

POLICY BRIEF

THE JUDICIARY AND ADVANCING REPRODUCTIVE RIGHTS AND JUSTICE IN NIGERIA

Examining the Role of Nigeria's Judiciary within National, Regional, and International Human Rights Frameworks

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LAWYERS ALERT

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Executive Summary

This policy brief examines the role of the Nigerian judiciary in advancing reproductive rights and justice within the framework of national, regional, and international human rights obligations. It highlights persistent barriers faced by women in exercising reproductive autonomy, including restrictive legal frameworks, socio-cultural stigma, inadequate healthcare infrastructure, and limited judicial engagement with reproductive health-related violations.

Drawing on evidence from global and African contexts, the brief shows that enabling legal and judicial environments, combined with rights-based public health interventions, can significantly reduce preventable maternal mortality. Comparative experiences from Nepal, Romania, Bangladesh, and Benin illustrate that where safe termination of pregnancy (SToP) is legally permitted and supported by functional health systems, maternal deaths decline markedly. These experiences dissipate the misconception that legal reform increases health risks and instead confirm that access to safe, lawful, and quality reproductive healthcare is a critical life-saving intervention.

In Nigeria, unsafe termination of pregnancy remains a significant contributor to maternal mortality, reflecting persistent gaps in legal protection, service delivery, and judicial oversight. Progressive initiatives, such as Ogun State's adoption of the SToP Guidelines, illustrate emerging opportunities to embed legal and policy reforms within broader health system-strengthening efforts, thereby enhancing governance, accountability, and service delivery outcomes.

Nevertheless, sustained progress requires deliberate judicial engagement to ensure accountability, protect women's rights, and align state action with constitutional guarantees and regional human rights standards.

The brief, therefore, calls for a coordinated, evidence-informed approach, anchored in judicial capacity strengthening, legal reform, and community awareness, to advance reproductive justice.

Key recommendations include:

- Strengthen the judiciary's interpretive role in safeguarding women's reproductive rights.
- Aligning domestic legal frameworks with the African Charter on Human and Peoples' Rights and the Maputo Protocol.
- Enhancement of access to justice through legal aid, strategic litigation, and simplified judicial procedures; and
- Promoting structured partnerships between courts, policymakers, and civil society to ensure equitable access to reproductive healthcare.

Through principled judicial leadership and policy coherence, Nigeria can advance its constitutional and international commitments to gender equality, human dignity, and the right to health for all women and girls.

Lawyers Alert

and

Advancing Sexual and Reproductive Health and Rights (SRHR)

Lawyers Alert (LA) is a leading legal and human rights organization working to advance the rights of women and girls across six African countries: Cameroon, Ghana, Nigeria, Kenya, Malawi, and Zimbabwe. Established as a non-partisan, non-profit organisation, LA works at the intersection of law, policy, and systems reform to promote gender justice and accountability.

The organisation is guided by the vision of a world in which women and vulnerable groups are free from injustice, and a mission to empower women and vulnerable groups through knowledge of their rights and accessible means of enforcing them.

LA has built a strong team of lawyers and multidisciplinary professionals dedicated to advancing access to justice, sexual and reproductive health and rights (SRHR), and socio-economic development of women, girls, and other vulnerable populations. Guided by the principle that rights must not only be known but actively claimed, LA empowers individuals to understand, assert, and enforce their rights through administrative, judicial, and quasi-judicial mechanisms.

For over two decades, Lawyers Alert has delivered measurable impact for women and girls while strengthening accountability systems within communities and institutions.

Key achievements include successfully ending the use of compulsory virginity testing as a criterion for awarding secondary school scholarships to girls in Odogbolu Community, Ogun State. Securing justice and legal representation for people living with HIV (PLWHIV), people affected by tuberculosis (PABTs), and other vulnerable groups. Supporting reinstatement of housing access

for individuals unlawfully denied accommodation across several regions of the country due to their health status.

LA has also contributed significantly to the passage of gender- and child-protective legislation, as well as the domestication and implementation of the Violence Against Persons (Prohibition) Act (VAPP).

The organisation established and runs multiple community and thematic-based networks that operate independently to advance women's rights, prevent sexual and gender-based violence (SGBV), and promote reproductive rights. These networks form part of LA's sustainability and systems-strengthening approach, ensuring continuity beyond project cycles.

Central to LA's work is a robust legal strategy applied across its thematic focus areas, including sexual and reproductive health and rights, gender justice, and protection of vulnerable populations. The organisation maintains a dedicated team of legal professionals who engage in strategic litigation, including defending healthcare providers delivering post-abortion care and safe termination services, as well as women and girls criminalised for accessing such services. This approach reflects LA's commitment to protecting both service users and providers within restrictive legal and social environments, while advancing jurisprudence that aligns with regional and international human rights standards.

Building on this legal strategy, in 2024, Lawyers Alert achieved a landmark pronouncement by the ECOWAS Court of Justice, which affirmed that.

The state's refusal to provide access to safe abortion in cases of rape constitutes a systemic failure to protect women and reinforces gender discrimination. The Court held that such refusal forces survivors of sexual violence to bear the physical, psychological, and social consequences of forced pregnancy, exposes women to extreme vulnerability, and violates Article 18 of the African Charter on Human and Peoples' Rights. This

decision represents a significant normative advancement for reproductive justice in the West African sub-region.

This policy brief builds on this perspective and is informed by Lawyers Alert's extensive experience in sexual and reproductive health and rights (SRHR), with a particular emphasis on reproductive justice. It presents key findings from the organisation's work, analyses the legal and human rights rationale for expanding and protecting reproductive rights, especially for women and girls, and outlines the legal pathways necessary to ensure access to justice. It also projects the critical



Participants at Nigeria's first SRHR Conference, organised by Lawyers Alert in 2024

role of healthcare workers whose professional mandate is to save lives, and who require legal protection to deliver essential reproductive health services without fear of criminalisation or reprisals.

It affirms that the judiciary occupies a central and indispensable role in safeguarding sexual and reproductive health and rights, as its interpretations, decisions, and remedies determine whether legal frameworks serve as instruments of protection and justice for women and girls or reinforce systemic exclusion and vulnerability.

1. Reproductive Rights and Justice: Regional Normative Frameworks and Global Evidence

Reproductive rights are fundamental to gender equality and human dignity. International and regional bodies recognise them as both a public health and human rights priority. Across Africa, significant progress has been made in recognising reproductive rights as integral to human rights and public health. Key regional instruments, including the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), affirm women's rights to bodily autonomy, control over fertility, and access to comprehensive sexual and reproductive health services. The African Commission on Human and Peoples' Rights (ACHPR) has further reinforced these guarantees through a General Comment that clarifies States' obligations to remove legal, structural, and institutional barriers that impede women's reproductive autonomy.

Despite these advances, implementation across many African States, including Nigeria, remains uneven. Weak domestication of regional treaties, limited judicial activism, and persistent socio-cultural resistance continue to undermine the realisation of reproductive rights in practice.

Globally, evidence consistently demonstrates that decriminalising safe termination of pregnancy (SToP), when accompanied by strong health systems, trained providers, and community awareness, reduces maternal mortality rather than increases it. Nepal's legalisation of safe abortion in the late 1990s contributed to a dramatic reduction in maternal mortality, from about 750 per 100,000 live births in 1996 to around 250 by 2017. This improvement was supported by the expansion of safe termination of abortion services, improved access to family planning, and strengthened maternal healthcare systems. Similarly, Romania's reversal of restrictive SToP laws in 1989 led to a sharp decline in SToP-related deaths, highlighting the

immediate life-saving potential of rights-based reforms and accessible health services.

In Bangladesh, policy reforms and the integration of menstrual regulation services into the public health system significantly reduced SToP-related mortality, illustrating how context-appropriate models that align policy, service delivery, and community engagement can sustain long-term gains. More recently, Benin's 2021 SToP law reform, which expanded legal grounds for access to include circumstances of material, educational, professional, or moral distress, has positioned the country as a regional exemplar in Sub-Saharan Africa. Early implementation efforts, supported by the Ministry of Health and development partners, have focused on provider capacity-building, facility readiness, and community sensitisation to ensure safe service delivery.

Against this broader regional and global backdrop, Nigeria's legal framework remains highly restrictive. Termination of pregnancy is legally permitted only where a woman's life is at risk, significantly constraining women's ability to exercise reproductive autonomy. Restrictive legal frameworks, pervasive societal stigma, and gaps in healthcare services and infrastructure further compound these constraints.

In this context, the judiciary plays a crucial role in advancing reproductive justice by interpreting and enforcing existing laws and supporting legal reforms that uphold women's rights. This brief provides a comprehensive overview of Nigeria's reproductive rights and justice landscape, examines the judiciary's role in safeguarding and advancing these rights, and presents actionable recommendations to strengthen legal protections, improve access to justice, and enhance accountability mechanisms.

Collectively, these experiences demonstrate that while legal reform and judicial action are critical entry points for advancing reproductive rights and justice, they are insufficient in isolation.

Systematic monitoring of implementation, accountability for enforcement failures, and mechanisms for learning from judicial precedents are essential to ensure that court decisions and legal protections translate into meaningful change on the ground. In this light, tracking compliance with judicial rulings, identifying barriers to accessing justice, and documenting enforcement gaps are vital to ensuring that expanded legal rights result in tangible and equitable improvements in reproductive health outcomes.



First convening of the Legal Support Network, a group of legal and media professionals established to drive reproductive rights litigation in Nigeria



1.2 Nigeria's Reproductive Rights Context and Systemic Challenges

Against this global and regional backdrop, Nigeria presents a different landscape where legal restrictions continue to drive preventable maternal deaths. Unsafe termination of pregnancy remains one of the most persistent and preventable contributors to maternal mortality in Nigeria, underlining significant gaps in the fulfilment of women's reproductive health and rights, underscoring substantial gaps between legal commitments and the realisation of women's reproductive health and rights.

Despite international and regional recognition of reproductive rights as integral to public health and human dignity, Nigeria continues to operate within a highly restrictive legal and policy environment that limits women's autonomy and access to essential reproductive healthcare.

Available evidence highlights the scale of the challenge. An estimated 6,000 women die annually in Nigeria from complications related to unsafe termination of pregnancy, which accounts for approximately 13–30 per cent of all maternal deaths nationwide. Over 60 per cent of pregnancy terminations are unsafe, often carried out by unskilled providers or in non-clinical settings. Nigeria's maternal mortality ratio, estimated at 1,047 deaths per 100,000 live births, remains among the highest globally, reflecting systemic weaknesses in access to quality reproductive health services.

Collectively, these figures confirm that unsafe termination of pregnancy is a major but preventable cause of maternal mortality and a direct violation of women's rights to life, health, dignity, and bodily autonomy as guaranteed under the African Charter on Human and Peoples' Rights and the Maputo Protocol.

1.3 Systemic Barriers

Systemic barriers faced by women in Nigeria are interconnected constraints that limit the exercise of reproductive rights and undermine health outcomes. These include;

- Restrictive legal frameworks: Nigeria's abortion laws criminalise termination except to save a woman's life, driving unsafe practices and limiting autonomy.
- Cultural and religious norms: Deeply entrenched beliefs stigmatise women's reproductive choices, discouraging service uptake and perpetuating fear and discrimination.
- Health system gaps: Inadequate infrastructure, shortages of trained providers, and limited access to accurate information—particularly in rural and underserved areas—restrict access to quality care.
- Judicial gaps: While judicial recognition of reproductive rights has expanded incrementally, enforcement remains uneven, and access to justice is often delayed or inaccessible.
- Economic inequality: High out-of-pocket costs disproportionately affect low-income women and adolescents, further entrenching inequities.

Within Nigeria's restrictive national legal landscape, Ogun State provides a practical example of subnational progress by formally adopting and committing to the Safe Termination of Pregnancy (SToP) Guidelines.

By operationalising access to legal, safe, and medically supervised services within the scope of existing law, the state aligns its practices with international best standards and the provisions of the Maputo Protocol. This subnational reform demonstrates that, even under restrictive national frameworks, targeted policy action can save lives, improve access to reproductive health services, and set an important precedent for other states to emulate.



Dr. Ojukwu, the Executive Director, National Human Rights Commission, delivering a keynote address during the meeting of the Legal Support Network

2. WHAT JUDGES CAN DO

2.1 Legal Foundations for Reproductive Rights under the African Human Rights System

The African Charter on Human and Peoples' Rights (1981) and the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol, 2003) establish women's reproductive and bodily autonomy as enforceable rights under regional human rights law. Collectively, these instruments move reproductive rights beyond the realm of policy discretion and locate them firmly within the domain of justiciable legal entitlements, imposing binding obligations on State parties and corresponding duties on courts.



Under the African Charter, States are required to respect, protect, and fulfil a constellation of interrelated rights that are directly implicated in reproductive health and autonomy, including the right to life and integrity of the person (Article 4), freedom from cruel, inhuman, or degrading treatment (Article 5), the right to the highest attainable standard of health (Article 16), and the obligation to eliminate discrimination against women (Article 18(3)). These provisions are mutually reinforcing. Denial of access to essential reproductive healthcare can simultaneously violate the rights to life, health, dignity, and non-discrimination, particularly where such denial results in preventable maternal morbidity or mortality.

The Maputo Protocol operationalises these protections by explicitly recognising women's sexual and reproductive autonomy as distinct and substantive rights. Article 14 guarantees women's rights to control their fertility, make informed reproductive choices free from coercion or violence, access contraception and family planning information, and obtain a safe medical termination of pregnancy in cases of rape, sexual assault, incest, or where the pregnancy endangers the woman's life or physical or mental health. The express inclusion of mental health is particularly significant, affirming that psychological harm constitutes a legitimate and legally cognisable basis for reproductive healthcare intervention. Article 4(1)(f) further obliges States to establish accessible mechanisms for rehabilitation, information, and reparation for survivors of sexual and gender-based violence, reinforcing State accountability where reproductive harm is compounded by institutional neglect or obstruction.

Taken together, the African Charter and the Maputo Protocol transform women's bodily autonomy into a justiciable human right. They provide a clear normative and legal framework within which courts are not only permitted but required to act to protect reproductive rights, assess State compliance, and provide effective remedies where violations occur.

2.2 Regional Jurisprudence and the Judicial Duty to Protect Reproductive Rights

The judiciary plays a decisive role in translating reproductive rights standards into enforceable protections. Regional jurisprudence demonstrates how courts have applied the African Charter and the Maputo Protocol to safeguard women's bodily autonomy and reproductive health in practice, establishing persuasive authority for national courts across the continent.

In *Mildred Mapingure v. Minister of Home Affairs & Others* (SC 406/12), the Supreme Court of Zimbabwe held that the denial of timely access to emergency contraception and safe termination of pregnancy to a rape survivor constituted a violation of her rights to dignity, bodily integrity, and reproductive autonomy. Drawing on Articles 4 and 14 of the Maputo Protocol and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Court affirmed that States bear positive obligations to ensure prompt, accessible, and non-judgmental reproductive healthcare for survivors of sexual violence. It further held that administrative and procedural barriers that delay access to care amount to secondary victimisation and may constitute cruel, inhuman, or degrading treatment.

Similarly, in *Igohozo v. Prosecution* (2016), the Rwandan High Court overturned a restrictive lower-court decision and upheld the right of a 13-year-old rape survivor to a medical termination of pregnancy. Citing Article 14(2)(c) of the Maputo Protocol, the Court found that compelling a child to continue a rape-induced pregnancy violated her rights to bodily integrity, reproductive autonomy, education, and development. The Court underscored that children are entitled to heightened protection under regional human rights law and that the best interests of the child must guide all judicial determinations affecting reproductive healthcare access.

These decisions underscore that reproductive rights are not abstract principles but enforceable human rights requiring timely State action, clear procedures, and institutional accountability.

They provide persuasive authority for national courts, including Nigerian courts, to interpret domestic law consistently with regional human rights obligations and to develop jurisprudence that protects rather than penalises women and girls seeking reproductive healthcare.

2.3 The Role of the Judiciary in Nigeria's Reproductive Rights Framework

Within Nigeria's restrictive legal environment, the judiciary occupies a central position in determining whether existing laws function as instruments of protection or as barriers to women's reproductive autonomy. While judicial recognition of reproductive rights has expanded incrementally, significant gaps remain in translating legal recognition into equitable access to safe maternal care and lawful termination services.

Judicial engagement is therefore critical to clarifying the lawful scope of reproductive health services, ensuring timely and effective remedies for rights violations, and protecting healthcare providers and service users acting within the bounds of the law.

Through its interpretive, oversight, and remedial functions, the judiciary can also ensure that policy commitments translate into enforceable rights in practice and hold state and institutional actors accountable for systemic neglect

Through purposive, rights-based interpretation, Nigerian courts can align domestic jurisprudence with the African Charter, the Maputo Protocol, and emerging regional standards, thereby ensuring that constitutional guarantees of life, dignity, privacy, and non-discrimination are meaningfully realised in the reproductive health context. Building on these judicial opportunities, the following recommendations outline actionable steps for judges towards strengthening legal protections, improving access to justice, and advancing reproductive rights in Nigeria

2.4 Recommendations

1. Adopt a rights-based judicial approach

Judges should consciously set aside personal moral, cultural, or religious beliefs when adjudicating cases involving women's reproductive rights and bodily autonomy. Such cases should be grounded in constitutional principles, statutory provisions, and Nigeria's regional and international human rights obligations.

2. Apply expansive and purposive legal interpretation

Courts should adopt progressive interpretive approaches that read existing laws, including criminal law exceptions, in a manner that advances rather than restricts access to lawful reproductive healthcare, particularly where restrictive interpretations perpetuate discrimination or harm.

3. Facilitate civil society participation in judicial processes

Courts should enable meaningful participation by civil society organisations through amicus briefs, public interest litigation, and strategic cases. In matters involving structural inequality and social transformation, judicial reasoning should be informed by lived realities, public health evidence, and regionally grounded human rights standards.

4. Establish specialised judicial mechanisms

The judiciary should consider establishing specialised courts, designated benches, or fast-track procedures for cases involving sexual and reproductive health and rights, gender-based violence, and bodily autonomy, to reduce delays, enhance expertise, and prevent irreparable harm.

5. Remove financial barriers to justice

Survivors and rights claimants should not face prohibitive costs when seeking judicial redress. Court fees and related expenses should be waived or subsidised in cases involving

alleged violations of fundamental rights, particularly for women, adolescents, and other marginalised groups.

6. **Affirm women's bodily autonomy as a fundamental right**

The judiciary must consistently recognise and uphold women's bodily autonomy and self-determination, in line with the ECOWAS Court's decision in Dorothy Njemanze & Others v. Federal Republic of Nigeria, which affirmed that State actions and omissions must not infringe on women's dignity, agency, and freedom of choice.



Lawyers Alert team engage with correctional centres and courts to secure bail for healthcare providers remanded on STOP cases



Bamidele A. Jacobs. Lawyers Alert legal Director leads case study discussions on advancing reproductive rights through strategic litigation at the Reproductive Justice Litigation Baraza in Kampala, Uganda in 2023

3 WHAT THE STATE CAN DO

3.1 Policy Goals

This policy brief aims to guide both the judiciary and policymakers toward adopting and implementing measures that protect and advance reproductive rights for all women and girls in Nigeria. The overarching goal is to transform Nigeria's reproductive rights framework from one characterised by restriction and criminalisation to one grounded in dignity, equity, and accountability.

Specifically, the policy seeks to:

- Advance a legal environment in which women's reproductive rights are recognised as fundamental human rights;
- Promote liberal, rights-affirming interpretation and application of the law by the courts;
- Secure judicial and institutional buy-in for effective adjudication and enforcement of reproductive rights; and
- Ensure that women and girls can access legal recourse and reproductive health services without stigma, delay, or financial barriers.

3.2 Proposed Actions and Policy Pathways

Achieving these goals requires coordinated legal, judicial, and institutional reforms. Priority actions include repealing restrictive laws that criminalise safe termination of pregnancy and replacing them with progressive legislation aligned with constitutional guarantees and Nigeria's regional human rights obligations, including the Maputo Protocol.

Judicial dialogues and continuing legal education should be strengthened through structured learning exchanges that enhance judicial understanding of reproductive rights, public health evidence, and applicable human rights law. Public

awareness and community education initiatives are also essential to reducing stigma, improving rights literacy, and fostering social support for reproductive autonomy.

Legal reform must be accompanied by healthcare system strengthening, including legal protection for service providers, improved policy coordination across federal and state levels, and expanded access to quality reproductive health services, particularly in underserved and rural areas. Integrated accountability frameworks should be developed to track implementation, document violations, and ensure effective remedies where rights are infringed.



Executive Director of UNAIDS Dr Winnie Byanyima with Rommy Mom PhD at the 2024 Reproductive rights litigation Baraza in Uganda 2025.

4. Evidence from Comparative Jurisdictions

Lessons from international and regional experiences demonstrate that aligning legal reform with proactive judicial engagement and robust institutional accountability can significantly reduce maternal mortality, expand access to reproductive healthcare, and advance reproductive justice.

- **South Africa** – The Constitution explicitly guarantees reproductive rights. The judiciary has been pivotal in upholding these rights, as seen in *Treatment Action Campaign v. Minister of Health*, which reinforced the State's obligation to provide access to essential healthcare services, illustrating the critical role of courts in operationalising constitutional protections.
- **Kenya** – The 2010 Constitution enshrines the right to the highest attainable standard of health. Kenyan courts have issued progressive rulings advancing reproductive rights, particularly for adolescents and survivors of sexual violence, emphasizing the State's duty to prevent maternal morbidity and mortality through accessible, timely, and lawful healthcare services.
- **Argentina** – In 2020, Argentina legalised termination of pregnancy, with prior judicial endorsement reinforcing the constitutional principles of equality, dignity, and bodily autonomy. This demonstrates how strategic judicial interpretation can generate momentum for legislative reform and ensure effective implementation of reproductive rights.

These comparative experiences affirm that when judicial interpretation, legislative reform, and functional health systems operate in synergy, reproductive rights become enforceable,

equitable, and impactful, providing both a normative and practical framework for national jurisdictions, including Nigeria.

4.1 Strategic Judicial and Policy Recommendations

Based on these lessons, the following strategic recommendations are proposed to strengthen reproductive rights protection and enforcement in Nigeria:

a. Expand the Context of Reproductive Rights

Broaden judicial interpretation to explicitly encompass access to safe termination of pregnancy as an integral component of the rights to health, life, and dignity. Judicial reasoning should be purposive, aligning with constitutional and regional human rights standards, and advancing gender equality while reducing preventable maternal deaths.

b. Institutionalise Reproductive Justice in Judicial Training

Integrate reproductive rights, sexual and gender-based violence, and gender justice into judicial education and capacity-building programmes. Strengthening judicial literacy ensures consistent, rights-based adjudication and empowers judges to apply regional and international legal standards effectively.

c. Enhance Multi-Sectoral Collaboration

Establish platforms for sustained dialogue between the judiciary, health sector actors, civil society, and policymakers. Coordinated engagement promotes timely responses to reproductive rights violations, strengthens enforcement mechanisms, and supports the development of evidence-informed judicial and policy interventions.

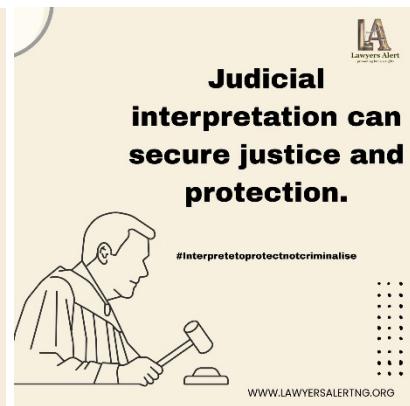
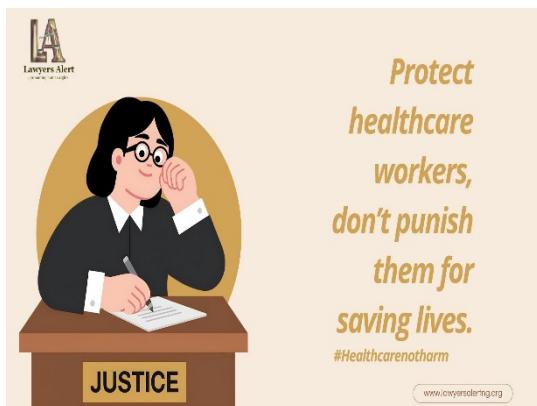
d. Strengthen Legal Remedies and Accountability

Encourage courts to adopt a proactive stance in granting remedies, reparations, and injunctive relief in cases of denial or

delay of reproductive healthcare. Such judicial activism reinforces State accountability, sets binding precedents for reproductive justice, and ensures that legal recognition of rights translates into tangible access and protection on the ground.



Lawyers Alert lead campaign review of VAPP in Benue State



Lawyers Alert campaign on reproductive justice and access to comprehensive SRHR services

5. CONCLUSION

Nigeria's obligations under the African Charter and the Maputo Protocol establish a clear legal and normative mandate to respect, protect, and fulfil women's reproductive rights. The judiciary plays a catalytic role in realising this mandate by interpreting the law in line with constitutional principles and regional human rights standards, providing effective remedies, and holding the State accountable for failures of implementation and enforcement.

However, judicial action alone is insufficient. Sustainable progress requires complementary State action through legislative reform, institutional strengthening, public education, and accountability mechanisms that ensure legal and judicial advances translate into meaningful change on the ground. When judicial leadership is matched by political will and systemic reform, reproductive rights can be transformed from formal guarantees into lived realities—saving lives, reducing maternal mortality, and advancing gender equality in Nigeria.



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