ As above.

²⁵⁶ *Equality Now and Ethiopian Women Lawyers Association (EWLA) v Federal Republic of Ethiopia* (Communication 341/2007).

²⁵⁷ Above at para 3.

²⁵⁸ Above at para 5.

“discrimination” to be condemned as violations of women’s rights’. The ACHPR awarded reparations for the physical, psychological, and emotional trauma suffered by the victim.²⁵⁹

b) Critique of the decision

At the time of the decision, the ACHPR was chaired by a female commissioner, Honourable Pansy Tlakula and it comprised of seven female commissioners and three male commissioners, thus gender parity of 63%.²⁶⁰ The ACHPR demonstrated aspiration towards ensuring substantive equality through, acknowledging the systemic nature of marriage by abduction as widespread and harmful. It recommended that the Ethiopian government ought to have exercised due diligence in preventing the acts as well as holding the perpetrators accountable. By such reasoning, the ACHPR showed a consciousness towards the African woman question. The award of reparations indicated an acknowledgment of the harm that had been done to the victim and attempted to alleviate it through pecuniary and non-pecuniary measures.

The decision has been critiqued for using the male comparator as it did in *Egyptian initiative for Personal Rights & Interights v Egypt* to determine discrimination. This is because unlike in the preceding case, there was no male comparator in a similar situation which whom to draw a comparison in the instant case, and this prevented the ACHPR from making a finding of discrimination.²⁶¹

3.3.3 The impact of women’s representation on the ACHPR

The ACHPR has diversified its composition with more women, however, there are still few women who have served in leadership roles on its bureau.²⁶² For instance, only about five women have chaired the ACHPR.²⁶³ The inclusion of women though has improved gender-specific focus on the protection of women’s rights.²⁶⁴

In respect of its protective mandate, it is clear from the foregoing analysis that there is a shift towards more gender responsive decisions by the ACHPR. The decisions adopted by the ACHPR before achieving 50% gender parity showed little regard to language and framing of issues of determination in ensuring substantive equality for women. The two cases analysed in which the

²⁵⁹ Above at para 158.

²⁶⁰ Thirty ninth Activity Report of the African Commission on Human and Peoples’ Rights.

²⁶¹ Kamunyu (n 2) 127.

²⁶² Ojigho (n 174).

²⁶³ ACHPR ‘Former commissioners’. <https://www.achpr.org/formercommissioners> (accessed 27 October 2021).

²⁶⁴ Ojigho (n 174).

ACHPR had 50% gender parity have been hailed as landmark cases in the recognition and advancement of the rights of women and girls.

The impact of women's representation has been felt in the promotion mandate of the ACHPR. The establishment of the Special Rapporteur on the Rights of Women in 1998 was a positive step towards the recognition of emphasis on women's issues in Africa.²⁶⁵ The office of the Special Rapporteur on the Rights of Women and the promotional activities of the Office laid the ground drafting and adoption of the Maputo Protocol.²⁶⁶

It is important to note that until the appointment of the first female commissioner in 1993, the ACHPR did not comprehensively discuss issues affecting women on the continent.²⁶⁷ It was after the inclusion of the first woman on the ACHPR that the requirement under article 31 and 45 of the African Charter that required commissioners to have legal experience to be appointed was discussed. The provisions automatically excluded women from being appointed since law was predominantly a male dominated field.²⁶⁸

The ACHPR has failed to utilise the comprehensive normative structure as discussed in chapter two of this dissertation in advancing its protective mandate to adopt gender sensitive decisions. To date, the ACHPR has not adjudicated a case using the Maputo Protocol.²⁶⁹ Article 27 of the Maputo Protocol bestows the jurisdiction of its interpretation upon the ACtHPR while article 32 mandated the ACHPR to adjudicate under the Maputo Protocol pending the establishment of the ACtHPR. This contention has created a hurdle for rights holders to approach the ACHPR to realise their rights. It also explains the handful of cases on the adjudication of the violation of women's rights.²⁷⁰ The ACHPR has made slow progress in handling the litigation of women's rights. It fails to articulate recommendations regarding the specific abuses against women to pave way for structural change of repressive gender norms, even with female majority commissioners.²⁷¹

²⁶⁵ ACHPR 'Special mechanisms'. <https://www.achpr.org/specialmechanisms/detail?id=6> (accessed 27 October 2021).

²⁶⁶ Ojigho (n 174).

²⁶⁷ ACHPR Activity Reports before 1993 did not address any matters concerning the rights of women. <https://www.achpr.org/> (accessed 27 September 2021).

²⁶⁸ Seventh Annual activity report of the ACHPR 1993-1994 para 6.

²⁶⁹ Kamunyu (n 2).

²⁷⁰ Kamunyu (n 2) 283.

²⁷¹ Kamunyu (n 2) 270.

3.4 Selected cases before the ACERWC

For the analysis of women's impact on the recommendations of the ACERWC, the dissertation limits its inquiry to the protective mandate of the ACERWC through which communications are brought.²⁷² Since its inauguration in 2002, the ACERWC has only received 16 communications, six of which have been finalised, three declared inadmissible while seven are pending at various stages.²⁷³ The dissertation will focus on the communications decided on merit with an implication of the women and girls' rights. The ACERWC did not deliberate any communications with an effect on women and girls' rights jurisprudence. Therefore, the cases analysed here are those decided upon the ACERWC achieving 50% gender parity or over.

3.4.1 Decisions of the ACERWC after achieving 50% gender parity

*Michelo Hunsungule and Others (On behalf of children in northern Uganda) against the government of Uganda (Michelo Hunsungule case)*²⁷⁴

a) Summary of the case

This communication was filed on behalf of children in northern Uganda in relation to the disruption caused by a civil war between armed rebel insurgents, the Lord Resistance Army (LRA) and the Ugandan Army between 1986 to 2006. The war led to gross violations of children's rights since LRA rebels abducted children, especially boys to be used as child soldiers. Female children were used as 'bush wives', raped and sexually abused by the LRA rebels as well as the Ugandan Army according to the complainants' submissions. The complainants argued that the respondent state failed to fulfil its obligation to protect civilians/children from rebel attacks and from their soldiers who engaged in sexual exploitation of the children as well.

The issues to be determined were whether the state's actions and omissions led to the violation of the duty to protect children from sexual abuse and violence as under articles 11, 14, 16, 22 and 27 of the ACRWC. However, the discussion is limited to the alleged violation of articles on sexual abuse and violence by the respondent state.

The ACERWC recognised the abuse and torture of boys and girls abducted by the LRA. It referenced the Rome Statute's categorisation of rape and 'other forms of sexual violence of comparable gravity' as war crimes and crimes against humanity. The ACERWC also noted the psychological effects of sexual violence and early pregnancies on girls as well as the special

²⁷² Art 42(a) ACRWC.

²⁷³ ACERWC 'Table of Communications'. <https://www.acerwc.africa/table-of-communications/> (accessed 21 October 2021).

²⁷⁴ *Michelo Hunsungule and Others (On behalf of children in northern Uganda) against the government of Uganda* (Communication No.1/2005).

attention accorded to girl children in the ACRWC. It reiterated that that ‘forced marriage’ that the female children were being subjected to was a crime against humanity.²⁷⁵ The ACERWC however, did not find evidence of the direct involvement of the Ugandan army in sexual abuse and violence against children and neither did it find evidence in support of the Government’s failure to undertake its obligation to prosecute and punish perpetrators of sexual violence committed by the members of the army.

b) Critique of the decision

The 11 members of the ACERWC included seven female members and four of the members were male at the time hence gender parity of 63%.²⁷⁶ The ACERWC acknowledged the effects of sexual violence on girls and boys as well as the systemic nature of forced marriages. The ACERWC’s decision portrays a consciousness of intersectionality and how girl children are subjected to various forms of discrimination during armed conflict. It took note of special protection offered to girl children in article 1 of the ACRWC.

Technically, however, the hands of the ACERWC were tied because by the time of its sitting, the respondent state has established the International Crimes Division to try war crimes for which the communication was filed. Though the scope of recommendations was limited, the ACERWC experts wore gender lenses and addressed how sexual exploitation in armed conflicts affects both girls and boys but that girl children are at an added risk of forced pregnancy and marriage thus they require an added layer of protection from the ACRCW.²⁷⁷

The African Centre of Justice and Peace Studies (ACJPS) and People’s Legal Aid Centre (PLACE) against the Government of the Republic of Sudan²⁷⁸

a) Summary of the case

Ms Iman Hassan Benjamin (Ms. Benjamin), on whose behalf the communication was submitted, was born to a Sudanese mother and a South Sudanese father in 1994. In 2011, the Republic of South Sudan seceded from Sudan after which amendments providing for the automatic revocation

²⁷⁵ Above at para 76.

²⁷⁶ Report of the 21st Session of the ACERWC.

²⁷⁷ *Michelo Humsungule case* (n 274) para 77.

²⁷⁸ *The African Centre of Justice and Peace Studies (ACJPS) and People’s Legal Aid Centre (PLACE) against the Government of the Republic of Sudan* (Communication no. 001/2015).

of Sudanese nationality of persons who became citizens of South Sudan were made to the Sudan Nationality Act of 1994.²⁷⁹ The amendments targeted persons who were entitled to South Sudanese nationality since dual nationality with South Sudan was prohibited. Ms Benjamin had her Sudanese nationality revoked because her father would have become South Sudanese upon the secession thus leaving her stateless and unable to attain a university education. The Nationality Act also provided that for persons born to Sudanese mothers, nationality by birth was not automatic, rather it could only be acquired through application.

The issue was whether the respondent state violated articles 3 (2), 7, 11 and 18(1) of the ACERWC. The ACERWC held that the Nationality Law was discriminatory based on sex since a Sudanese father could transfer nationality to his children automatically while a Sudanese mother could not.²⁸⁰ It also took cognisance of the prohibition of gender-based discrimination in conferral of nationality and in so doing relied on the provisions of the CEDAW which entitles women to equal rights with men with respect to the nationality of their children.

The ACERWC recommended that Sudan pay compensation to the complainant to remedy her legal status even when no evidence was submitted to show damage in addition to urging for an expedient grant of nationality to Ms Benjamin, and any other children who may have been affected by the Nationality law, based on their mother's nationality.²⁸¹

b) Critique of the decision

Of the 11 members of the ACERWC, seven were female, including the Chairperson, Mrs Goitseone Nanike Nkwe, accounting for 63% gender parity.²⁸² The ACERWC adopted a liberal approach in this communication considering that gender discrimination nationality laws on the continent are among the leading causes of statelessness among children on the continent.²⁸³ The recommendation to pay compensation to the victim to remedy her injury even though she did not submit any evidence to show that she had suffered damage. This reasoning reflects that the ACERWC acknowledged the gendered nature of discrimination in nationality laws and their effects

²⁷⁹ Above at para 14.

²⁸⁰ Above at para 34.

²⁸¹ Above at para 104.

²⁸² Report of the 31st ordinary session of the ACERWC (ACERWC/RPT(XXXI)).

²⁸³ Center for women's global leadership 'Gender discriminatory nationality laws: Impact on women's livelihood and world of work. [Gender Discriminatory Nationality Laws: Impact on Women's Livelihood and World of Work | Global 16 Days Campaign](#) (accessed 24 October 2021).

on poorer, migrant or refugee women.²⁸⁴ The decision reflects that the ACERWC was alive to women's perspectives.

The Institute for Human Rights and Development in Africa and Finders Group Initiative on behalf of TFA (A minor) against The Government of the Republic of Cameroon.²⁸⁵

a) Summary of the case

The communication was submitted on behalf of a 10-year-old minor, TFA, who had been raped. The prosecution of the crime had stalled given the influential nature of the suspect. The communication was brought in response to the respondent state's failure to investigate, prosecute the crime and punish the perpetrator according to its obligations under the UN Convention on the Rights of the Child, the African Charter, the Maputo Protocol, the CEDAW, the Convention Against Torture, Inhuman and Degrading Treatment or Punishment, the ICCPR and the UDHR.²⁸⁶ The ACERWC dealt with two issues, that is, whether the respondent state violated its obligation under article 1 of ACRWC and whether the rape amounted to gender-based discrimination

The complainants based their submissions on the respondent state's failure to adequately investigate the rape against a minor violated which the ACRWC and the CEDAW. The respondent state argued that nationwide strategies had been undertaken to address sexual violence against. The ACERWC found that the respondent state had failed to discharge its duty as it did not undertake an effective investigation in the rape of the child.²⁸⁷ The ACERWC relied on article 1 of the CEDAW which defines gender-based violence. It recognised the role of ideology and stereotype of male privilege over women, culture and social subordination that cause and sustain the oppression of women. This reasoning is in line with answering the woman question and recognising the structural nature of violence against women by men. The ACERWC concluded that by its failure to effectively investigate the discriminatory act, the respondent state was in violation of article 3 of the ACRWC on gender-based discrimination.²⁸⁸

The ACERWC enjoined the respondent state to put in place protective measures to protect children from all forms of torture such as establishing structures to support child victims of torture,

²⁸⁴ Working Group on the issue of discrimination against women in law and in practice 'Discrimination against women in nationality laws' (2017).

²⁸⁵ *Decision on the Communication submitted by the Institute for Human Rights and Development in Africa and Finders Group Initiative on behalf of TFA (A minor) against The Government of the Republic of Cameroon* (Communication no. 006/Com/002/2015 Decision no. 001/2018).

²⁸⁶ Above at para 6.

²⁸⁷ Above at para 50.

²⁸⁸ Above at para 66.

as well as institutions to assist with the prevention, identification, reporting, referral, investigation of child abuse and neglect. It also awarded monetary damages amounting to \$88 000 for the victim's pain, suffering and harm to her dignity.²⁸⁹

b) Critique of the decision

Of the 11 members of ACERWC, seven were female thus gender parity was at 63%.²⁹⁰ The ACERWC was chaired by a woman, Mrs Goitseone Nanikie Nkwe. This decision is landmark in the protection of women and girls against violence since the ACERWC applied the due diligence principle creatively to hold the state accountable for the acts committed by a private individual. The principle provides a safe environment for women, promotes gender justice and has been used to bridge the artificial private/public dichotomy by investigating and punishing crimes occurring in public or private life.²⁹¹ The decision explored the structural causes and the intersectionality between Violence Against Women and other factors.

Therefore, the decision satisfies the test of gender consciousness since it identifies the issue and then redresses it substantially. The majority female composition of the ACERWC engaged in substantive representation in raising women's perspectives in the instant case.

3.4.2 The impact of women's representation on the ACERWC

The ACERWC does not contain provisions for gender representation on the ACERWC. Yet it has been intentional in gender diversity within its membership. The protections contained in the ACERWC interrelate with those contained in the Maputo Protocol in the protection of the rights of girls.²⁹² There is substantive difference in the ACERWC's decision in the first communication to the later decisions. The trends indicate a shift towards a victim-centred approach to addressing the violations of the rights of female children.

The ACERWC's first ever communication, the decision, made by a female majority committee failed to ask the African woman question by omitting to make an order for the respondent state to provide psychological counselling for the girl children who were abducted and forced into marriages with the rebels. In the subsequent communications, analysed in the

²⁸⁹ Above at para 82.

²⁹⁰ Report of the 31st Session of the ACERWC.

²⁹¹ ZA Aziz & Janine Moussa 'Due diligence framework: State accountability framework for eliminating violence against women' (2016). <https://www.peacewomen.org/sites/default/files/Due%20Diligence%20Framework%20Report%20final.pdf> (accessed 8 October 2021).

²⁹² Joint General Comment of the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee on the Rights and Welfare of the Child (ACERWC) on ending child marriage (2017).

dissertation, the ACERWC orders reparations to victims to alleviate the long-term effects of sexual violence. In 2016, following a decision of the AU Executive Council requesting the AU Peace and Security Council (PSC) to include the rights of a child in its agenda, the ACERWC undertook a study in which it assessed the impact of sexual and gender-based violence against children in armed conflict.²⁹³ This development is welcomed as it will streamline and guide the ACERWC's approach to cases involving sexual abuse of minors which are unfortunately common on the continent.²⁹⁴

3.5 Selected cases before the ACtHPR

The ACtHPR has both contentious and Advisory jurisdiction. Contentious jurisdiction is activated when parties submit Applications containing disputes requiring the interpretation and application of the African Charter.²⁹⁵ For the ACtHPR to exercise its Advisory jurisdiction, an AU member state, the AU or any of its organs may request for the opinion of the ACtHPR on any legal matter relating to the African Charter.²⁹⁶ This section of the dissertation analyses both decisions arising from contentious matters as well as Advisory Opinions of the ACtHPR on matters of violations of women's rights.

3.5.1 Decisions of the ACtHPR before achieving 50% gender parity

*Association pour le progrès et la défense des droits des femmes maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v Republic of Mali*²⁹⁷

a) Summary of the case

The application arose following the adoption of the Malian Persons and Family Code (Family Code). According to the Family Code, the minimum age for marriage for boys was set at 18 years and 16 for girls. The law introduced an exemption for marriage from as low as 15 years, with the father's or mother's consent for boys, whereas for girls, only the father's consent had to be obtained. The Application was submitted alleging that the Family Code violated article 6(b) of the Maputo Protocol, articles 1(3), 2 and 21 of the ACRWC and the CEDAW. The issues are whether the respondent state violated its obligations under the foregoing instruments and what remedy would prevent the violations of the rights of women and girls.

²⁹³ ACERWC 'Continental study on the implications of conflict and crises on children in Africa' (2016) https://www.acerwc.africa/wp-content/uploads/2018/07/Study_on_the_impact_of_armed_conflict_and_crises_on_children_in_Africa_ACE_RWC_FINAL_ENGLISH.pdf (accessed 13 October 2021).

²⁹⁴ S Bissell & A Tiessen 'Sexual violence, the weapon of war that has ceased to die' 13 June 2014. *UNICEF Blog*. <https://blogs.unicef.org/blog/sexual-violence-the-weapon-of-war-that-has-ceased-to-die/> (accessed 26 October 2021).

²⁹⁵ Rule 27 Rules of ACHPR.

²⁹⁶ Rule 26(1)(b) Rules of ACHPR.

²⁹⁷ *Association Pour le Progrès et la Défense des droits des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v Republic of Mali* (Application no. 046/2016).

The applicants on one hand submitted that girls and women disproportionately suffer sexual violence which prevents them from enjoying fundamental rights and freedoms on equal terms with men. The respondent state on the other hand argued that it reduced the minimum age for girls due to the pressure from Islamic groups and to reflect Malian's social and cultural views surrounding marriage.²⁹⁸

The ACtHPR adopted applicants' submissions and held that the Family Code facilitated the discrimination of girls as it set a lower minimum age for girls than boys while also making it possible for girls to be married at 15 for 'compelling reasons'.²⁹⁹ The ACtHPR found that the respondent state violated the Maputo Protocol and the ACRWC. Further, the ACtHPR noted that the respondent state violated the right to inheritance for women and children born out of wedlock. Despite being born 'in wedlock' female children were to inherit half of what the males did. The ACtHPR found that this was discriminatory and contrary to the respondent state's obligations in international law.³⁰⁰

b) Critique of the decision

The ACtHPR was composed of the 11 judges, only two were women, making gender parity of 1.8%.³⁰¹ The decision was the first time a AUHRB breathed life into the provisions of the Maputo Protocol to realise the rights of women and girls.³⁰² The decision demonstrates the ACtHPR commitment to the promotion and protection of women's rights on the continent. The ACtHPR made important recommendations to protect girl children from 'child marriages' such as requiring the amendment of the impugned law and carrying out sensitisation of the population as per the respondent state's obligations in the African Charter.³⁰³

As stated beforehand, gender consciousness in decisions is also evident in a court's reasoning. The essence of the African woman question is to establish how women have been left out and how this oversight may be corrected. In the instant case, the ACtHPR failed to address the issues of discriminatory customary and religious laws which are some of the realities affecting the issues of child marriages. The Court failed to interrogate the fact that a significant factor in gender-based discrimination is religion and customary succession practices.

²⁹⁸ *APDF and IHRDA v Republic of Mali* (n 297) para 103.

²⁹⁹ Above at para 77.

³⁰⁰ Above at para 124.

³⁰¹ *APDF and IHRDA v Republic of Mali* (n 297).

³⁰² A Budoo 'Association Pour le Progrès et la Défense Des Droits Des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v. Republic of Mali (Afr. Ct. H.P.R.)' (2018) 57 *The American Society of International Law* 1097.

³⁰³ Art 25 African Charter.

3.5.2 Decisions of the ACtHPR after achieving 50% gender parity

The two Advisory Opinions considered in this section both have a gender parity of 45%. However, they will be considered as if the ACtHPR had achieved 50% gender parity since the percentage translates into five female judges and six male judges on the bench. Given that the composition of the ACtHPR is 11, an odd number, there is no possibility of achieving equal numbers for both sexes.

Request for Advisory Opinion by: The Centre for Human Rights, University of Pretoria, Federation of Women Lawyers, Kenya, Women's Legal Centre, Women Advocates Research and Documentation Centre, Zimbabwe Women Lawyers Association³⁰⁴

a) Summary of the Request

This was the first request for an Advisory Opinion before the ACtHPR. The request was brought alleging that the commonplace unregistered and unrecorded marriages were rendering women in Africa vulnerable. Women who, as a result, were unable to prove marriages, were easily divorced, unable to enforce the requirement for consent before a man took a second wife in a polygamous relationship. Further, that this disadvantaged them such that they were unable to secure land and property rights, among others. The authors requested the ACtHPR's interpretation of article 6(d) of the Maputo Protocol which enjoins state parties to enact legislative measures to guarantee the registration of marriages and the ensuing state obligations thereunder.³⁰⁵ They drew attention to the Maputo Protocol's call for the integration of a gender perspective into the decisions and policies of state parties.³⁰⁶

The ACtHPR could not render an opinion because the authors had not been granted Observer Status before the AU and neither has, they signed a Memorandum of Understanding with the AU as required under article 4(1) of the African Court Protocol.

b) Critique of the Advisory Opinion

Of the 11 Members of the ACtHPR at the time of adopting this decision, there were five female judges and six male judges hence gender parity of 45%.³⁰⁷ This request presented an opportunity for the ACtHPR to pronounce on women's rights in the African human rights system. Yet, the ACtHPR's procedural hurdles prevented the authors from invoking the ACtHPR's jurisdiction.

³⁰⁴ *Request for Advisory Opinion by: The Centre for Human Rights, University of Pretoria, Federation of Women Lawyers, Kenya, Women's Legal Centre, Women Advocates Research and Documentation Centre, Zimbabwe Women Lawyers Association* (No.001/2016).

³⁰⁷ As above.

The ACtHPR used similar reasoning in the *Request for Advisory Opinion by the Centre for Human Rights of the University of Pretoria and the Coalition for African Lesbians* hence losing an opportunity to pronounce on the protection and promotion of the rights of queer women on the continent.³⁰⁸ There have been calls for the ACtHPR to allow African individuals and groups to have automatic and direct access to its judicial mechanism, as this would allow for more cases before the ACtHPR.³⁰⁹ The creation of the ACtHPR had been celebrated because it created an avenue to receive binding decisions on all African human rights treaties and international instruments.³¹⁰ Yet, the ACtHPR restricted access means that it has decided less cases than its European and Americas counterparts.³¹¹

Asking the African woman question includes awareness to structural constraints that prevent women from accessing justice.³¹² In the instant case, Justice Rafaâ Ben Achour delivered an individual opinion in which he essentially asked the African woman.³¹³ He acknowledged that article 4(1) of the African Court Protocol was overly restrictive in requests for Advisory Opinions than it was for contentious matters. He concluded on a progressive note by calling for the amendment of the provision to enable referrals to the ACtHPR as well as relaxation of the conditions required of NGOs to bring matters before it.³¹⁴ This sense of judicial awareness and activism displayed by the individual opinion presents a general will of the ACtHPR towards addressing gender justice and asking the woman question.

Request for Advisory Opinion by The Pan African Lawyers Union (PALU) on the compatibility of vagrancy laws with the African Charter on Human and Peoples' Rights and other human rights instruments applicable in Africa (PALU Request)³¹⁵

a) Summary of the request

The request for Advisory Opinion was filed by PALU highlighting its concern with the number of AU member states that still retained vagrancy laws in their legal frameworks. The authors sought the ACtHPR opinion on whether member states had a positive obligation to repeal these laws in conformity with the African Charter. The authors drew the ACtHPR attention to how poor

³⁰⁸ *Request for Advisory Opinion by the Centre for Human Rights of the University of Pretoria and the Coalition for African Lesbians* (No. 002/2015).

³⁰⁹ CN Ezennia 'Access to justice mechanisms for individuals and groups under the African regional human rights system: An appraisal' (2015) 8 *African Journal of Legal Studies* 115.

³¹⁰ Ezennia (n 309).

³¹¹ Gathii (n 187) 219.

³¹² Art 8(a) Maputo Protocol.

³¹³ Request for Advisory Opinion by the Centre for Human Rights, University of Pretoria, Federation of Women Lawyers, Kenya, Women's Legal Centre, Women Advocates Research and Documentation Centre, Zimbabwe Women Lawyers Association (Individual Opinion of Judge Rafaâ Ben Achour).

³¹⁴ As above.

³¹⁵ *Request for Advisory Opinion by the Pan African Lawyers Union (PALU) on the compatibility of vagrancy laws with the African Charter on Human and Peoples' Right and other human rights instruments applicable in Africa* (No. 001/2018).

women are disproportionately affected by vagrancy laws given the feminisation of poverty that translates into their inability to pay fines, bail or legal representation thus staying in detention longer for violations. They requested the ACtHPR to advise as to whether vagrancy laws that provided for arrests without arrest warrants violated article 24 of the Maputo Protocol.

The ACtHPR noted the structural and intersectional violations faced by poor and marginalised in the application of vagrancy laws. It noted that member states are under an obligation created pursuant to article 24 of the Maputo Protocol to ‘create an environment where poor and marginalised women can fully enjoy all their human rights’. It concluded that vagrancy laws are incompatible with article 24 of the Maputo Protocol.

b) Critique of the Advisory Opinion

At the adoption of the decision, the ACHPR bench was composed of six male judges and five judges making the gender parity 45%.³¹⁶ The ACtHPR’s acknowledgment of the multiple violations poorer, uneducated women faced with vagrancy laws undergo is indicative of the application of a gendered perspective. The ACtHPR relied on the intersectional approach to find that vagrancy laws are discriminatory and offend the dignity of women because they unequally target women who have “no means of subsistence and cannot give a satisfactory account” of themselves.³¹⁷ The ACtHPR opinion is a clear indication of its commitment to ask the African woman question to redress the historical marginalisation that women on in Africa have undergone.

3.5.3 The impact of women’s representation on the ACtHPR

The ACtHPR has evolved notably with the participation of women judges.³¹⁸ The impact of women is determinable from the nature of institutional change on the body. The ACtHPR became the most gender-balanced regional Court in 2018, when it achieved majority female bench since its inception in 2006.³¹⁹ The three decisions analysed in the preceding sections indicate an obvious shift towards gender awareness in the ACtHPR reasoning and recommendations with increased representation of women on the bench. Even where the ACtHPR did not reach a favourable decision given procedural barriers, it is conscious of these limitations. The judges, both men and

³¹⁶ *PALU Request* (n 315).

³¹⁷ Above at paras 136-140.

³¹⁸ JJ Dawuni & SH Adjolohoun ‘The African Court: From the politics of gender to the gender of politics’ *The Institute for African Women in Law*. <https://www.africanwomeninlaw.com/post/the-african-court-from-the-politics-of-gender-to-the-gender-of-politics> (accessed 9 October 2021).

³¹⁹ Dawuni & Adjolohoun (n 318).

women seem to appreciate the African woman question and the peculiar position of the African woman in international law.³²⁰

The Rules of ACtHPR prescribe the conduct of judges. Where a judge had previously expressed opinions in public that may affect their ability to objectively hear a case, they are expected to recuse themselves.³²¹ The current president, Lady Justice Aboud, is concurrently one of the Board of Directors of the International Association of Women Judges (IAWJ), a network of women judges who aim to curb gender bias and advance gender-responsive courts.³²² Lady Justice Chizumila, who currently sits on the Court, was the first female ombudsman in Malawi and one whose work on inheritance laws led to the enactment of legislation that criminalised property grabbing from widows in Malawi.³²³ To expect judges to strip themselves of their biases and socialization while hearing a matter is a difficult requirement to achieve.³²⁴

The impact of women on the ACtHPR may also be determined by the number of separate and dissenting judgments delivered by women on the Court.³²⁵ Female judges on the bench have delivered 28 dissenting/separate opinions in cases involving the violation of human rights generally.³²⁶ The role of dissenting opinions in jurisprudence cannot be overemphasised because, while they do not have binding force, they carry critical language of the majority judgment which could serve to improve advocacy and point out insights that may have been ignored by the majority.³²⁷ For example, Lady Justice Chizumila previously delivered a separate opinion in which she argued that even when the ACtHPR did not have normative basis to make an order, in practice, international courts, like the ACtHPR, can offer *obiter dictum* whenever the need arises.³²⁸ Such a creative approach to judging therefore creates a more conducive environment for the Court to adopt more gender responsive decisions in the future.

³²⁰ Request for Advisory Opinion by the Centre for Human Rights (Individual Opinion of Judge Rafâa Ben Achour) (n 313).

³²¹ Rule 9 Rules of ACtHPR.

³²² International Association of Women Judges 'Who we are'. https://www.iawj.org/content.aspx?page_id=22&club_id=882224&module_id=475491 (accessed 12 October 2021).

³²³ ACtHPR 'Lady Justice Tujilane Rose Chizumila'. <https://www.african-court.org/wpafc/lady-justice-tujilane-rose-chizumila-malawi/> (accessed 12 October 2021).

³²⁴ Wilson (n 63).

³²⁵ Dawuni & Adjolohoun (n 318).

³²⁶ ACtHPR 'Statistics'. <https://www.african-court.org/cpmt/statistic> (accessed 26 October 2021).

³²⁷ MA Bowen & XI Flowers 'Making use of dissenting opinions' *Butler Snow* 10 November 2020. <https://www.butlersnow.com/2020/11/making-use-of-dissenting-opinions/> (accessed 9 October 2021).

³²⁸ *Werema Wangoko Werema & Another v United Republic of Tanzania* (Application No. 024/2015). (Joint separate opinion of Justice Ben Kioko and Justice Tujilane Rose Chizumila).

3.6 Conclusion

In conclusion, the cases analysed document progression of the AUHRB to becoming more gender-specific, through their processes, reasoning, recommendations and framing of the language around the gross violations of women's rights. The AUHRB utilises their foundational treaties to shift from the formal equality model to substantive equality norms such as the due diligence principle in the protection and promotion of the rights of women. On whether women have an impact on the gender responsiveness of the AUHRB, the answer is in the affirmative as the foregoing analysis and key findings have indicated substantive representation of women. Women, by the nature of their sex and status in society, develop a level of gender consciousness of gender and how it interacts with power structures.

Additionally, women on AUHRB, just like their male counterparts, work within a given framework and can only make an impact within the confines of such framework. The next chapter expands the analysis to the ways in which the restrictive and limiting institutional and legal framework governing AUHRB may be reimagined to allow for the promotion and protection of the rights of women in cases involving gross violation of their rights as well to maintain gender parity.

Chapter 4 Reimagining practice in African Union’s human rights bodies to promote the rights of women

4.1 Introduction

Given the findings in chapter three, the path to reimagining practice in AUHRB, promoting the rights of women and achieving permanent gender parity should be rooted in Filomina Steady’s description of African feminism as; ‘dealing with multiple oppressions’ and as ‘dealing with women first and foremost as human rather than sexual beings’.³²⁹ In Africa, law, religion, and culture have been merged to disenfranchise women.³³⁰ Thus, the recognition of women as human is at the centre of any critique or doctrinal inquiry into the impact of women’s representation in decision-making bodies.

The reimagination of practice in AUHRB would ensure that substantive equality as envisioned by the legal regime on the rights of women as examined is implemented in decisions and reasoning of the AUHRB. The recommendations in this chapter are two-tiered that is, reimagining practice at the AUHRB by taking measures to ensure gender parity alongside encouraging gender-responsiveness of AUHRB. The following are some of the steps that may be undertaken to improve women’s representation as well as promote gender responsiveness of the AUHRB.

4.2 Recommendations

4.2.1 Encouraging gender responsiveness of AUHRB

African Union’s human rights bodies

³²⁹ G Mikell ‘African feminism: Toward a new politics of representation’ (1995) 21 *Feminist Studies* 405 at 407.

³³⁰ F Banda *Women, law and human rights* (2005).

For AUHRB to achieve gender responsiveness, the African human rights system should consider the application of feminist judgment project (FJP), which is an emerging movement in feminist legal scholarship where feminist academics, scholars, and lawyers write alternative judgments in legal cases.³³¹ This would be of benefit to the AUHRB in streamlining the feminist judicial practice in Africa. FJP was developed with the aim of rewriting judgments/decisions from a feminist perspective.³³² FJP presents a creative way of achieving gender justice in cases of gross violations of women's rights because not only does it provide a practical framework within which to reimagine judging but also, the reasoning is often from a different perspective.

Against this backdrop, including FJP in the law school curriculum would inspire future practitioners to apply feminist and intersectional approaches to matters concerning the gross violations of the rights of women or to general violations of human rights.³³³ Alternative judgments counter the narrative of the objectivity and unbiased nature of the law.³³⁴ FJP introduces a perspective-shifting approach to judicial decisions by interrogating nuances and varying forms of discrimination that intersection against women in law that may not form part of the mainstream subjects in judicial training.

The AUHRB should encourage the training of both male and female members of the AUHRB in matters of judicial gender sensitivities in handling cases involving gross human rights violations of women's rights and as well as other human rights. This is fundamental in achieving a radical change in the judging practice in the African human rights system. Although the dissertation focused on the impact of women on AUHRB, women cannot singlehandedly overhaul years of institutional practice. It is imperative that the male members are involved in the move to achieve gender responsiveness in cases involving the violation of women's rights. As has been discussed, the legal framework which protects the rights of women and girls on the continent is progressive and comprehensive. However, for claimants to realise the rights protected therein, members of the AUHRB should be empowered to interpret these norms with a view of achieving substantive equality and not merely formal equality.

The research revealed instances where restrictive procedural rules on admissibility limited the ability of AUHRB to deliberate on matters of violations of women's rights. Case in point are

³³¹ H Douglas et al (eds.) *Australian feminist judgments* (2014).

³³² Cardiff Law and Global Justice 'The African Feminist Judgment Project'. <https://www.lawandglobaljustice.com/the-african-feminist-judgments-project> (accessed 10 October 2021).

³³³ VE Munro 'Feminist Judgments Projects at the intersection' (2021) 29 *Feminist Legal Studies* 251 at 259.

³³⁴ LL Berger et al 'Learning from Feminist Judgments: Lessons in language and advocacy' (2019) 98 *Texas Law Review Online* 40.

the Rules of the ACtHPR that have hindered access to the ACtHPR thus leaving victims with no redress particularly in matters of emergency human rights violations.³³⁵ Additionally, the ACHPR has to date not adjudicated any case under the Maputo Protocol which provides the widest protection to women.³³⁶ Such issues as to the ambiguity of which body has the jurisdiction to adjudicate the Maputo Protocol also affect the access to justice and should be clarified to improve gender responsiveness of AUHRB. The AUHRB should therefore revise and amend the communication procedures of any of these three bodies that creates an unnecessary hinderance to the access to justice.

A major hinderance to the move towards of improving gender representation on decision-making bodies is that there is no mechanism in international law to sanction states that have failed to comply. Therefore, the implementation largely depends on political will of the member states to remedy the underrepresentation of women on these bodies. One of the ways to encourage states to comply with this requirement is to amend the Rules of Procedures of the ACERWC and the ACHPR to include provisions gender representation.

Non-Governmental Organisations and African individuals

NGOs and individuals may have *locus standi* to appear before any of the three bodies of the AUHRB if they fulfill admissibility requirements.³³⁷ African NGOs and individuals whose rights have been violated have been instrumental in the promotion and protection of human rights and thereby holding African governments accountable.³³⁸ The cases analysed in chapter three reveal the importance of lawyers and practitioners to ask the African woman question as well as adopt gender-sensitive arguments in their submissions. This is because the submissions guide the framing of issues for victims to claim entitlements arising from a particular right.

Therefore, if the complainants are unconscious of the gender question, this could lead to missed opportunities for the AUHRB to pronounce itself on matters that could propel women's rights forward. The trainings on gender-sensitive litigation before AUHRB trainings should target all stakeholders, government, NGOs, and private practitioners who are involved in the deliberation and judging process especially in matters involving gross violation of women's rights. NGOs and private practitioners should encourage feminist strategic litigation which recognises gender bias in

³³⁵ *PALU Request* (n 315).

³³⁶ *Kamunyu* (n 2).

³³⁷ Art 56 African Charter before the ACHPR, Art 5 African Court Protocol before the ACtHPR, Art 44 ACRWC before the ACERWC.

³³⁸ K Appiagyei-Atua 'Human rights NGOs and their role in the promotion and protection of rights in Africa' (2002) 9 *International Journal on Minority and Group Rights* 265.

the dispensation of justice even in cases where the laws are progressive. This will enable victims of human rights violations to realise legal entitlements.

Member states

Member states may engage in the encouragement of gender-responsiveness of AUHRB by complying with the recommendations made at the end of the communications processes in all matters, but especially in matters involving gross violations of human rights. Since AUHRB, member states are usually hesitant in complying with the payment of reparations for the violations suffered by victims. This places the legitimacy of the AUHRB in doubt. Recently, the Ethiopian government filed a motion to review the decision made by the ACHPR in the *Equality Now case*.³³⁹

4.2.2 Maintaining gender parity on AUHRB *African Union's human rights bodies*

To maintain gender parity on AUHRB, the African human rights system should facilitate a socio-cultural shift in the 'Boys' Club' attitude. This is a long-term solution to the exclusion of women and must be undertaken incrementally to improve gender representation.³⁴⁰ According to research, because of the masculinisation of institutions, women who make it to the institutions report harassment and discrimination which manifests in various ways like being subjected to gendered forms of intimidation.³⁴¹ This then discourages other women from taking up these roles. The AUHRB while promoting the gender equality agenda should make sure that the environment is conducive for women. This includes adopting gender-inclusive policies that propel women's judicial careers forward. This would encourage women to take up leadership positions in the AUHRB.

Member states

Member states are crucial in the nomination, recruitment, and appointment processes of women to the AUHRB. The African human rights system should address barriers that women candidates face in selection processes in addition to taking proactive measures to empower qualified women on the national level to take up the opportunities at AUHRB. States have an obligation to take

³³⁹ *Equality Now case* (n 256).

³⁴⁰ A Mudukuti 'Symposium on gender representation: The international Criminal Court's "Boys Club" problem' 07 October 2021 *OpinioJuris*. <http://opiniojuris.org/2021/10/07/symposium-on-gender-representation-the-international-criminal-courts-boys-club-problem/> (accessed 09 October 2021).

³⁴¹ Geneva Forum series No.1 'Women and the judiciary' (2014). <https://www.ici.org/wp-content/uploads/2014/10/Universal-Women-and-Judiciary-Gva-For-1-Publications-Conference-Report-2014-ENG.pdf> (accessed 25 October 2021).

legal and policy measures to ensure that more women are represented, firstly in national courts which subsequently influence the pool of qualified female candidates a state has. The processes of nominating, electing, and appointing candidates should be such that they encourage gender representation. The Legal Affairs Unit of the AU, which reviews nominations for members of the AUHRB rejects nominations from members states that do not include names of female candidates. Therefore, there is need for political will by states to fulfil their international obligations. The rules of ACHPR and the ACERWC should provide for gender considerations in the nomination processes by states.

4.3 Conclusion

To investigate the impact of women's representation on decisions of AUHRB is neither meant to invoke justification for the inclusion of women nor is it to presume a common essence among women that influences them to judge in a certain way. Opponents of symbolic representation and the ensuing debates surrounding identity politics have advanced arguments critical of the study of the impact of having women in decision-making bodies.³⁴² The answer lies in the fact that for a long time, men have been the yardstick against which leadership was valued. The impact of women's representation transcends essentialist arguments. It serves to problematise the underrepresentation of women in decision-making bodies. In so doing, the inclusion of women and their substantive contribution to decision-making is essential to study as it relates to the access to justice of a historically marginalised group.

The key findings support the proposition that the inclusion of women is not only beneficial to female victims but to every complainant before AUHRB, because as discussed, the African woman question may be used broadly to expose implicit biases in laws. The findings highlight the importance of integration of women into AU institutions and how such integration and substantive representation influences institutional outcomes. The findings show the importance of integration and the substantive representation.

There is need to exercise caution in assuming that the inclusion of more women necessarily translates into gender benefits for women. Since women act in similarly constrained institutions as their male counterparts, there may be limited opportunities to shape their substantive representation as well as an impossible task to influence institutions in such profound way. Attention should be shifted to eliminating the structures that perpetrate the marginalisation of women.

³⁴² N Grossman 'Julia Sebutinde: An Unbreakable Cloth' in Dawuni, J and Kuenyehia, A (eds.) *International Courts and the African Woman Judge: Unveiled Narratives* (2018).

(19936 words)

Bibliography

Books

Baetens, F (ed) (2020) *Identity and diversity on the international bench* Oxford: Oxford University Press.

Banda, F (2005) *Women, law and human rights* Oxford: Hart Publishing.

Dawuni, JJ & H.E Kuenyehia, A (eds) (2018) *International courts and the African woman judge: unveiled narratives* New York: Routledge.

Doherty, B & de Geus, M (eds.) (1996) *Democracy and green political thought: Sustainability, rights, and citizenship* London: Routledge.

Douglas, H; Bartlett, F; Luker, T & Hunter R (eds) (2014) *Australian feminist judgments* Oxford: Hart Publishing.

Eltahawy, M (2016) *Headscarves and hymens: Why the Middle East needs a sexual revolution* New York: Farrar, Straus and Giroux.

Gathii, JT (ed.) (2020) *The performance of Africa's international courts: Using litigation for political, legal and social change* Oxford: Oxford University Press.

Grossman, N 'Julia Sebutinde: An Unbreakable Cloth' in Dawuni, J and Kuenyehia, A(2018) (eds) *International Courts and the African Woman Judge: Unveiled Narratives* New York: Routledge.

Gutmann, A (2009) *Identity in democracy* Princeton, NJ: Princeton University Press.

Hodson, L & Lavers T (eds) (2019) *Feminist Judgments in International Law* London: Bloomsbury Publishing.

Hooks, B (2015) *Feminist theory from margin to center* Boston: South End Press.

Hunter, R & Rackley E (eds) (2010) *Feminist judgments: From theory to practice* Oxford: Hart Publishing.

Kuhn LH (2009) *Social control and human nature: What is it we are controlling?* El Paso, TX: LFB Scholarly Publishing LLC.

Oyeronke O (1997) *The invention of women: Making an African sense of western gender discourses* Minneapolis: University of Minnesota Press.

Papenfua, A & von Schorlemer, S 'Organs, Article 8' in Simma, B; Khan, DE; Nolte, G; Paulus, A & Wessendorf, N (eds.) (2012) *The Charter of the United Nations: A Commentary* Oxford: Oxford University Press.

Pateman, C (1988) *The sexual contract* Stanford: Stanford University Press.

Pitkin, HF (1967) *The concept of representation* Berkeley: University of California Press.

Schultz, U & Shaw, G (eds) (2003) *Women in the world's legal professions* London: Bloomsbury Publishing.

Schultz, U & Shaw, G (eds) (2013) *Gender judging* London: Hart Publishing.

Smart, C (1989) *Feminism and the power of the law* London: Routledge.

Tamale, S (2020) *Decolonization and afro-feminism* Ottawa: Daraja Press.

Viljoen, F (2007) *International human rights law in Africa* Oxford: Oxford University Press.

Journal articles

Abdulmelik, N & Belay, T 'Advancing women's political rights in Africa: The promise and potential of ACDEG' (2019) 54 *Africa Spectrum* 147.

Appiagyei-Atua, K 'Ethical dimensions of third world approaches to international law (TWAAIL): A critical review' (2015) 8 *African Journal of Legal Studies* 209.

Appiagyei-Atua, K 'Human rights NGOs and their role in the promotion and protection of rights in Africa' (2002) 9 *International Journal on Minority and Group Rights* 265.

Bartlett, KT 'Feminist legal methods' (1990) 103 *Harvard Law Review* 829.

Berger, LL ; Stanchi, KM & Crawford, BJ 'Learning from Feminist Judgments: Lessons in language and advocacy' (2019) 98 *Texas Law Review Online* 40.

Brooks, RE 'Feminism and international law: An opportunity for transformation' (2002) 14 *Yale Journal of law and Feminism* 345.

Budoo, A 'Association Pour le Progrès et la Défense Des Droits Des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v. Republic of Mali (Afr. Ct. H.P.R.)' (2018) 57 *The American Society of International Law* 1097.

Charlesworth, H 'The mid-life crisis of the Universal Declaration of Human Rights' (1998) 55 *Washington and Lee Law Review* 781.

Crenshaw, K 'Mapping the margins: Intersectionality, identity politics, and violence against women of color' (1991) 43 *Standard Law Review* 1241.

Dawuni, JJ 'African women on international courts: Symbolic or substantive gains?' (2018) 47 *University of Baltimore Law Review* 199.

- Dean, R; Gagnon JP & Asenbaum, H ‘What is democratic theory?’ (2019) 6 *Democratic Theory: An Interdisciplinary Journal* 5.
- Durojaye, E & Oluduro, O ‘The African on Human and People’s Rights and the woman question’ (2016) 24 *Feminist Legal Studies* 315.
- Dzubinski, LM & Diehl, AB ‘The problem of gender essentialism and its implications for women in leadership’ (2018) 12 *Journal of Leadership Studies* 56.
- Elliot, H ‘The difference women judges make: Stare decisis, norms of collegiality, and feminine jurisprudence- A research proposal’ (2001) 16 *Wisconsin Women’s Law Journal* 41.
- Elson, D & Gideon, J ‘Organising for women’s economic and social rights: How useful is the International Covenant on Economic, Social and Cultural Rights?’ (2004) 18 *Journal of Interdisciplinary Gender Studies* 133.
- Ezennia, CN ‘Access to justice mechanisms for individuals and groups under the African regional human rights system: An appraisal’ (2015) 8 *African Journal of Legal Studies* 115.
- Feenan, D ‘Women Judges: Gendering judging, justifying diversity’ (2008) 35 *Journal of Law and Society* 490.
- King, KL, Meernik, JD & Kelly EG ‘Deborah’s voice: The role of women in sexual assault cases at the International Criminal Tribunal for the Former Yugoslavia (2016) 98 *Social Science Quarterly* 548.
- Langley, W ‘The rights of women, the African Charter, and the economic development of Africa’ (1987) 7(2) *Boston College of Third World Law Journal* 215.
- Mezmur, BD ‘The African Children’s Charter @ 30: A distinction without a difference?’ (2020) 28 *The International Journal of Children’s Rights* 693.
- Mikell, G ‘African feminism: Toward a new politics of representation’ (1995) 21 *Feminist Studies* 405.
- Munro, VE ‘Feminist Judgments Projects at the intersection’ (2021) 29 *Feminist Legal Studies* 251.
- Mutua, M ‘Banjul Charter and the case for an African cultural fingerprint: An evaluation of the language of duties’ (1995) 35 *Virginia Journal of International Law* 339.
- Oosterveld, V ‘Gender-sensitive justice and the International Criminal Tribunal for Rwanda: Lessons learned for the International Criminal Court’ (2005) 12 *New England Journal of International and Comparative Law* 119.
- Roth, BR ‘The CEDAW as a collective approach to women’s rights’ (2002) 24 *Michigan Journal of International Law* 187.
- Ssenyonjo, M ‘Responding to human rights violations in Africa: Assessing the role of the African Commission and Court on Human and Peoples’ Rights (1987-2018)’ (2018) 7 *International Human Rights Law Review* 1.
- Sterio, M ‘Women as judges at international criminal tribunals’ (2020) 29 *Transnational Law & Contemporary Problems* 219.

Tamale, S 'Exploring the contours of African sexualities: Religion, law and power' (2014) 14 *African Human Rights Law Journal* 150.

Wilson, B 'Will women judges really make a difference?' (1990) 28 *Osgoode Hall Law Journal* 507.

Yamada, R 'Feminism in radical democracy and Japanese political theory: Mouffe, Pateman, Young and "Essentialism"' (2021) 1 *Comparative Political Theory* 8.

Case law

African Commission on Human and Peoples' Rights

Decision of the ACHPR on request for review of merits decision in *Equality Now and Ethiopian Women Lawyers Association v Federal Republic of Ethiopia* (Communication 341/2007).

Democratic Republic of Congo v Burundi, Rwanda and Uganda (Communication 227/99).

Doebbler v Sudan (2003) AHRLR 153 (ACHPR 2003).

Egyptian Initiative for Personal Rights and Interights v Egypt (Communication No.334/2006) [2011] ACHPR 110.

Equality Now and Ethiopian Women Lawyers Association (EWLA) v Federation Republic of Ethiopia (Communication 341/2007).

Malawi African Association and Others v Mauritania (Communication No. 54/91-61/91-96/93-98/93-164/97_196/97-210/98).

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

Decision on the Communication submitted by the Institute for Human Rights and Development in Africa and Finders Group Initiative on behalf of TFA (A minor) against The Government of the Republic of Cameroon (Communication no. 006/Com/002/2015 Decision no. 001/2018).

Michelo Hunsungule and Others (On behalf of children in northern Uganda) against the government of Uganda (Communication No.1/2005).

The African Centre of Justice and Peace Studies (ACJPS) and People's Legal Aid Centre (PLACE) against the Government of the Republic of Sudan (Communication no. 005/Com/001/2015 Decision no. 002/2018).

African Court on Human and Peoples' Rights

Association Pour le Progrès et la Défense des droits des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v Republic of Mali (Application no. 046/2016).

Request for Advisory Opinion by the Centre for Human Rights of the University of Pretoria and the Coalition for African Lesbians (No. 002/2015).

Request for Advisory Opinion by the Centre for Human Rights, University of Pretoria, Federation of Women Lawyers, Kenya, Women's Legal Centre, Women Advocates Research and Documentation Centre, Zimbabwe Women Lawyers Association (No.001/2016).

Werema Wangoko Werema & Another v United Republic of Tanzania (Application No. 024/2015) (Joint separate opinion of Justice Ben Kioko and Justice Tujilane Rose Chizumila).

International Criminal Tribunal for the Former Yugoslavia

The Prosecutor v Jean-Paul Akayesu (Case No. ICTR-96-4-T).

Inter-American Court on Human Rights

Gonzalez et al. v Mexico ("Cotton Field") Inter-American Court on Human of Rights (ser. C) No.205 (16 Nov. 2009).

National Courts

Attorney General v Unity Dow, Appeal Court 1994(6) BCLR 1.

Legal instruments

International

Charter of the United Nations 1945.

Convention on the Elimination of All Forms of Discrimination against Women 1979.

International Covenant on Civil and Political Rights 1966.

International Covenant on Economic, Social and Cultural Rights 1966.

Rome Statute of the International Criminal Court 1998.

The Statute of the Special Court for Sierra Leone 2002.

The Updated Statute of the International Criminal Tribunal for the Former Yugoslavia 2009.

Universal Declaration of Human Rights 1948.

Regional

African Charter on Democracy, Elections and Governance 2007.

African Charter on Human and Peoples' Rights 1981.

African Charter on the Rights and Welfare of the Child 1990.

African Committee of Experts on the Rights and Welfare of the Child, Revised Guidelines for the Consideration of Communications 2014.

Constitutive Act of the African Union 2000.

The Organisation of African Unity Charter 1963.

The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 1998.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women 2003.

The Rules of Court, African Court on Human and Peoples' Rights 2020.

The Rules of procedure of the African Commission on Human and Peoples' Rights 2020.

Soft law instruments

International

CEDAW General Recommendation No. 23: Political and public life 1997, A/52/38.

CEDAW General Recommendation No. 33 on women's access to justice 2015, C/GC/33.

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women 1999.

Parliamentary Assembly of the Council of Europe: Resolution 1366 (2004), as modified by Resolutions 1426 (2005), 1627 (2008), 1841 (2011), 2002 (2014) and 2278 (2019).

Resolution: Procedure for the nomination and election of judges of the International Criminal Court ICC-ASP/3/Res.6.

UN ECOSOC Resolution: Equality in political participation and decision-making 1990 E/CN.6/1990/2.

United Nations Beijing Declaration and Platform for Action 1995.

Vienna Declaration and Programme of Action 1993.

Regional

Resolution on the right to a remedy and reparation for women and girls victims of sexual violence ACHPR/Res.111(XXXII) 07 adopted in Brazzaville, Republic of Congo 28 November 2007.

The AU Solemn Declaration on Gender Equality in Africa Assembly/AU/Decl.12 (III) Rev.1.

Theses and dissertations

Kamunyu, MW 'The gender responsiveness of the African Commission on Human and Peoples' Rights' A thesis submitted in fulfilment of the requirements for the degree of Doctor of Laws (LLD), University of Pretoria (2018).

Documents of the African Commission on Human and Peoples' Rights

Final communiqué of the 10th Extraordinary Session of the African Commission on Human and Peoples' Rights.

Final communiqué of the 33rd Ordinary Session of the African Commission on Human and Peoples' Rights.

Final communiqué of the 42nd Ordinary Session of the African Commission on Human and Peoples' Rights.

Seventh Annual Activity Report of the African Commission on Human and Peoples' Rights (1993-1994).

Thirteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (1999-2000).

Thirty ninth Activity Report of the African Commission on Human and Peoples' Rights.

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

Report of the 21st Ordinary Session of the African Committee of Experts on the Rights and Welfare of the Child.

Report of the 31st Ordinary Session of the African Committee of Experts on the Rights and Welfare of the Child.

Reports, publications and studies

African Union Strategy for gender equality & women's empowerment 2018-2028.

Celebrating 40 years since the adoption of the African Charter on Human and Peoples' Rights 1981- 2021 (2021) *Pretoria University Law Press*.

Report of the African Committee of Experts on the Rights and Welfare of the 'Continental study on the implications of conflict and crises on children in Africa' (2016).

Report of the Human Rights Advisory Committee 'Current levels of representation of women in human rights organs and mechanisms: Ensuring gender balance' at the Forty seventh session of the Human Rights Council 21 June - 9 July 2021 (A/HRC/47/51).

Report of the Working Group on the issue of discrimination against women in law and in practice (A/HRC/35/9).

United Nations '2009 World survey on the role of women in development'.
<https://www.unwomen.org/-/media/headquarters/media/publications/un/en/worldsurvey2009.pdf?la=en&vs=959>
(accessed 27 September 2021).

United Nations 'Women's rights are human rights' (2014) HR/PUB/14/2.

Internet sources/Blogs

'Gender and judging in the Middle East and Africa: Emerging scholarship and debates' *Oñati International Institute for the Sociological of Law* <https://www.iisj.net/eu/workshops/gender-and-judging-middle-east-and-africa-emerging-scholarship-and-debates> (accessed 26 October 2021)

A Mudukuti 'Symposium on gender representation: The international Criminal Court's "Boys Club" problem' 07 October 2021 *OpinioJuris*. <http://opiniojuris.org/2021/10/07/symposium-on-gender-representation-the-international-criminal-courts-boys-club-problem/> (27 October 2021)

A Samardzija ‘The future is female: Gender representation in international courts and tribunals’ 10 December 2012 *Leiden Law Blog*. <https://www.leidenlawblog.nl/articles/the-future-is-female-gender-representation-in-international-courts-and-tribunals> (accessed 27 October 2021)

African Commission on Human and Peoples’ ‘Statement on the passing of Honourable Ndiame Gaye Commissioner’. <https://www.achpr.org/pressrelease/detail?id=571> (accessed 27 October 2021)

African Commission on Human and Peoples’ Rights ‘Special Mechanisms’. <https://www.achpr.org/specialmechanisms/detail?id=6> (accessed 26 October 2021)

African Commission on Human and Peoples’ Rights, Current commissioners. <https://www.achpr.org/currentcommissioners> (accessed 26 October 2021)

African Commission on Human and Peoples’ Rights, Former commissioners. <https://www.achpr.org/formercommissioners> (accessed 26 October 2021)

African Committee of Experts on the Rights and Welfare of the Child, ‘Experts’. <https://reporting.acerwc.africa/CommitteeExperts> (accessed 26 October 2021)

African Committee of Experts on the Rights and Welfare of the Child, ‘Former members’. <https://www.acerwc.africa/former-members/> (accessed 26 October 2021)

African Committee of Experts on the Rights and Welfare of the Child ‘Mandate’. [ACERWC - African Committee of Experts on the Rights and Welfare of the Child](https://www.acerwc.africa/mandate/) (accessed 27 October 2021)

African Committee of Experts on the Rights and Welfare of the Child, ‘Table of Communications’. <https://www.acerwc.africa/table-of-communications/> (accessed 26 October 2021)

African Court on Human and Peoples’ Rights, ‘Current judges’. <https://www.african-court.org/wpafc/current-judges/> (accessed 26 October 2021)

African Court on Human and Peoples’ Rights, ‘Former judges’. <https://www.african-court.org/wpafc/former-judges/> (accessed 26 October 2021)

African Court on Human and Peoples’ Rights, ‘Lady Justice Tujilane Rose Chizumila’. <https://www.african-court.org/wpafc/lady-justice-tujilane-rose-chizumila-malawi/> (accessed 12 October 2021)

African Court on Human and Peoples’ Rights, ‘Statistics’. <https://www.african-court.org/cpmt/statistic> (accessed 26 October 2021)

African Union, ‘List of countries which have signed, ratified/acceded to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights. [https://au.int/sites/default/files/treaties/36393-sl-protocol to the african charter on human and peoplesrights on the estab.pdf](https://au.int/sites/default/files/treaties/36393-sl-protocol%20to%20the%20african%20charter%20on%20human%20and%20peoplesrights%20on%20the%20estab.pdf) (accessed 26 October 2021)

African Union, ‘Maputo Protocol on Women’s Rights in Africa’ (2020). <https://au.int/en/newsevents/20201117/maputo-protocol-womens-rights-africa> (accessed 31 August 2021)

AMANDLA! The Vanguard Edition ‘Chafika Bensaoula, PhD’ *Institute for African Women in Law*. <https://www.africanwomeninlaw.com/amandla1/Chafika-Bensaoula%2C-Ph.D> (27 October 2021)

Amnesty International ‘Reservations to the Convention on the Elimination of All Forms of Discrimination against Women: Weakening the protection of women from violence in the Middle East and North Africa region’ November 2004. Available at <https://www.refworld.org/pdfid/42ae98b80.pdf> (accessed 27 November 2021).

Cardiff Law and Global Justice ‘The African Feminist Judgment Project’. <https://www.lawandglobaljustice.com/the-african-feminist-judgments-project> (accessed 27 October 2021)

Center for women’s global leadership ‘Gender discriminatory nationality laws: Impact on women’s livelihood and world of work. [Gender Discriminatory Nationality Laws: Impact on Women’s Livelihood and World of Work | Global 16 Days Campaign](#) (accessed 24 October 2021).

Centre for Women, Peace + Security ‘EIPR and Interights v Egypt’. <https://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/eipr-and-interights-v-egypt/> (accessed 23 October 2021)

Department of Economic and Social Affairs ‘Achieving Gender Equality, Women’s Empowerment and Strengthening Development Cooperation’ (2010). Available at [https://www.un.org/en/ecosoc/docs/pdfs/10-50143\(e\)\(desa\)dialogues_ecosoc_achieving_gender_equality_women_empowerment.pdf](https://www.un.org/en/ecosoc/docs/pdfs/10-50143(e)(desa)dialogues_ecosoc_achieving_gender_equality_women_empowerment.pdf). (accessed 26 October 2021)

E Edroma ‘Promoting gender equality in the judiciary’ 5 July 2019 *United Nations Development Programme*. Available at <https://www.undp.org/blogs/promoting-gender-equality-judiciary> (accessed 27 October 2021)

Geneva Forum series No.1 ‘Women and the judiciary’ (2014). <https://www.icj.org/wp-content/uploads/2014/10/Universal-Women-and-Judiciary-Gva-For-1-Publications-Conference-Report-2014-ENG.pdf> (accessed 26 October 2021).

Global Network for the Right to Food and Nutrition briefs, ‘African Human Rights System’. Available at https://www.righttofoodandnutrition.org/files/achpr_formatted_en.pdf (accessed 26 October 2021)

Goal 5, Gender equality, Sustainable Development Goals. https://www.undp.org/sustainable-development-goals?utm_source=EN&utm_medium=GSR&utm_content=US_UNDP_PaidSearch_Brand_English&utm_campaign=CENTRAL&c_src=CENTRAL&c_src2=GSR&gclid=Cj0KCQjw1dGJBhD4ARIsANb6OdmgFsbNzS1IuAv-bTNFfGH1QALHrjgbVXXymgy4cmnMo56Ca7seHc0aAkpjEALw_wcB#gender-equality (accessed 27 October 2021)

Institute for African women ‘Beyond numbers: Gender parity at the African Court- A lesson for African judiciaries’. Available at <https://www.africanwomeninlaw.com/post/beyond-the-numbers-gender-parity-on-the-african-court-a-lesson-for-african-judiciaries> (accessed 26 October 2021)

International Association of Women Judges ‘Who we are’.
https://www.iawj.org/content.aspx?page_id=22&club_id=882224&module_id=475491
(accessed 12 October 2021).

International Federation for Human Rights ‘Women’s rights in Africa: Interview with Soyata Maiga, Special Rapporteur of the African Commission on Human and Peoples’ Rights (ACHPR)’ 10 July 2021. Available at <https://www.fidh.org/en/international-advocacy/african-union/13645-women-s-rights-in-africa-interview-with-soyata-maiga-special-rapporteur-of> (27 October 2021).

International Human Rights Law Clinic Working Paper Series No.4 ‘Achieving gender parity on international judicial and monitoring bodies’ October 2017. Available at <https://www.law.berkeley.edu/wp-content/uploads/2015/04/Working-Paper-4-Achieving-Gender-Parity-171002-3.pdf> (26 October 2021).

JJ Dawuni & SH Adjolohoun ‘The African Court: From the politics of gender to the gender of politics’ *The Institute for African Women in Law*.

List of countries which have signed, ratified/acceded to the African Charter on Democracy, Elections and Governance. <https://au.int/sites/default/files/treaties/36384-sl-AFRICAN%20CHARTER%20ON%20DEMOCRACY%2C%20ELECTIONS%20AND%20GOVERNANCE.PDF> (accessed 27 October 2021)

List of countries which have signed, ratified/acceded to the African Charter on the Rights and Welfare of the Child. <https://reporting.acerwc.africa/RatificationsTable> (accessed 27 October 2021).

List of countries which have signed, ratified/acceded to the African Charter on the Rights of Women in Africa. <https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf> (accessed 26 October 2021)

Litigating before the African Commission on Human and Peoples’ Rights: A practice manual. https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/712/attachments/original/1537202856/Litigation_Before_ACHPR_Manual_FINAL.pdf?1537202856 (accessed 22 October 2021)

MA Bowen and XI Flowers ‘Making use of dissenting opinions’ *Butler Snow* 10 November 2020. <https://www.butlersnow.com/2020/11/making-use-of-dissenting-opinions/> (27 October 2021)

O Ojigho ‘Does female representation at the African Commission on Human and Peoples’ Rights matter?’ *Institute for African Women in Law*. Available at <https://www.africanwomeninlaw.com/post/does-female-representation-at-the-african-commission-on-human-and-peoples-rights-matter> (accessed 27 October 2021)

Ratification status for CEDAW. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en (accessed 26 October 2021)

S Bukani ‘Feminist strategic litigation as a tool for confronting gendered exclusion and silencing’ 22 July 2021 *African Feminism*. Available at <https://africanfeminism.com/feminist-strategic->

[litigation-as-a-tool-for-confronting-gendered-exclusion-and-silencing/](#) (accessed 27 October 2021)

Status of ratification, ICCPR. <https://indicators.ohchr.org/> (accessed 27 October 2021)

Status of ratification, ICESCR. <https://indicators.ohchr.org/> (accessed 27 October 2021)

United Nations 'Member States'. <https://www.un.org/en/about-us/member-states> (accessed 27 October 2021)

V Ruiz 'The role of women judges and a gender perspective in ensuring judicial independence and integrity' 31 January 2019 UNODC: The Doha Declaration: Promoting a culture of lawfulness. <https://www.unodc.org/dohadeclaration/en/news/2019/01/the-role-of-women-judges-and-a-gender-perspective-in-ensuring-judicial-independence-and-integrity.html> (accessed 27 October 2021)

ZA Aziz & J Moussa 'Due Diligence Framework: State accountability framework for eliminating violence against women' (2016). <https://www.peacewomen.org/sites/default/files/Due%20Diligence%20Framework%20Report%20final.pdf>. (accessed 26 October 2021)