1 Introduction

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Almost 25 years after the historic International Conference on Population Development (ICPD) in Cairo in 1994 and the Beijing Declaration of 1995, the world has witnessed some major developments regarding the promotion and protection of sexual and reproductive health as human rights. Issues relating to sexual and reproductive health and rights (SRHR) have been receiving more attention from governments across the world, including African governments. Despite these positive developments, however, challenges remain. Sub-Saharan Africa still accounts for the highest number of people living with HIV in the world. Teenage pregnancies and unsafe abortions have resulted in avoidable deaths among women of reproductive age. Moreover, Africa remains one of the most dangerous places in the world for a woman to give birth. The maternal mortality ratios (MMR) in many African countries remain very high. For instance, the MMR in Nigeria is 814 deaths per 100,000 live births (one of the highest in the world).¹ The average number of deliveries attended by a skilled health care worker in Africa is put at about 47% lower than the world's average of 60% and 88% in Southern and Eastern Asia, respectively.² Contraceptive use among young women remains very low. About two-thirds of all births are still to young women aged 20–25.

Other regional challenges include negative attitudes towards non-conforming sexuality on the basis of age, gender, sexual orientation or identity. Existing rights in international and regional human rights instruments can be invoked to apply to sexual and reproductive health. These include the rights to life, dignity, privacy, non-discrimination, equality, liberty, freedom from inhuman and degrading treatment, health, scientific benefit and family. At the ICPD in Cairo, the international community defined reproductive rights to include:

[T]he right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice of regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.³

A meeting convened by the World Health Organization defined sexual rights to include the right of all persons, free of coercion, discrimination and violence, to:⁴

- Seek, receive and impart information related to sexuality;
- Sexuality education;
- Respect for bodily integrity;
- Choose their partner;
- Decide to be sexually active or not;
- Consensual sexual relations;
- Consensual marriage;
- Decide whether or not, and when, to have children; and
- Pursue a satisfying, safe and pleasurable sexual life

2 Overview of sexual and reproductive rights issues and challenges

While the international community has made remarkable progress in advancing SRHR, some major challenges remain with regard to realizing these rights. Since ICPD and the Beijing Declaration, the world has seen more attention given to issues that affect the rights and well-being of women. For instance, the rate of maternal mortality has decreased considerably from about half a million deaths annually in the 1990s to about 230,000.⁵ Despite this remarkable progress, many of the African countries failed to achieve the Millennium Development Goal 5, which was to reduce the number of maternal deaths by 75% by 2015, but the rate of maternal deaths remains unacceptably high.⁶ Many factors account for this, including lack of political will, poor allocation of resources to maternal health, a high rate of unsafe abortions and lack of access to skilled health care providers during birth, especially for women in rural areas or disadvantaged communities.⁷

In the same vein, progress has been made with regard to providing life-saving medications in the context of HIV/AIDS. At the end of 2018, an estimated 23 million out of 37 million people living with HIV were said to be on treatment⁸ a remarkable improvement from 2010 when it was around 17 million people on treatment. This has led to a dramatic decrease in HIV-related deaths from 1.7 million in 2004 to 770,000 at the end of 2018.⁹ Further, the rate of mother-to-child transmission of HIV has reduced considerably.¹⁰ Indeed, many of the countries that are worst affected by the HIV epidemic in Africa are now providing medications to reduce transmission from pregnant women to the unborn child and for the treatment for children, with the number of people receiving treatment eaching 940,000 at the end of 2018.¹¹ However, this still falls short of the 1.7 million children in need of HIV treatment, and disparities still exist among the regions.

Furthermore, evidence has shown that there has been an increase in the number of women using one form of contraception or another in many parts of the world, including Africa.¹² This is significant, as access to contraception is crucial

for the prevention of unwanted pregnancy and unsafe abortions. However, unmet need for contraception remains high in many countries in the region. Hence, the fertility rates for many African countries are still very high. While the average fertility rate in sub-Saharan Africa is 4.5, it can be as high as 5.4 in Nigeria and 5.9 in Mali.¹³ Lack of access to sexual and reproductive health information and services, and cultural practices such as child marriage, power imbalances and lack of information account for the high fertility rate in the region. Lack of respect for the agency of young women coupled with cultural and religious factors continue to limit access to sexual and reproductive health services, including access to contraception to those in the region.¹⁴ It is known that fertility rate influences maternal mortality and the well-being of a woman, as the higher the fertility rate, the higher the risk to the woman's health.

While progress has been made to address the impact of harmful cultural practices affecting the enjoyment of sexual and reproductive health and rights of women in the region, these practices have continued. Over the last few years, many African countries have taken drastic measures including the enactment of laws prohibiting or criminalizing child marriage and female genital cutting/mutilation (FGC/M). These measures have been propelled by continental-wide efforts such as the African Union Campaign to end child marriage.¹⁵ This campaign aimed to promote the rights of women and girls in Africa by advocating for the eradication of child marriage in the continent. The campaign received the support of many African countries and led to law reforms in some countries to address gender inequality and raise the marriageable age at a national level.¹⁶ However, the number of child marriages taking place in Africa is still high and of great concern. Reports have shown that in Africa, 35% of women have been married before reaching 18 compared to 30% in South Asia.¹⁷ A similar situation applies to FGC/M. While many countries in the region have experienced progress in combating this cultural practice through legislative reforms and public awareness campaigns, the practice has continued unabated.¹⁸ Of the over 200 million girls that have undergone FGC/M, about 70% of them live in Africa. Indeed, about eight African countries have recorded over 80% FGC/M prevalence.¹⁹ Strong religious and cultural views on this practice have led to its continuance in many parts of the region. There is a need for political will, education and continued engagement with communities where this practice takes place.

In many African countries, discrimination and human rights abuse of sexual minorities have continued. Individuals and states have continued to exhibit homophobic tendencies against persons of different gender identities or sexual orientations across the region. Reports have documented violent attacks on individuals based on their perceived or real gender identity or sexual orientation.²⁰ In addition, a significant number of African countries have enacted laws or policies criminalizing consensual same-sex sexual relationships.²¹ Even in countries where same-sex relationships are lawful, violent attacks based on gender identity or sexual orientation are common.²² Violence against and human rights abuse of individuals based on gender identity or sexual

orientation not only undermines the enjoyment of human rights, it also hinders programmes and efforts at addressing HIV and other sexual and reproductive health challenges. However, there seems to be a glimmer of hope, as the African Commission on Human and Peoples' Rights, hitherto silent, has recently taken a progressive stance on this issue.²³

3 Opportunities

Treaty human rights bodies such as the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Rights of the Child (CRC), the Committee on the Elimination of All forms Discrimination against Women (CEDAW) and the Human Rights Committee have all issued very useful General Comments/recommendations and concluding observations that have further clarified the meaning and content of sexual and reproductive health and rights. For instance, in its general comments 14 and 22, the CESCR noted that states are obligated to ensure availability, accessibility, acceptability, quantity of sexual and reproductive health care services.²⁴ It further noted that states must respect, protect and fulfil sexual and reproductive health and rights of all, especially vulnerable and marginalized groups. The Committee noted that denial of sexual and reproductive health services to an individual based on gender, sexual orientation or identity, refugee or asylum status, health status or age will amount to a breach of the state's obligation under the Covenant.²⁵

On the other hand, the CEDAW Committee has affirmed that failure by states to ensure access to health care services particular to women's needs will amount to an act of discrimination contrary to the provisions of the Convention.²⁶ It has recently affirmed that acts of violence, including harmful practices, homophobic attacks and forced sterilization amount to violation of women's fundamental rights and freedom.²⁷ In the same vein, the Committee on Rights of the Child has issued different general comments to clarify the sexual and reproductive health and rights of children and adolescents.²⁸ The Committee has emphasized the need for states to respect the rights of children and adolescents to sexual and reproductive health services without parental consent. It has further noted that states are to ensure the removal of all forms of barriers, including legal, religious, cultural and social, to sexual and reproductive health services for children and adolescents.²⁹

In September 2015, the United Nations General Assembly adopted the Sustainable Developments Goals (SDGs), which contain 17 goals.³⁰ The overarching goal of the SDGs is to ensure that no one is left behind in the fight to eradicate poverty worldwide. The SDGs contain some important targets relating to sexual and reproductive health. In particular, goals 3 on healthy living and 5 on gender equality are very relevant to addressing some of the sexual and reproductive health challenges facing Africans. SDG 3 aims specifically to reduce maternal mortality ratios to 70 deaths per 100,000 by 2030.³¹ The indicators to monitor progress for this include, among others, proportion

of births attended by skilled medical personnel, contraceptive prevalence use, adolescent birth rate, antenatal care coverage and ensuring universal access to family planning services. These positive developments can propel governments and policymakers in Africa to live up to their obligations under these different human rights instruments.

At the regional level, the African Commission on Human and Peoples' Rights has continued to play an important role in developing norms and standards to advance sexual and reproductive health as human rights. These include its adoption of thematic resolutions, general comments, concluding observations and other promotional activities. Of the recent developments on SRHR in Africa, some points are worthy of note—the adoption of general comments 1 and 2 on Article 14 of the Maputo Protocol, the adoption of Resolution 275 and the joint general comment on child marriage and other harmful practices.

In 2012, the African Commission adopted its first General Comment to clarify the provision of Article 14 (1) (d) and (e) of the Maputo Protocol, which is the first provision to explicitly address HIV as a human rights issue.³² The Commission has clarified that among the steps to be taken by states to meet the obligations under this provision, included the creation of an enabling legal environment that is respectful of the fundamental rights of all, including people living with HIV or at risk of the epidemic.³³ General Comment 2 of the Commission addresses various aspects of sexual and reproductive health, including access to safe abortion services, contraceptive services and sexuality education for young people.³⁴ It urges African governments to ensure that barriers to sexual and reproductive health services are removed.³⁵ States are further enjoined to ensure the provision of youth-friendly services to meet the sexual and reproductive health needs of young people.³⁶ It particularly urges states to ensure access to safe abortion services to all women in the region in accordance with the Maputo Protocol.³⁷ These general comments are historic in the sense that they broke the silence on some contentious sexual and reproductive health issues that are often treated with kid gloves.

Perhaps one of the most significant contributions of the African Commission to the development of sexual and reproductive health and rights is the affirmation of the rights of sexual minorities in the landmark Resolution 275.³⁸ In this Resolution, the African Commission condemns all forms of violence against persons based on real or perceived sexual orientation or gender identity.³⁹ It invokes the provisions of the African Charter on equality and non-discrimination, dignity and freedom from torture, inhuman and degrading treatment, and calls all African states to address all forms of violence against persons based on sexual orientation or identity. The Resolution came in the wake of violent attacks on people perceived to be of different sexual orientation and identity and the enactment of draconian laws to punish homosexual activities in countries such as Nigeria and Uganda.⁴⁰ While in recent years some countries have intensified homophobic tendencies to the issue of non-conforming sexuality, the African Commission has taken a bold step in protecting the rights of all

individuals from violence regardless of their gender identity or sexual orientation. This is a milestone in the annals of the Commission's history and portrays a positive development in the recognition of the rights of sexual minorities in the region

In its first ever Joint General Comment, the African Commission and the Expert Committee on the Rights and Welfare of the Child in Africa addressed the human rights violations in the context of child marriage and other harmful cultural practices.⁴¹ This Joint General Comment is significant in that it addresses a very serious and sensitive issue. Child marriage has remained a source of concern to human rights advocates and policy makers in the region. Despite several efforts made to curtail this practice, it has withstood resistance from communities and regions where it is practised mainly on religious and cultural reasons.

The Joint General Comment expresses concerns about the prevalence of child/early marriage in the region and its human rights implications. It specifically notes that this practice undermines various rights in the African Charter, Maputo Protocol and the African Children's Charter.⁴² Beyond condemning child marriage a human rights violation of the girl-child, the Joint General Comment makes concrete culturally appropriate recommendations addressing this serious human rights concern.⁴³ These include the need to ensure verification of birth and the issuance of birth certificates, full implementation of laws and imposition of sanctions, education and awareness campaigns and institutional measures to guarantee access to justice and rehabilitation of the girl-child already involved in child marriage.⁴⁴

In 2017, the African Commission adopted a very progressive document to combat sexual violence and its consequences in Africa. This document—Guidelines to Combat Sexual Violence and its Consequences in Africa—remains one of the most important documents by the African Commission on this issue.⁴⁵ Drawing on existing international norms and standards regarding sexual violence, the Commission adopts a broad and progressive definition of violence against women. The document further provides comprehensive examples of sexual violence to include, among others, rape, including marital rape, sexual harassment, female genital mutilation, virginity testing, child marriage, forced pregnancy, forced abortion, nudity and forced sterilization.⁴⁶ This is a progressive approach by the Commission, which complements the provisions of the Maputo Protocol on violence against women. The guidelines take into consideration the lived experiences of African women regarding all forms of sexual violence they daily encounter.

The various efforts of the regional human rights bodies have been consolidated by the adoption of the continental framework known as the revised Maputo Plan of Action 2016–2030 on universal access to sexual and reproductive health care services in Africa.⁴⁷ The Plan of Action aims at reaffirming commitments made during the ICPD in 1994 and the SDGs 2015, and contains detailed and costed actions towards realization of universal access to SRHR by African governments⁴⁸. It addresses key SRHR issues affecting the region and

outlines policies and programmes that African governments should adopt with a view to ensuring universal access to SRHR in the region. It is an ambitious fourteen-year plan that proposes to address some of the sexual and reproductive ill-health facing many Africans and improve their living conditions and well-being. For instance, it proposes an integration of SRHR services with HIV/AIDS, STIs, maternal health and new-born and family planning services. It recommends the involvement of men, families and communities, civil society groups, private and public sectors, and South-south cooperation towards the realization of universal SRHR services in the region.⁴⁹

In addition to these significant developments at the regional level, some national courts have begun to provide important jurisprudence bordering on the promotion and protection of the rights to sexual and reproductive health. For instance, courts in Kenya, Uganda, South Africa, Malawi and Zimbabwe have handed down judgments that advance the sexual and reproductive health and rights of individuals. Some of the cases adjudicated included forced detention for inability to pay maternity fees,⁵⁰ respect for adolescent sexual development and expression,⁵¹ promotion of rights of sex workers in the context of mandatory HIV testing⁵² and declaration of child marriage as unconstitutional.⁵³

These developments in the region provide opportunities for accountability on the part of African governments to live up to their obligations and to realize SRHR under international law and the African regional human rights system. The above developments clearly indicate that there are sufficient norms and standards in the region not only to hold states accountable, but also to advance the SRHR of vulnerable and marginalized groups. This calls for renewed commitment and political will on the part of African governments. More importantly, it calls for the involvement of other stakeholders such as civil society groups and national human rights institutions to act as watchdogs to the governments by ensuring accountability and creating awareness on SRHR issues.

4 Objectives

The main objective of this book is to explore recent developments, constraints and opportunities relating to the advancement of sexual and reproductive health and rights in Africa. It aims to highlight the relevance of a rights-based framework to addressing topical and contentious issues on sexual and reproductive health and rights in the region. Other objectives are:

- To stimulate debate on the impact of culture, morality and social beliefs on the enjoyment of sexual and reproductive health and rights, particularly in relation to vulnerable and marginalized groups;
- To explore the role of national human rights institutions and regional human rights bodies in advancing the realization of sexual and reproductive health and rights in the region;
- To discuss the importance of litigation as a means of advancing sexual and reproductive health and rights.

5 Significance of this book

Attempts have been made to explore the subject of sexual and reproductive health and rights in Africa from different perspectives and by different authors. Some of these publications have explored the application of human rights to sexual and reproductive health challenges in Africa. Others have examined the impact of socio-cultural practices on the enjoyment of sexual and reproductive health and rights. However, none captures the recent developments on this issue within the African region. The edited volume, *Strengthening sexual and reproductive health as human rights in Africa*, by Ngwená and Durojaye⁵⁴ published in 2014 seeks to address the application of human rights to the enjoyment of sexual and reproductive health in the region. It contains very interesting chapters addressing different issues, including HIV/AIDS, adolescents' sexuality, maternal mortality, child marriage, unsafe abortion and protection of women in armed conflict. The volume, however, does not address some contentious issues on sexual and reproductive health in the region such as homosexuality, conscientious objection to abortion services, the potential role of litigation in advancing SRHR and the role of national and regional human rights bodies in advancing SRHR.

The book *Protecting human rights of sexual minorities in Africa*⁵⁵ which was published in 2017 focuses entirely on the human rights challenges facing sexual minorities in Africa. It addresses the various acts of violence and human rights abuses perpetrated against sexual minorities across Africa. While the book focuses on sexual rights issues as experienced by sexual minorities, it does not deal with broader social, cultural and religious issues that affect sexual and reproductive health in the region.

This book addresses contemporary issues relating to SRHR in Africa. It attends to both sexual health and rights issues and reproductive health and rights issues. It captures developments that are more recent across Africa and their impact on the enjoyment of SRHR. The book further explores the role of national courts in advancing sexual and reproductive health and rights across the region. Important case-law from some African countries is discussed to emphasize the need to hold states accountable for the violation of sexual and reproductive health and rights.

In line with the views of other commentators, this book affirms that addressing the sexual and reproductive health and rights of Africans, particularly vulnerable and marginalized groups, is a matter of life and death that deserves urgent interventions from governments.⁵⁶ It recognizes that religious and cultural practices may sometimes interfere with the enjoyment of sexual and reproductive rights of the people. More importantly, the book makes the link between the SDGs and the right to health, including sexual and reproductive health and rights.

It suggests that applying a rights-based approach to issues of sexual and reproductive health would have great potential to improve the living conditions of the people in general and advancing the rights of vulnerable and

marginalized groups in particular. It further claims that the existing norms and standards on the right to sexual and reproductive health provide an impetus for its realization in the region. Therefore, the inability by a state to ensure that all individuals, regardless of their gender, age, sexual orientation or identity, enjoy to the fullest their sexual and reproductive health, amounts to failure to meet its human rights obligations.⁵⁷

6 Relevance

This book will be useful to researchers, students, academics, people working in civil society organizations, government departments/institutions, judiciary, international organizations, human rights institutions/bodies and individuals interested in the issue of sexual and reproductive health and rights.

7 Structure

This book is divided into three parts and contains 14 chapters addressing diverse issues on SRHR, with contributions from academia, human rights activists and members of regional human rights bodies and national human rights institutions. Part I addresses issues relating to reproductive health and rights. Part II deals with sexual health and rights, while Part III features chapters addressing mechanisms for the realization of sexual and reproductive health and rights. Due to language barriers, the book covers situations in Anglophone countries in the region. The summary of the chapters is presented below.

7.1 *Part I – Reproductive health and rights*

In Chapter 2, Satang Nabaneh examines the lack of regulation regarding the scope of conscientious objection to abortion in South Africa. The chapter seeks to clarify the essential conditions needed to ensure that women who seek access to abortion services are treated with respect for their reproductive autonomy and human dignity. It concludes by reflecting on how the right to freedom of conscience should be balanced with women's right to legal abortion services and care.

The focus of Chapter 3 by Ibrahim Obadina is on the nexus between unsafe abortion and maternal mortality in Nigeria. The chapter proposes that asking the 'woman question', and more particularly the 'Nigerian woman question', should guide policies, laws and judicial decisions relating to women's sexual and reproductive health and rights, including abortion services in Nigeria. It notes that asking the 'Nigerian woman question' means examining how the peculiar experiences of Nigerian women have been ignored by laws rooted in patriarchy across the country. Although criminal statutes have incorporated exceptions to the lifesaving requirement, the chapter argues that the country can draw inspiration from the Protocol on the Rights of Women in Africa (Maputo Protocol), which has recognized the rights of a woman to seek

abortion on certain grounds, in consonance with women's reality and experience in Africa.

Chapter 4 by Robert D. Nanima examines how the abortion question can be mainstreamed into the discussion on the right to health of women in Uganda. He argues that the restrictive regime on abortion exacerbates the marginalization of women and deepens already existing polarities. In his view, these polarities tend to pit the woman against the community, thereby undermining the right to health and well-being of Ugandan women. The chapter then engages in a discussion of the international and regional norms and standards applicable to the realization of safe abortion services for women and how this can be applied to Ugandan women. It particularly discusses the importance of the provision of the Maputo Protocol on abortion and the implications of the reservation entered by the Ugandan government. The chapter makes some recommendations to the Ugandan government on how to deal with the polarization of abortion in the country.

In Chapter 5, Michelle Rufaro Maziwisa examines the obligations of the government to promote, protect and fulfil human rights in the context of adolescent girls' reproductive health and rights using Zimbabwe as a case study. The chapter specifically notes that the right to contraception constitutes a critical part of the realization of this. The chapter further argues that constraints such as lack of information, socio-cultural factors and need for parental consent often limit access to contraception for adolescents in the country. Existing international and regional norms on SRHR impose obligations on the Zimbabwean government to ensure access to contraception services for adolescents in rural areas. The chapter concludes by urging the Zimbabwean government to take more proactive measures, consistent with its obligations under international law, with a view to ensuring access to contraception for adolescents in rural areas.

Chapter 6 by Sibusiso Mkwanzanji discusses an important but often ignored issue of men's involvement in the realization of the SRHR of women. Using South Africa as a case study, the chapter examines the various challenges women and girls face in realizing their SRHR and proposes that the involvement of men in SRHR of women has the potential to advance the rights of women. It highlights some of the benefits and constraints of involving men in the promotion and protection of SRHR of women and girls in the country. The chapter makes useful recommendations of how men can effectively be involved in the realization of the SRHR of women and girls.

7.2 Part II – Sexual health and rights

Godfrey Dalitso Kangaude discusses the human rights issues in relation to sexuality of adolescents in Malawi in Chapter 7. He argues that most parents have difficulties recognizing their children as sexual. Parents react negatively to childhood sexual development by prohibiting sexual conduct rather than promoting positive sexual behaviours. Using Malawi as a case study, the chapter argues that addressing gender inequitable norms that begin to exert influence

in early adolescence requires recognizing children and adolescents as possessing an evolving sexual agency, and supporting them to develop positive sexual behaviours and practices as they begin to pursue romantic and sexual interests. The chapter recommends a rights-based approach to addressing the sexual and reproductive health of adolescents in Malawi in ways consistent with gender equality norms and in line with the country's obligations under international law.

In Chapter 8, Ebenezer Durojaye and Satang Nabaneh examine the effectiveness of criminalization of FGC/M in The Gambia. The chapter discusses the nexus between FGC/M and human rights as well as the reasons often adduced to support the use of criminal law to address FGC/M. Furthermore, it focuses on the amendment to the Women's Act in The Gambia, which prohibits FGC/M. The paper evaluates the utility of the approach adopted by the Gambian government vis-a-vis its obligation under the Protocol to the African Charter on the Rights of Women (African Women's Protocol). The chapter concludes by recommending that beyond criminalization, states should complement this approach with other strategies such as education and awareness programmes.

Chapter 9 by Adetoun T Adebajo examines the role of culture and religion in the criminalization of homosexuality in Nigeria and proposes a middle ground where the rights of gay people can be respected, notwithstanding Nigerian cultural, moral and religious beliefs. The chapter discusses the relevant provisions of Nigeria's Criminal and Penal Codes, and Shari'a law, which had criminalized homosexuality long before the introduction of the Same-Sex Marriage (Prohibition) Act of 2013. It further argues that Nigeria's anti-gay laws contradict provisions of the Nigerian Constitution and principles of fundamental human rights enshrined in international and regional human rights instruments. Taking into consideration the particular situation of Nigeria, the chapter recommends short and long-term measures that the Nigerian government should adopt with a view to ensuring securing the rights of homosexuals in the country. These include relaxing some of the stringent measures and provisions of the Same-Sex Act and ultimately working towards decriminalization in the future.

The focus of Chapter 10 by Kutlwano Pearl Magashula is on the rights of transgender people in Botswana. The chapter explores the implication of the *Gender marker* case on the lives of transgender persons in Botswana. It argues for more inclusive approaches to legal gender recognition in order to build a pluralistic society that safeguards the rights of all its members. It calls for a reflection on the array of human experience and influence, as well as compliance with international human rights standards in relation to legal gender recognition. The chapter concludes by proposing alternative approaches to legal gender recognition informed by learnings from progressive national laws and advancements in comparative jurisprudence. It considers the implication and benefits of less restrictive approaches to legal gender recognition and registration and how they could be applied in Botswana.

Chapter 11 by Berry D. Nibogora discusses the challenges with the promotion and protection of the rights of sexual minorities under the African human rights system. In particular, the chapter examines Resolution 275 adopted by the African Commission on Human and Peoples' Rights. It discusses the provision of international regional human rights instruments in relation to sexual minorities and human rights abuses they encounter. The chapter traces the various activities and strategies that culminated in the adoption of the very progressive Resolution 275. It then examines the content of the resolution and makes recommendations to African governments towards its implementation.

7.3 Part III – Mechanisms for realizing SRHR

The focus of Chapter 12 by Tambudzai Gonesé-Manjonjo and Ebenezer Durojaye is on the relevance of litigation to advance SRHR in the region. The chapter draws on the experiences of the Southern African Litigation Centre, an organization that focuses on strategic litigation as a tool for realizing the SRHR of individuals in southern African countries. It then discusses some of the challenges, gains and opportunities of strategic litigation in ensuring accountability and redressing violations experienced by vulnerable and marginalized groups within the region. Using three cases as examples, the chapter discusses how engaging with the courts at the national level can elicit positive results in society as regards the realization of SRHR. The chapter concludes by admitting that despite the positive impact of strategic litigation, there are some challenges that need to be taken into consideration before deciding to embark on strategic litigation.

In Chapter 13, Shatikha S. Chivusia examines the role of national human rights institutions (NHRIs) in advancing SRHR at the national level. Using the Kenyan National Human Rights Institution as a case study, the chapter discusses the findings of the Kenya National Commission on Human Rights (KNCHR) from its Public Inquiry into Violations of Sexual and Reproductive Health Rights in Kenya that was conducted in 2012 and from its work around the 2017 election period with regard to sexual and gender-based violence (SGBV) cases. The chapter concludes by making concrete recommendations on how the Kenyan NHRI can play a more proactive role in realizing the SRHR of women and girls in the country.

Chapter 14 by Ayalew Getachew Assefa examines the role of the Expert Committee on the Rights of the Child in Africa in realizing the SRHR of children and adolescents in the region. The chapter highlights international and regional norms in relation to the SRHR of adolescents and considers the relevant principles on children's rights on this issue. It further considers the mandate of the Expert Committee and how this could help in advancing the SRHR of children and adolescents in the region. The chapter discusses the various mechanisms of the Expert Committee, including the state report system, communication system and the investigation system. It further examines the strengths and weaknesses of these mechanisms and concludes by

recommending how they can be more effective in advancing the SRHR of children and adolescents in the region.

Notes

- 1 WHO et al *Trends in maternal mortality 1990–2015* (2018).
- 2 As above.
- 3 See International Conference on Population and Development (ICPD) in Cairo, Egypt, on 5–13 September 1994 para 7.6 of The Programme of Action.
- 4 WHO *Expert meeting on sexual and reproductive health and rights* (2002).
- 5 See World Health Organization et al *Trends in maternal mortality: 2000 to 2017: Estimates* (2019).
- 6 As above.
- 7 As above. See also, O Afulukwe-Eruchalu & E Durojaye ‘Developing norms and standards on maternal mortality in Africa: Lessons from UN human rights bodies’ (2017) 1 *African Human Rights Yearbook* 82–106; R Cook et al *Reproductive health and human rights: Integrating medicines, ethics and Law* (2003) 161.
- 8 UNIADS *Global AIDS update 2018* (2019).
- 9 As above.
- 10 As above.
- 11 As above.
- 12 See World Health Organization (WHO) *Ensuring human rights in the provision of contraceptive information and services: Guidance and recommendation* (2014) 4.
- 13 World Bank Report *Fertility rate total (births per woman) sub-Saharan Africa* (2018) available at <https://data.worldbank.org/indicator/SP.DYN.TFRT.IN> (accessed 18 November 2020).
- 14 See E Durojaye ‘Access to contraception for adolescents in Africa: A human rights challenge’ (2011) 44(1) *Comparative and International Law Journal of Southern Africa* 1–29.
- 15 See for instance, African Union document on Campaign to end child marriage in Africa: A call to action available at <https://au.int/en/sa/cecm> (accessed 10 March 2021).
- 16 See for instance, the 14 February 2017 Amendment to the Malawian Constitution, which removes the contradiction regarding marriageable age. Prior to the Amendment, the Marriage, Divorce and Family Relation Act of 2015 prohibited marriage of a girl under 18, however, the Constitution has provided that with parental consent, a girl under 18 could get married. See also the Women’s Act of 2010.
- 17 See UNICEF *Child Marriage* (April 2020) available at <https://data.unicef.org/topic/child-protection/child-marriage> (accessed 23 June 2020).
- 18 See S Nabaneh & A Muula ‘Female genital mutilation/cutting: A complex legal and ethical landscape’ (2019) 145(2) *International Journal of Gynecology & Obstetrics* 253–257; see also E Durojaye & PM Sonne ‘A holistic approach to addressing female genital cutting (FGC) in Africa: The relevance of the Protocol to the African Charter on the Rights of Women’ (2011) *Akunba Law Review* 240–259.
- 19 United Nations Children’s Fund *Female genital mutilation/cutting: A global concern* (2016).
- 20 See International Lesbian, Gay, Bisexual, Trans & Intersex Association et al *State sponsored homophobia 2017: A world survey of sexual orientation laws: Criminalisation, protection and recognition* (2017) 81; see also Report by AMSHeR & Coalition of African Lesbians *Violence based on perceived or real sexual orientation and gender identity* (2013) 11.
- 21 See for instance, PM Eba ‘HIV-specific legislation in sub-Saharan Africa: A comprehensive human rights analysis’ (2015) 15 *African Human Rights Law Journal* 224–262.
- 22 AMSHER & Coalition of African Lesbians (n. 20) 18.
- 23 See African Commission on Human and Peoples’ Rights *Resolution on protection against violence and other human rights violations against persons on the basis of their real or imputed*

sexual orientation or gender identity available at <http://www.achpr.org/sessions/55th/resolutions/275>.

- 24 See General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant) (2000) § 2, 8; UN Committee on Economic, Social and Cultural Rights 'General Comment No. 22, Right to Sexual and Reproductive Health' (2016) UN Doc. E/C.12/GC/22.
- 25 General Comment 14 para 12.
- 26 See CEDAW Committee, General Recommendation No. 24: Article 12 of the Convention (women and health). See also UN Committee on the Elimination of Discrimination against Women 'Statement of the on Sexual and Reproductive Health and Rights: Beyond 2014 ICPD Review' (2014) UN Doc. CEDAW/C/2014/I/CRP.
- 27 CEDAW Committee General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 adopted 14 July 2017.
- 28 See for instance, General Comments 3, 4, 14 and 15 of the Committee on CRC.
- 29 See for instance, General Comments 4 of the Committee on CRC on Adolescents and Health.
- 30 United Nations General Assembly the Sustainable Developments Goals (SDGs).
- 31 As above.
- 32 On 6 November 2012, the African Commission adopted the first ever General Comment 1 on Article 14(1) (d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the rights of women in Africa available at <http://www.achpr.org/instruments/general-comments-rights-women/> (accessed 14 February 2020).
- 33 General Comment 1 para 20.
- 34 General Comment No 2 on Art 14.1 (a), (b), (c) and (f) of the Protocol to the African Charter on the Rights of Women available at http://www.achpr.org/files/instruments/general-comments-rights-women/achpr_instr_general_comment2_rights_of_women_in_africa_eng.pdf.
- 35 General Comment 1 para 16.
- 36 General Comment 2 para 29.
- 37 General Comment 2 para 37–40.
- 38 African Commission on Human and Peoples' Rights *Resolution on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity* available at <http://www.achpr.org/sessions/55th/resolutions/275>.
- 39 See para 1.
- 40 International Lesbian, Gay, Bisexual, Trans & Intersex Association et al (n. 20); see also AMSHER Report (n. 20) 20.
- 41 Joint general comment of the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on ending child marriage adopted by the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) 2017.
- 42 Joint General Comment on Child Marriage para 12.
- 43 Joint General Comment on Child Marriage paras 30–37.
- 44 As above.
- 45 *The Guidelines to Combat Sexual Violence and Its Consequences in Africa* was adopted during the 60th Ordinary Session of the African Commission on Human and Peoples' Rights held from 8 to 22 May 2017 in Niamey, Niger.
- 46 As above.
- 47 The revised Maputo Plan of Action on SRHR was adopted by African Ministers of Health during the ... to replace the 2007–2015 Plan on Action.
- 48 As above.
- 49 As above.

- 50 See *Millicent Awuor Omuya alias Maimuna Awuor & Another v. The Attorney General & 4 Others* (2015), Petition No. 562 of 2012 Kenya, High Court, Constitutional and Human Rights Division.
- 51 See *Teddy Bear Clinic for Abused Children and Another v. Minister of Justice and Constitutional Development and Another* CCT 12/13, [2013] ZACC 35.
- 52 SouthernAfrica Litigation Center 'News Release: Malawi High Court says mandatory HIV testing violates Constitutional Rights' available at <https://www.southernafricalitigationcentre.org/2015/05/20/news-release-malawi-high-court-declares-mandatory-hiv-testing-unconstitutional/> (accessed 26 June 2020).
- 53 See for instance, *Mudzuru & Another v. Ministry of Justice, Legal & Parliamentary Affairs (N.O.) & Others* Const. Application No. 79/14 [2015] ZWCC 12.
- 54 'C Ngwenya & E Durojaye (eds) *Strengthening sexual and reproductive health as human rights in Africa* (2014).
- 55 S Nawanse & A Jjuuko (eds) *Protecting human rights of sexual minorities in Africa* (2017).
- 56 See for instance, A Glasier et al 'Sexual and reproductive health: A matter of life and death' (2006) 368 *Lancet* 1595–607.
- 57 See General Comment 22 of the Committee on ESCR 2016.