

70 YEARS AFTER: REFLECTIONS ON THE SIGNIFICANCE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS FOR WOMEN'S RIGHTS IN AFRICA

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ABSTRACT

The purpose of this article is to explore the significance of the Universal Declaration of Human Rights for women's rights in Africa. In this regard, the following questions are addressed: (i) to what extent is the Universal Declaration of Human Rights relevant for the interpretation of women's rights in the African region considering the creation of binding treaties such as the Convention on the Elimination of all Forms of Discrimination against Women, the African Charter on Human and People's Rights, and its Protocol on the Rights of Women in Africa; (ii) and how can the future role of the Universal Declaration of Human Rights be assessed in the light of these developments. It is concluded that the Declaration is of substantial relevance for women's rights in Africa and will continue to provide a foundation for the development of subsequent human and women's rights instruments.

KEYWORDS

UDHR; Women's Rights; Universality Debate; CEDAW; African Human Rights System; African Charter; Maputo Protocol

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** The author wishes to thank Dr Ciara O'Connell for her valuable contributions as well as the Centre's research group for their helpful comments.

1. INTRODUCTION

The purpose of this article is to explore the significance of the Universal Declaration of Human Rights¹ (hereafter UDHR or the Declaration) for women's rights in Africa. Falling into the African Women's Decade (2010 – 2020), the Declaration's 70th anniversary presents an opportunity for retrospection and reorientation. Whilst contestations surrounding the universalism of human rights have dominated academic discourses, an assessment of the Declaration's significance for women's rights, especially African women's rights, has been neglected. To fill the gap in the literature, the article addresses, first, the extent as to which the Declaration is relevant for the interpretation and application of women's rights in Africa and, secondly, how the future role of the UDHR can be assessed in the light of subsequent human and women's rights instruments. The approach of tracing the UDHR in formal law is motivated by debates relating to the Declaration's status as a 'paper tiger', its lack of enforceability and relevance in the struggle for women's rights.²

The article commences with an overview of the drafting process of the UDHR incorporating historical and contemporary, mostly feminist, critiques thereof. Embedded in a feminist legal perspective, the objective of the article is to establish if and how the Declaration has been referenced in international treaties and case law relevant to women's rights in Africa. To this end, the research draws upon the textual analysis of subsequent human rights treaties and documented court cases to establish links and trace references. Therefore, the next section discusses subsequent human rights treaties namely the Convention on the Elimination of all Forms of Discrimination against Women³ (hereafter CEDAW or the Convention), the African Charter on Human and People's Rights⁴ (hereafter ACHPR or the African Charter), and its Protocol on the

¹ Universal Declaration of Human Rights (UDHR) 1948.

² '70th Anniversary of the Universal Declaration of Human Rights' (UN Office of the High Commissioner for Human Rights, 6 December 2018); TJ Coles, 'Paper promises: the Universal Declaration of Human Rights at 70' (New Internationalist, 10 December 2018) <<https://newint.org/features/2018/12/10/paper-promises-universal-declaration-human-rights-70>> accessed 30 October 2019.

³ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979.

⁴ African Charter on Human and Peoples' Rights (ACHPR) 1986.

Rights of Women in Africa⁵ (hereafter Maputo Protocol). Next, several court cases from the African region are analysed with regards to references to the Declaration and their relevance for women's rights in Africa.

Although globally, all women experience oppression due to the underlying bias and gendered nature of most societies in which men have privileges over women, many African women face distinct issues that further vary within different local contexts.⁶ Throughout this article, the term 'African women' is used. African women are women who were born, raised and/or live on the African continent. This is not to neglect the differences between women in Africa or to speak to African women as a whole, but to emphasise the shared oppression that many women in the African region experience. Culture and customs greatly vary from region to region, country to country, even within the context of a country. However, in the words of Adeoye Akinola, 'there are certain belief systems that run through most African communities, such as the denial of women's land rights and the patriarchal nature of societies' which are addressed in the course of the paper.⁷

African women continue to face discrimination and inequality due to patriarchal attitudes and legal frameworks which limit their access to education, oppress their participation in political and public life, exclude them from the possession of property and restrict women's agency when it comes to their sexual and reproductive health.⁸ However, in contrast to the dominant understanding of African women as victims of their environment, women's rights movements and civil society organisations have successfully challenged discriminatory laws which were considered beyond the reach of women's rights litigation.

⁵ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) 2005.

⁶ Manisuli Ssenyonjo, 'Culture and the Human Rights of Women in Africa: Between Light and Shadow' (2007) 51 *Journal of African Law* 39; Sylvia Bawa, 'Women's Rights and Culture in Africa: A Dialogue with Global Patriarchal Traditions' (2012) 33 *Canadian Journal of Development Studies* 90.

⁷ Adeoye O Akinola, 'Women, Culture and Africa's Land Reform Agenda' (2018) 9 *Frontiers in Psychology* 2234.

⁸ Ssenyonjo (n 7); Bawa (n 7); Akinola (n 6); J Oloka-Onyango and Sylvia Tamale, "'The Personal Is Political,'" or Why Women's Rights Are Indeed Human Rights: An African Perspective on International Feminism' (1995) 17 *Human Rights Quarterly* 691; Fareda Banda, *Women, Law and Human Rights: An African Perspective* (Hart Publishing 2005); Emmanuelle Bouilly, Ophélie Rillon and Hannah Cross, 'African Women's Struggles in a Gender Perspective' (2016) 43 *Review of African Political Economy* 338.

Based on a discussion of the findings, it is concluded that, due to its flexibility to be applied in various cultural contexts and its ability to be combined with other human rights instruments, the Universal Declaration of Human Rights is and will continue to be of substantial relevance for women's rights in Africa and for the development of subsequent human and women's rights instruments.

2. CHALLENGES TO THE UNIVERSAL RELEVANCE OF HUMAN RIGHTS

At the risk of stirring up old debates, this section briefly addresses some of the challenges to the universal relevance of the Declaration. In addition to the general critique of its universality, the debate was gradually developed and expanded by, for example feminist, especially African feminist, and TWAIL scholarship challenging the Declaration's applicability to non-Western contexts and consideration for women's realities.⁹ The contribution of this article does not lie in readdressing or reconciling these critiques but it is necessary to ground and frame the research in the respective theoretical framework. Besides, with the continuous development and expansion of the human rights regime, a reevaluation of old debates might bring new insights, especially when it comes to the significance of the Declaration for women's rights in Africa vis-à-vis the development of subsequent human and women's rights instruments.

Back in 1948, the adoption of the Universal Declaration of Human Rights was a major attempt to create a universally shared and accepted human rights framework. Based on the assumption of universality, "human rights must not only be universal in scope (that is, they apply to all human beings), but the underlying values must be universally shared".¹⁰ However, it is often argued that the human rights standards set by the UN originate from a Western or rather Eurocentric¹¹ individual libertarian

⁹ For further discussion on the universalism/cultural relativism debate and contesting views on culture and women's right, see, for example, Rodolfo Stavenhagen, *Peasants, Culture and Indigenous Peoples* (4th edn, Springer 2013); Bas de Gaay Fortman, 'Minority Rights: A Major Misconception?' (2011) 33 *Human Rights Quarterly* 265; Abdullahi Ahmed An-Na'im, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (University of Pennsylvania Press 1992); Mosope Fagbongbe, 'The Future of Women's Rights from a TWAIL Perspective' (2008) 10 *International Community Law Review* 401.

¹⁰ Stavenhagen (n 9).

¹¹ The terms 'Western' and 'Eurocentric' are used interchangeably to describe the shared understanding of the concept of human rights in mainly Europe, North America, New Zealand, and Australia. This is

perspective and exclude differing moral systems and ways of communal life.¹² Thus, human rights claims have to be communicated as per the dominant Western culture that does not necessarily accommodate non-Western value systems.¹³ Feminist critiques built on this argument and added that the UDHR was not only born out of a Western but also a patriarchal and highly gendered environment. The lack of provisions concerning women's rights and the lack of gender perspective makes it problematic for women to address uniquely female issues, for example, maternal health, as they have to be communicated according to the dominant 'malestream'¹⁴ discourse.¹⁵ This can be even more complicated for African women as they have to formulate their claims within a Eurocentric 'whitestream'¹⁶ and a patriarchal 'malestream' human rights system which does not take into consideration their lived experiences and the various systems of oppression.¹⁷

African feminist scholars have repeatedly criticised the exploitation of the universality debate by African leaders and law-makers to subordinate and silence women's rights movements in Africa in the name of culture and tradition.¹⁸ The origins of the UDHR are often traced to documents such as the Magna Carter, the English Bill of Rights, the French Declaration of the Rights of Man and Citizen and the works of intellectuals and philosophers such as Rousseau, Locke, and Kant, but it cannot be

not to imply that there are no ideological differences across these regions, but to acknowledge the similarities within their dominant human rights discourses.

¹² Bawa (n 7); Stavenhagen (n 9); de Gaay Fortman (n 9).

¹³ de Gaay Fortman (n 9).

¹⁴ The term 'malestream' was coined by Mary O'Brien to describe how male-dominated perspectives and realities are applied to women, but neglect the structural inequality that women are exposed to because of their sex and gender; see *The politics of reproduction* (Routledge & Kegan Paul 1983).

¹⁵ Rebecca J Cook, 'Women's International Human Rights Law: The Way Forward' (1993) 15 Human Rights Quarterly 230.

¹⁶ The term 'whitestream' reflects the sentiments of 'malestream' with regards to the dominance of Western and Eurocentric experiences and was coined by Claude Denis in 1997; see *We are not you: First nations and Canadian modernity* (Broadview Press).

¹⁷ Oloka-Onyango and Tamale (n 8); Rachel Murray, 'A Feminist Perspective on Reform of the African Human Rights System' [2001] African Human Rights Law Journal 205.

¹⁸ Sylvia Tamale, 'Gender Trauma in Africa: Enhancing Women's Links to Resources' (2004) 48 Journal of African Law 50; Banda (n 8); Bawa (n 7).

dismissed that similar and even older documented and undocumented discourses existed in various cultures all over the world that addressed the concept of human rights and dignity.¹⁹ Kalny argues that “it is not human rights itself which are ‘Western’, but that dominant forms of perception and the construction of the history of human rights are based on Western and especially Eurocentric predilections”.²⁰ Bawa further remarks that the opposition to anything Western implies a homogenous African culture with a commonly shared value system.²¹ An assertion which obscures the major differences in practices and traditions that exist and have historically existed within the region.²²

In a recent publication, Adami readdresses the role of non-Western and female delegates in the drafting process of the UDHR in order to reconcile the issues surrounding the Declaration’s universality.²³ Hansa Mehta and Lakshmi Menon from India had a great influence on the wording of the UDHR. Mehta, a member of the UN Human Rights Commission from 1947 to 1948, was credited with changing Article 1 of the Declaration to ‘[a]ll human beings are born free and equal’ instead of ‘[a]ll *men* are born free and equal’, [emphasis added]. Additionally, Menon insisted on the mention of ‘the equal rights of men and women’ in the Preamble.²⁴ In spite of the importance of these amendments, women’s contributions to the drafting process of the UDHR were limited. Therefore, many issues that only or disproportionately affect women remained unaddressed. There is no mention of sexual and gender-based violence, discriminatory customary practices of inheritance, forced marriage and divorce, issues that are not only relevant to women on the African continent.²⁵

¹⁹ Eva Kalny, ‘Against Superciliousness. Revisiting the Debate 60 Years after the Adoption of the Universal Declaration of Human Rights’ (2009) 29 *Critique of Anthropology* 37.

²⁰ *Ibid* 372.

²¹ Bawa (n 7) 94.

²² *Ibid*.

²³ Rebecca Adami, *Women and the Universal Declaration of Human Rights* (Routledge 2018).

²⁴ ‘Women Who Shaped the Universal Declaration’ (*United Nations*) <<https://www.un.org/en/events/humanrightsday/women-who-shaped-the-universal-declaration.shtml>> accessed 1 April 2019; ‘The Role of Women in Shaping the Universal Declaration of Human Rights’ (*UN Human Rights Office of the High Commissioner*) <<https://www.ohchr.org/EN/NewsEvents/Pages/TheRoleWomenShapingUDHR.aspx>> accessed 1 April 2019; Kalny (n 19).

²⁵ Banda (n 8); Cook (n 15).

With this criticism in mind, the Convention on the Elimination of all Forms of Discrimination against Women, the African Charter on Human and People's Rights, and the Maputo Protocol are discussed in the following section. A better understanding of these human rights treaties is necessary to assess the Declaration's influence on their making and application with regards to women's rights in Africa. The assumption is that while the UDHR offers a normative foundation, it is the subsequent development of human and women's rights instruments which allows for advocacy both internationally and regionally.²⁶ This is not to demonstrate the universality of the Declaration but aims at illustrating the extent of its relevance for women's rights in Africa and to assess its future role.

3. THE UDHR ON PAPER – REFERENCES IN CEDAW, THE AFRICAN CHARTER, AND THE MAPUTO PROTOCOL

The treaties discussed in this section have been chosen for three reasons, firstly, based on their relevance for women's rights in the African human rights system, secondly, for their textual references to the Declaration and, thirdly, for their enforceability by treaty bodies and in courts. CEDAW is the first comprehensive women's rights treaty by the UN and has been ratified by 51 of the 55 AU member states. The African Charter is the fundamental human rights instrument in the African region, which, together with its Protocol on the Rights of Women, provides an elaborate framework for the protection and promotion of women's rights in Africa. Arguably, several other examples could be examined, however, due to the focus of this article, the analysis is limited to the instruments as stated.²⁷

²⁶ Brooke A Ackerly, 'Women's Human Rights Activists as Cross-Cultural Theorists' (2001) 3 International Feminist Journal of Politics 311.

²⁷ Other international and regional human rights instruments of importance for the advancement of women's rights include but are not limited to Security Council Resolution 1325, the Beijing Platform for Action and the Millennium Development Goals resulting from the Millennium Declaration and the Sustainable Development Goals as part of the 2030 Agenda for Sustainable Development as well as the Solemn Declaration on Gender Equality in Africa and the 2009 African Gender Policy by the AU. Sub-regional African human rights instruments worth mentioning are the SADC Protocol on Gender and Development (2008), the COMESA Gender Policy (2002), the Great Lakes Protocol on the Prevention and Suppression of Sexual Violence against Women and Children (2008), and the East African Community Gender and Community Development Framework (2006).

3.1. CEDAW – TRANSLATING HUMAN RIGHTS INTO WOMEN’S RIGHTS

In response to the lack of gender perspective in the Universal Declaration of Human Rights, the UN adopted CEDAW in 1979.²⁸ In its Preamble, it is noted “that despite these various instruments [resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women] extensive discrimination against women continues to exist”²⁹. CEDAW acknowledges that the Universal Declaration of Human Rights confirms the formal equality of all human beings without distinction of any kind, but, at the same time, underlines the need for substantive equality³⁰ and enforceable measures to protect and promote the human rights of women.

CEDAW identifies the underlying reasons for women’s ongoing discrimination and displays a nuanced understanding of gender prejudices, structural inequality and the obstacles to social change.³¹ The denial of the right to be free from discrimination based on sex is a legacy of patriarchal structures and gendered hierarchies which, historically, did not consider women equal to men. In contrast to the Declaration, CEDAW’s wording explicitly refers to discrimination against women and not only to discrimination based on sex. Besides, CEDAW covers direct as well as indirect discrimination, which means that laws or practices that do not intend to have a discriminating effect, yet negatively affect women, must be amended as well.³² Thus,

²⁸ CEDAW was preceded by the Convention on the Political Rights of Women in 1953 and the Declaration on the Elimination of Discrimination against Women in 1967 which set the foundation for a comprehensive women’s rights treaty.

²⁹ CEDAW (n 3) Preamble.

³⁰ In the words of Sandra Fredman, substantive equality should be understood as a multi-dimensional concept with the aim to ‘to address stigma, stereotyping, prejudice and violence; enhance voice and participation; and accommodate difference and achieve structural change’ to benefit disadvantaged, marginalised and oppressed social groups such as women; see ‘Substantive equality revisited’ (2016) 14(3) *International Journal of Constitutional Law* 712.

³¹ CEDAW (n 3) art 5(a); Claude Welch, ‘Human Rights and African Women: A Comparison of Protection under Two Major Treaties’ (1993) 15 *Human Rights Quarterly* 549.

³² Andrew Byrnes, ‘The Convention on the Elimination of All Forms of Discrimination against Women’ in Wolfgang Benedek, Esther Mayambala Kisaakye and Gerd Oberleitner (eds), *The Human Rights of Women: International Instruments and African Experiences* (Zed Books 2002).

CEDAW continuously reminds State Parties to “implement the principles set forth in the Declaration [...] and, for that purpose, to adopt the measures required”³³ further introducing ‘temporary special measures aimed at accelerating de facto equality between men and women’.³⁴

Nonetheless, many gaps remain in the Convention's provisions especially when it comes to sexual and reproductive health rights. While CEDAW mentions the right to health care and the right to education on health and sexual and reproductive rights, it does not refer to abortion.³⁵ Besides, there is no specific article on sexual and gender-based violence against women, a failure that the Committee has tried to rectify with General Recommendation 19.³⁶ Another point of criticism is the lack of an intersectional approach³⁷ when it comes to discrimination against women.³⁸ Except for Article 14, which focuses on the rights and protection of rural women, it is only subsequent recommendations that take into account the particular problems faced by women in armed conflict, asylum-seeking women and so forth.³⁹ Although general recommendations are not binding on State Parties they still serve as interpretive guidelines and can put pressure on State Parties.⁴⁰ They serve as important mechanisms to expand on the provisions in CEDAW and for the Committee to advance the women's rights framework.

³³ CEDAW (n 3) Preamble.

³⁴ Ibid art 4(1); CEDAW General Recommendation 25.

³⁵ CEDAW (n 3) arts 10(h), 12.

³⁶ CEDAW General Recommendation 19.

³⁷ In the late 1980s and early 1990s, African-American feminist scholars such as Collins and Crenshaw started to draw attention on the intersection of black women's economic, social and political position with their race, gender and class, which is especially helpful when it comes to many women of colour both from the African continent and elsewhere; see PH Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (Routledge 1990); K Crenshaw, ‘Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics’ (1989) University of Chicago Legal Forum 139; K Crenshaw, ‘Mapping the margins: Intersectionality, identity politics, and violence against women of colour’ (1991) 43 Stanford Law Review 1241.

³⁸ Johanna E Bond, ‘CEDAW in Sub-Saharan Africa: Lessons in Implementation’ (2014) Michigan State Law Review 241.

³⁹ CEDAW General Recommendation 14, 17, 26, 30, 32.

⁴⁰ Byrnes (n 32).

Ultimately, CEDAW has filled a critical gap in the UN system with regards to women's rights and provided a much-needed foundation for the ongoing development of the women's rights discourse. Yet, when it comes to women's rights in Africa, CEDAW loses some of its leverage due to its failure to acknowledge that with differing cultural contexts come differing human rights issues.⁴¹ For example, traditional and customary laws of land succession and patrilineal systems of inheritance tend to exclude many African women and render them dependent on male family members.⁴² A 2018 Working Paper by the World Bank Group found that women are significantly less likely to own property in terms of land and housing based on data from 28 sub-Saharan African countries.⁴³ The report established a correlation between higher ownership rates and legal frameworks that protect the property rights of women further showing that the gender gap in property ownership is larger in rural areas.⁴⁴ However, Cheryl Doss et al. claim that 'many oft-cited statements about women's land-ownership are gross oversimplifications and are not substantiated by any available data', although the study does not challenge the understanding that women generally own significantly less land than men.⁴⁵ The inability of CEDAW to capture and cater to such cultural differences and issues has created a normative gap and has seemingly left especially African women behind.⁴⁶

3.2. THE AFRICAN CHARTER – THE REGION'S TAKE ON HUMAN RIGHTS

The African Charter on Human and Peoples' Rights is the region's human rights treaty and operates within the specific geographic and cultural framework.⁴⁷ The Charter is

⁴¹ Bond (n 38).

⁴² Tamale (n 18); Akinola (n 6).

⁴³ Isis Gaddis, Rahul Lahoti and Wenjie Li, 'Gender Gaps in Property Ownership in Sub-Saharan Africa' (World Bank Group 2018) Policy Research Working Paper 8573.

⁴⁴ Ibid.

⁴⁵ Cheryl Doss and others, 'Gender Inequalities in Ownership and Control of Land in Africa: Myth and Reality' (2015) 46 *Agricultural Economics* 403.

⁴⁶ Jing Geng, 'The Maputo Protocol and the Reconciliation of Gender and Culture in Africa' in Susan Harris Rimmer and Kate Ogg (eds), *Research Handbook on Feminist Engagement with International Law* (Edward Elgar 2019).

⁴⁷ Bonny Ibhawoh, 'Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State' (2000) 22 *Human Rights Quarterly* 838; Bawa (n 7).

unique in the way it promotes the rights of the individual bearing in mind the communitarian nature of African societies by outlining the duties of the individual towards their community.⁴⁸ However, the Charter only briefly addresses the human rights of women. Article 18(3) is the only provision that directly refers to women calling for the “elimination of every discrimination against women’ further requiring state parties to ‘ensure the protection of the rights of women and the child as stipulated in international declarations and conventions’”.⁴⁹ With regards to these international declarations and conventions, the African Charter shows its affirmation of the Universal Declaration of Human Rights in the Preamble and in Article 60 stating that the African Commission “shall draw inspiration from international law on human and people’s rights from the provision of [...] the Universal Declaration of Human Rights”⁵⁰, amongst others, and recognises the role model function of the Declaration for the human rights framework in the African region.⁵¹

According to feminist critiques, the lack of women-related provisions is a sign of the same underlying patriarchal thinking that influenced the drafting of the UDHR and renders women’s needs and grievances invisible.⁵² Moreover, it is important to note that the rights of women are only mentioned in connection with the rights of the child, therefore, in the context of the family, as mothers and caregivers, which limits the potential of the Charter to address women’s rights in general and outside the family context.⁵³ Additionally, Judge Ouguergouz criticises the lack of provisions regarding the right to privacy, the right to vote in regular elections, equal protection for le-

⁴⁸ ACHPR (n 4) arts 27, 29; Makau Wa Mutua, ‘The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties’ (1995) 35 *Virginia Journal of International Law* 339; Bawa (n 7).

⁴⁹ ACHPR (n 4) art 18(3).

⁵⁰ *Ibid* art 60.

⁵¹ B Obinna Okere, ‘The Protection of Human Rights in Africa and the African Charter on Human and People’s Rights: A Comparative Analysis with the European and American Systems’ (1984) 6 *Human Rights Quarterly* 141.

⁵² Bawa (n 7); Ssenyonjo (n 7).

⁵³ Geng (n 46); Nadine Puechguirbal, ‘Discourses on Gender, Patriarchy and Resolution 1325: A Textual Analysis of UN Documents’ (2010) 17 *International Peacekeeping* 172.

gitimate and natural children and the right to marriage with full consent of both parties - rights that disproportionately affect women.⁵⁴ Also, with respect to nationality and citizenship laws there is no provision to address the fact that in many countries, women are not able to pass on their nationality onto their children.⁵⁵

As a result, African women's groups and civil society organisations noted that despite the widespread ratification of the Charter and CEDAW, discrimination of women continued to prevail on the continent. The existing provisions did not seem to be able to grasp the realities of African women.⁵⁶ Hence, in 1995, the former Organisation of African Unity initiated a process for the drafting of a protocol to the African Charter to address the rights of women in Africa.⁵⁷ After eight years of combined efforts, the Protocol was adopted in 2003, came into effect in 2005, and is a beacon of women's mobilisation in politics and law-making on the continent.

3.3. INTEGRATING WOMEN'S RIGHTS INTO THE AFRICAN HUMAN RIGHTS SYSTEM - THE MAPUTO PROTOCOL

The African Charter offers an extensive framework for the protection and promotion of human rights in Africa. Yet, it is the Maputo Protocol that has translated these rights into women's rights and through which African women have demonstrated their agency. Apart from the Charter, the Maputo Protocol acknowledges the importance of the Universal Declaration of Human Rights noting that "women's rights have been recognised and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights".⁵⁸ However, similar to CEDAW, the Protocol further states that

⁵⁴ Judge Fatsah Ouguergouz, 'The African Charter on Human and People's Rights. A Living and Evolving Instrument for the Promotion and Protection of Human Rights in Africa' (Speech for the celebration of the 30th anniversary of the African Charter, Banjul, 2011).

⁵⁵ As an example case, see *Unity Dow v Attorney General of Botswana* (1992) 103 ILR 128.

⁵⁶ Fareda Banda, 'Blazing a Trail: The African Protocol on Women's Rights Comes into Force' (2006) 50 *Journal of African Law* 72.

⁵⁷ Geng (n 46).

⁵⁸ Maputo Protocol (n 5) Preamble.

“despite the ratification of the African Charter on Human and People's Rights and other international human rights instruments by the majority of state parties, and their solemn commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices”.⁵⁹

In this regard, the Protocol requires State Parties to integrate a gender perspective in their policies, domestic legislation, and other activities to ensure that women's interests and needs are represented and catered for. As with CEDAW, the Maputo Protocol further encourages the implementation of temporary special measures in “areas where discrimination against women in law and in fact continues to exist”.⁶⁰ However, in contrast to CEDAW, Banda argues that the Maputo Protocol has been successful in mediating between the principles of non-discrimination and equality and cultural practices in Africa which often seem irreconcilable.⁶¹ For example, the Maputo Protocol advocates for the eradication of polygamy, yet, at the same time, acknowledges polygamy as a widespread occurrence on the African continent. Although the rights of women in such relationships are respected and protected, there is a clear tendency towards monogamy as “the preferred form of marriage”.⁶² Also, when it comes to health and reproductive rights, the severity of the HIV/AIDS epidemic in the African region is taken into consideration.⁶³ Aside from that, the Maputo Protocol is the only human rights instrument that explicitly mentions the right to medical abortion in cases of rape, incest and where the continued pregnancy endangers the life of the mother, and the right to protection from harmful practices such as FGM.⁶⁴

Moreover, again in contrast to CEDAW, the Maputo Protocol defines intersectional forms of discrimination affecting for example refugee women, elderly women, widows, and women with disabilities.⁶⁵ The further inclusion of the girl child in the Protocol is particularly relevant considering that discrimination against women does not only start with adulthood. Girls drop out of school more often than boys due to

⁵⁹ Ibid Preamble.

⁶⁰ Ibid art 2(1)(d).

⁶¹ Banda (n 8).

⁶² Maputo Protocol (n 7) art 6(c).

⁶³ Ibid art 14(1)(d), (e).

⁶⁴ Ibid art 14(2)(c).

⁶⁵ Ibid arts 1(k), 22, 23.

numerous reasons, such as child marriage; teenage pregnancies, to assist in the household and look after younger siblings; to support their families financially through work; or because parents can only afford for some of their children, preferably boys, to get an education.⁶⁶ Another contemporary example of the structural inequality that disadvantages women and girls in Africa is the so called Mobile Gender Gap.⁶⁷ Seven out of ten online mobile users on the continent are men and only two out of three women own a cell phone.⁶⁸ Out of the two women with a cell phone only one uses mobile data on a regular basis. As one of several potential reasons for this, women's lack of education in terms of literacy and digital skills is mentioned.⁶⁹

As with CEDAW and the African Charter, many issues remain and will still emerge as time progresses. Already, criticism of the Protocol comes from various sides: Scholars such as Davis have written that the language used in the Protocol creates an 'over-specificity' which might exclude certain groups of women from the protection through the Protocol and at the same time deter countries from signing and ratifying the treaty.⁷⁰ Comments by, for example, Pope Benedict XVI have confirmed this prediction when he referred to Article 14 and its provisions on abortion as an attack on life and urged African leaders to reject the Protocol.⁷¹ Also, when it comes to the ratification and implementation of the Maputo Protocol, 13 AU member states

⁶⁶ 'Girls' education. Gender equality in education benefits every child' (UNICEF)

<<https://www.unicef.org/education/girls-education>> accessed 30 October 2019; Stephanie Thomson, '1 in 10 girls in Africa will drop out of school for this reason' (World Economic Forum, 9 December 2015) <<https://www.weforum.org/agenda/2015/12/1-in-10-girls-in-africa-will-drop-out-of-school-for-this-reason/>> accessed 30 October 2019; Dorota Gierycz, 'Human Rights of Women at the Fiftieth Anniversary of the United Nations' in Wolfgang Benedek, Esther Mayambala Kisaakye and Gerd Oberleitner (eds), *The Human Rights of Women: International Instruments and African Experiences* (Zed Books 2002).

⁶⁷ Siljia Fröhlich, 'Africa's Mobile Gender Gap: Millions of African Women Still Offline' *Deutsche Welle* (9 August 2019) <<https://www.dw.com/en/africas-mobile-gender-gap-millions-of-african-women-still-offline/a-49969106>> accessed 11 October 2019.

⁶⁸ Ibid.

⁶⁹ Ibid; see also Oreoluwa Somolu, "'Telling Our Own Stories": African Women Blogging for Social Change' (2007) 15 *Gender & Development* 477.

⁷⁰ Kristin Davis, 'The Emperor Is Still Naked: Why the Protocol on the Rights of Women in Africa Leaves Women Exposed to More Discrimination' (2009) 42 *Vanderbilt Journal of Transnational Law* 949.

⁷¹ 'The fight against the Maputo Protocol' (The Maputo Protocol. A clear and Present Danger) <<https://maputoprotocol.com/the-fight-against-the-maputo-protocol>> accessed 30 October 2019.

have yet to ratify the treaty and it might be too early to predict the future impact of the Protocol. It was only in 2017 that an international human rights body, namely the Economic Community of West African States (hereafter ECOWAS) Court of Justice, first applied the Protocol's provisions and in 2018 the Protocol was first applied by the African Court on Human and Peoples' Rights. Amongst others, these two cases will be discussed in the following with regard to their references to the Universal Declaration of Human Rights.

4. THE UDHR IN COURT – SELECTED CASES ON WOMEN'S RIGHTS FROM THE AFRICAN REGION

The following cases have been selected to illustrate the work of international treaty bodies and courts such as the ECOWAS Court of Justice and the African Commission when it comes to women's rights on the continent.⁷² At the expense of a lengthy introduction and examination of the cases, the analyses are limited to a focus on references to the Universal Declaration of Human Rights to assess the extent to which the Declaration is relevant for the interpretation of women's rights in the African region. The section starts with *Koraou v The Republic of Niger*⁷³, in which the court decided in favour of a woman who had been sold to an older man as a servant and concubine when she was twelve years old. The *Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt*⁷⁴ is a case about sexual and gender-based violence in which women journalists, who had participated in political protests, were violated and sexually assaulted. Lastly, *Dorothy Njemanze and 3 others v The Federal Republic of Nigeria*⁷⁵ is discussed, a case that dealt with the unlawful abduction and detention of four women and their assault by state officials.

⁷² Other cases of interest are *JAO v. NA* (2013); *Centre for Rights Education and Awareness & another v. Speaker of National Assembly & Others* (2017); *CMN v. AWM* (2013), and *Kishindo v. Kishindo* (2014).

⁷³ *Koraou v Niger*, Merits, Suit No ECW/CCJ/APP/08/08, Judgment No ECW/CCJ/JUD/06/08, IHRL 3115 (ECOWAS 2008), 27th October 2008, Economic Community of West African States [ECOWAS].

⁷⁴ *Egyptian Initiative for Personal Rights and Interights v Egypt*, Merits, Communication No 323/06, IHRL 3805 (ACHPR 2011), 12th December 2011, African Commission on Human and Peoples' Rights [ACHPR].

⁷⁵ *Dorothy Njemanze and 3 others v The Federal Republic of Nigeria* ECW/CCJ/JUD/08/17.

4.1. KORAOU V NIGER

In 1996, the plaintiff, in this case, was sold to an older man as part of a practice called *Wahiya* which allows older men, so-called masters, to buy younger girls to serve them as domestic servants and to engage in sexual relations.⁷⁶ The plaintiff served in the household for nine years during which four children were born as the result of forced sexual relations.⁷⁷ In 2008, the plaintiff was released from the services and decided to leave the house of her former master.⁷⁸ Yet, he refused to let her go stating that while she was no longer his servant, she was still his wife and had to stay with him.⁷⁹ The plaintiff eventually succeeded in leaving the house and brought her case before various civil and customary tribunals to no success.⁸⁰ On account of this, she submitted her case to the ECOWAS Court of Justice.

Consequently, the plaintiff sued the Republic of Niger for violating Articles 1, 2, 3, 5, 6, and 18 (3) of the African Charter, further requesting Niger to introduce new legislation to protect women from slavery, forced marriage, discriminatory divorce customs, and to provide her with compensation.⁸¹ In its analysis, the Court repeatedly referred to the Universal Declaration based on the plaintiff's arguments on discrimination and equality before the law, stating that the non-discrimination principle derives from Article 1 of the UDHR and that it is this principle "that allows for a definition in the field of equality".⁸²

In conclusion, the Court held that Niger was responsible under both international and national law for human rights violations against the plaintiff based on slavery and the inaction of state authorities to provide the plaintiff with assistance.⁸³ Ad-

⁷⁶ *Koraou v Niger* (n 73) Presentation of the fact and procedure para 9.

⁷⁷ *Ibid* para 12.

⁷⁸ *Ibid* para 14

⁷⁹ *Ibid*.

⁸⁰ *Ibid* paras 15 – 27.

⁸¹ *Ibid* para 28.

⁸² *Ibid* Consideration of the parties' pleas-in-law para 64.

⁸³ *Ibid* On merits para 2.

ditional references were made to CEDAW albeit without mentioning specific provisions.⁸⁴ The Court subsequently outlawed the *Wahiya* practice because it excludes women “of the equal dignity recognised to all citizens”.⁸⁵

4.2. EGYPTIAN INITIATIVE V EGYPT

In this case, the plaintiffs were several female journalists who had been insulted, violated, and sexually assaulted during political protests in Cairo in 2005.⁸⁶ The perpetrators were state officials who were actively involved in the attacks as well as passive bystanders, who had neglected their mandate to protect the women under attack.⁸⁷ The affected women complained with the Public Prosecution Office after which they were harassed and threatened by government officials to withdraw their cases.⁸⁸ The local prosecution office decided not to investigate on behalf of the victims and the women's appeal on this decision was dismissed.⁸⁹

After having exhausted the local remedies, the women turned to the African Commission and based their cases on the violations of their rights as per articles 1, 2, 3, 5, 7(1)(a), 9(2), 16, 18(3), and 26 of the African Charter.⁹⁰

In its judgement, the Commission observed that the Respondent State was in violation of all of the above articles except Articles 7(1)(a) and 16(2) and that the treatment of the women was not justifiable. Based on Articles 2 and 18(3), the Commission found that the violations against the victims were perpetrated because of their gender and constituted acts of sexual and gender-based violence. The Court underlined their decision with references to other human rights instruments including Articles 1(f) and (j) of the Maputo Protocol,⁹¹ Articles 1 and 4(c) of CEDAW,⁹² and Articles 19 and 25 of

⁸⁴ Ibid For these reasons.

⁸⁵ Ibid Consequently para 2.

⁸⁶ *Egyptian Initiative v Egypt* (n 74) paras 3 – 12, 14 – 15, 17 – 20.

⁸⁷ Ibid paras 3 – 6, 11, 18.

⁸⁸ Ibid paras 13, 16, 20.

⁸⁹ Ibid paras 7 – 8, 13, 16, 21 – 22.

⁹⁰ Ibid paras 21 – 23.

⁹¹ Ibid paras 87, 121.

⁹² Ibid paras 88, 89, 122, 123, 165.

the Universal Declaration of Human Rights.⁹³ In paragraphs 244 and 262 the Court emphasised that the right to freedom of expression and the right to health have been acknowledged under the UDHR further stressing that “everyone” has these rights.⁹⁴

Concluding, the Commission urged Egypt to provide compensation for the victims and to ensure that similar cases are adequately investigated and prosecuted by the authorities.

4.3. NJEMANZE V THE FEDERAL REPUBLIC OF NIGERIA

In this case, the plaintiffs were four Nigerian women who challenged their unlawful detention and mistreatment by Nigerian state authorities who had accused them of being sex workers, because they were out at night.⁹⁵ The plaintiffs lodged numerous complaints with the Commissioner of Police, the Public Complaints Commission, the National Human Rights Commission, and other Law Enforcement Agencies which were dismissed.⁹⁶

The ECOWAS Court found that the treatment of the women constituted gender discrimination and sexual and gender-based violence; and they criticised the failure of the Nigerian state to investigate and prosecute the violations of the plaintiffs’ rights. The Court decided in favour of the women based on Articles 1, 2, 3, 5, and 18(3) of the African Charter and Articles 2, 3, 4(1), and (2), 5, 8 and 25 of the Maputo Protocol.⁹⁷ The judgement was based on various other human rights instruments such as CEDAW and the UDHR. Concerning the UDHR, the Court defined that the treatment of the plaintiffs constituted gender-based discrimination, cruel, inhuman, and degrading treatment contrary to Articles 1, 2, 5, and 7.⁹⁸ Also, the failure of the Respondent State to investigate the plaintiffs’ complaints and to provide redress was considered to violate Article 8 of the UDHR.⁹⁹

⁹³ Ibid paras 244, 262.

⁹⁴ Ibid.

⁹⁵ *Njemanze v Nigeria* (n 75) 18, 36 – 37.

⁹⁶ Ibid paras 5, 7, 8

⁹⁷ Ibid 41.

⁹⁸ Ibid.

⁹⁹ Ibid.

In closing, the Court noted the failure of the Respondent State to fulfil its international obligations and awarded the plaintiffs with monetary compensation.

4.4. DISCUSSION OF CASES

Although the number of cases addressed in this article is limited, their analysis has given an idea of the extent to which the Universal Declaration of Human Rights is relevant for the interpretation of women's rights in Africa today. Previously, CEDAW, the African Charter, and the Maputo Protocol have shown continuous references to the Declaration. This goes hand in hand with the findings from the court cases, in which all judgements referred to the Declaration amongst other human and women's rights instruments.

However, the provisions of the Declaration brought forward in support of the alleged violations under review often did not mirror the actual charges. In *Koraou v Niger*, the main focus and significance of the case lay on the aspect of slavery and on the eradication of *Wahiya* as a practice and form of slavery that exploits and oppresses women based on the African Charter, the 1926 Slavery Convention, the European Convention of Human Rights, the American Convention of Human Rights, the ICCPR and the Nigerian criminal code.¹⁰⁰ The prohibition of slavery is not only enshrined in Article 4 of the UDHR, it is a fundamental principle of international law and qualifies as *jus cogens*. The Court could have further elaborated on the connection between gender inequality, discrimination and this particular form of slavery, also under consideration of the provisions of the UDHR, but only mentioned the Declaration with regard to its guidance in the field of equality. Essentially, the reference to the UDHR was used to frame the case within a broader discourse on equality but not to advance the Court's slavery jurisprudence.

For the *Egyptian Initiative v Egypt* case, further provisions of the UDHR could have been submitted, for example, Articles 2, 4, 5, and 6. Yet, only Articles 19 and 25 made it into the African Commission's reasoning. Considering the violations experienced by the plaintiffs, it is questionable to focus on the Declaration's provisions on the right to freedom of expression and the right to health only. The analysis by the Commission was mainly under the African Charter but heavily influenced by

¹⁰⁰ *Koraou v Niger* (n 73) paras 72, 74, 75.

CEDAW and the Maputo Protocol, although the Protocol had neither been signed nor ratified at the time. Therefore, it seems as if the Declaration was added to magnify the scope of the violations to the advantage of the applicants where the other treaties lacked content.

In *Njemanze v Nigeria* the Court recognised the violation of rights of the women because they were not sex workers and therefore should not have been abused and arrested. However, in the spirit of the UDHR, the Court should have reasoned that, no matter the women's status, they should not have been subjected to the treatment they received. It is questionable that the Court would have made the same decision and referred to the Declaration if the women had indeed been sex workers. In the light of this, the influence and significance of the Declaration on case law seems limited. At the same time, however, applicants continuously base their cases on the provisions of the UDHR and so do the courts in their decisions.

While the Declaration as a non-binding instrument is not vital to the decision-making, it seems to be an integral part in the making of human rights jurisdiction. However, in 2018, the African Court on Human and Peoples' Rights made a landmark decision based on the violations of the Maputo Protocol which did not feature the Declaration at all.¹⁰¹ Human rights organisations had brought the case before the Court challenging Mali's 2011 Family Code. The Family Code in question allegedly neglected Mali's obligation to eliminate traditional practices and conduct harmful to the rights of women and children as it violated the minimum age of marriage for girls, the right to consent to marriage and the right to inheritance.¹⁰² The Court found that Mali had indeed violated Articles 2, 5, 6(a) and (b) and 21 of the Maputo Protocol further adding that the Family Code violated the right to non-discrimination as set out in CEDAW¹⁰³ and the African Charter on the Rights and Welfare of the Child.¹⁰⁴ In its decision, the Court ordered Mali to amend the law and to comply with its state party obligations under the respective human rights instruments.¹⁰⁵ Striking, in this case, is

¹⁰¹ *Association Pour Le Progres Et La Defense Des Droits Des Femmes Maliennes (APDF) & The Institute for Human Rights & Development in Africa (IHRDA) v. Republic of Mali*, 2018 (African Court of Human and Peoples' Rights).

¹⁰² *Ibid* 14 – 24.

¹⁰³ CEDAW (n 3) arts 5(a), 16(1)(b).

¹⁰⁴ African Charter on the Rights and Welfare of the Child 1999 arts 1(3), 2, 3, 4, 21.

¹⁰⁵ *APDF & IHRDA v Mali* (n 101) 28-29.

the absence of any references to the UDHR to underline the Court's reasoning or to strengthen the decision in comparison to the previously discussed cases. The Court confidently built on the Maputo Protocol, the Children's Charter and CEDAW as the primary legal sources without the need to frame the case within the broader context of the Universal Declaration of Human Rights.

To be efficient in the protection and promotion of women's rights in Africa, the human rights regime should be able to override powerful states and non-state actors and hold perpetrators who violate human rights accountable. Human rights treaties such as CEDAW, the African Charter, and the Maputo Protocol are supposed to do just that. However, although the Malian case has shown a strong focus on these treaties, at the expense of the UDHR, their application in the previously discussed cases has varied. While the Maputo Protocol was critical in *Njemanze v Nigeria*, it has only been mentioned as a supportive reference in *Egyptian Initiative v Egypt*. CEDAW is only mentioned as an interpretative guideline of secondary importance albeit referred to consistently in all cases. Yet, this should not be seen as a disadvantage. The Maputo Protocol and CEDAW encourage the use of and supplementation through "more conducive"¹⁰⁶ and "more favourable"¹⁰⁷ human rights frameworks when it comes to the protection and promotion of women's rights. Similarly, the African Charter allows the use of numerous human rights instruments to be utilised in favour of its provisions which creates the potential for powerful combinations to protect and promote women's rights in Africa.¹⁰⁸ In all cases, the state under scrutiny was a State Party to several binding and non-binding human rights instruments. This enabled the plaintiffs to utilise a broad framework of complementary provisions to build and strengthen their cases and allowed for choice regarding the treaty body or court with the highest chances for success.

¹⁰⁶ CEDAW (n 3) art 23.

¹⁰⁷ Maputo Protocol (n 7) art 1.

¹⁰⁸ Ssenyonjo (n 7).

5. THE FUTURE ROLE OF THE UDHR FOR WOMEN'S RIGHTS IN AFRICA AND CONCLUDING REMARKS

The purpose of this article was to explore the significance of the Universal Declaration of Human Rights for women's rights in Africa 70 years after its adoption. To this end, the article assessed the Declaration's relevance for the interpretation of women's rights in Africa through a textual analysis of subsequent human and women's rights treaties and court cases. Considering the findings, the Declaration's relevance for women's rights in Africa, however irregular and sparse, cannot be denied. Even in the Malian case, in which the Court did not refer to the Declaration, it relied on CEDAW and the Maputo Protocol which both cite the UDHR in its texts. In other words, the Declaration has not become redundant nor has it been replaced, but it lives on through these treaties.

Contrary to the concerns of the marginalisation of women's rights, the combination of various human and women's rights instruments has further been an asset for women's rights activists and advocates in African courts. Also, considering that not all states diligently sign and ratify every newly adopted human rights treaty, the UDHR serves as an important backup declaration. It is beyond the scope of this article to examine why states commit to some human rights instruments and not to others or only ratify under reservations, however, the phenomenon of 'forum- and provision-shopping' lends even more significance to the UDHR as a fundamental guideline and guarantee of basic principles of human rights that cannot be limited through reservations.¹⁰⁹

Besides, the UDHR is not only of importance in the international human rights system, but also in the domestic context of African States. Many African Constitutions are built on international human rights law and need to be applied with respect to the UDHR.¹¹⁰ The Constitution of Burundi states in Article 19 that the

¹⁰⁹ Linda M Keller, 'The Impact of State Parties' Reservations to the Convention on the Elimination of All Forms of Discrimination against Women' [2014] Michigan State Law Review 309; Ssenyonjo (n 7); Banda (n 8); Oloka-Onyango and Tamale (n 8).

¹¹⁰ Hurst Hannum, 'The UDHR in National and International Law' (1998) 3 Health and Human Rights 144; Ibhawoh (n 47).

“rights and duties proclaimed and guaranteed, between others, by the Universal Declaration of Human Rights, the International Pacts related to human rights, the African Charter of human and community rights, the Convention on the elimination of all forms of discrimination at towards women [...] are an integral part of the Constitution of the Republic of Burundi”.¹¹¹

In *Ephraim v Pastory*¹¹² the Tanzanian High Court cited the Declaration in its judgement and decided in favour of a woman who challenged the discriminatory customary practices of her clan regarding land inheritance and ownership. The High Court held that the custom was discriminatory and violated women's property rights and that according to Article 13(4) of the Bill of Rights in the Tanzanian Constitution, discrimination against women was prohibited.¹¹³ The Court further argued that the Universal Declaration of Human Rights was a fundamental part of the Tanzanian Constitution as stated in Article 9(1)(f) and therefore important for the interpretation of domestic constitutional and statutory provisions.¹¹⁴

Despite the criticism of the Declaration as Western and patriarchal, it has proven to be a flexible moulding tool for the subsequent making of human and women's rights instruments within the African region and worldwide.¹¹⁵ The UDHR is not only continuously referenced in international and African human rights texts, but also by international and regional treaty bodies, courts and movements. There seems to be “a set of core human rights to which all humanity aspires”¹¹⁶ which has played an important role when it comes to women's rights in Africa.¹¹⁷ The further development of human and women's rights treaties within and from particular geographic and cultural contexts has created a human rights framework that allows for cross-cultural interaction and influences the continuous reinterpretation and reinforcement of the Declaration. Thus, due to its flexibility in interpretation and its ability to be combined with other human rights instruments, the strength of the human rights

¹¹¹ Constitution of the Republic of Burundi 2005 art 19.

¹¹² *Ephraim v Pastory* (2001) AHRLR 236 (TzHC 1990).

¹¹³ Ibid paras 5, 10.

¹¹⁴ Ibid para 10.

¹¹⁵ Hannum (n 110).

¹¹⁶ Ibhawoh (n 47) 838.

¹¹⁷ An-Na'im (n 9); Oloka-Onyango and Tamale (n 8); Bawa (n 7).

framework lies in its diversity and compatibility, the Declaration will continue to provide a foundation for both activism as well as the development of other women's rights frameworks.

African women's rights movements and activists together with transnational coalitions have realised this potential and draw from a variety of options to shape their socio-economic and cultural environment as well as to apply pressure through political and legal means. As could be seen at the example of the drafting process of the Maputo Protocol, African women and feminist activists have successfully built alliances and lobbied legal and political systems to influence public agendas.¹¹⁸ In *Koraou v Niger*, a coalition of lawyers from various countries such as Nigeria, Senegal and the United Kingdom acted a counsel and organisations such as Anti-Slavery International and the Nigerian Anti-Slavery Organisation Timidra cooperated to support the applicant under the guidance of Interights, the International Centre for the Legal Protection of Human Rights. In the Egyptian case, an international coalition of the Egyptian Initiative for Personal Rights and Interights, again, represented the applicants. In *Njemanze v Nigeria*, an initiative by the Institute for Human Rights and Development in Africa, the Alliances for Africa, the Nigerian Women Trust Fund and a local law firm filed the case before the Court with further support from the Open Society Initiative for West Africa.

However, coalitions and initiatives can be of a limited lifetime due to loss of momentum or a lack of resources or political will. Therefore, it is even more important that human rights instruments such as the Universal Declaration of Human Rights exist and continue to create spaces for civil society and legal initiative to develop and grow. Also, considering the lack of knowledge and awareness of the plethora of human rights instruments by the public, in the case of many African women due to a lack of education and access to information, and due to a lack of publicity and marketing on behalf of the organisations and treaty bodies, it can be an intricate task to navigate the human rights framework. Yet, there is a growing confidence among African women when it comes to claiming their rights and the Universal Declaration often serves as a widely known reference and grassroots organising tool due to its 70 years of existence.

¹¹⁸ Bouilly, Rillon and Cross (n 8).

As for the limitations of this research and its focus on the discussed international and regional human rights treaties, the *Travaux Préparatoires* could have been taken into consideration with regard to the influence of the Declaration during the drafting processes. *Travaux Préparatoires* are the official documentation of the negotiations and discussions during the drafting process and may be considered when interpreting and applying treaty provisions. Other suggestions for further research can be made concerning the Declaration's impact on sub-regional human rights instruments, constitutional provisions, and other domestic legislation. A more specific and in-depth focus can assist in achieving a better understanding of the relevance and future role of the UDHR for women's rights in Africa.

Moreover, despite its feminist perspective, a shortcoming of the article is that it perpetuates the conservative understanding of women pervasive in international law.¹¹⁹ The focus on textual references to the UDHR in human rights texts and court cases did not allow examining how certain groups of women such as sex workers¹²⁰ or transgender women are excluded and silenced through the use of particular language. These issues are not only controversial within the African context but are complex and would require a more focused inquiry. In general, further research is necessary to assess how stereotyping language removes whole groups of women, who do not fit certain gender roles, from the women's rights framework and leaves them vulnerable to human rights violations.

Nevertheless, the research here presents a balanced optimism of the influence of the Universal Declaration of Human Rights in formal human rights laws and their application within the African region for the protection of the rights of African Women. It is apt to conclude that, the Declaration's continued relevance in outlining and securing these rights is crucial.

¹¹⁹ Puechguirbal (n 53); Misbah Sabohi, Saghir Maher and Shafiqul Hassan, 'Feminist Perspective of International Law and Its Effect on International Courts and Tribunals' (2019) 22 *Journal of Legal, Ethical and Regulatory Issues* 1544.

¹²⁰ Ciara O'Connell, 'Reconceptualising the First African Women's Protocol Case to Work for All Women' (2019) 19 *African Human Rights Law Journal* 510.