

THE JUDICIARY AND ADVANCING REPRODUCTIVE RIGHTS IN NIGERIA

A Quick Reference Guide for Judicial Officers

LAWYERS ALERT

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1. CONTEXT

Women and girls who become pregnant as a result of rape by insurgents, bandits, or family members through incest are compelled by the State to continue those pregnancies under Nigeria's restrictive safe termination of pregnancy laws. National law permits termination only where a woman's life is at risk, excluding survivors of sexual violence from lawful, government-supported access to safe termination of pregnancy. This legal framework converts rape and incest into state-enforced forced pregnancy, intensifying physical harm, psychological trauma, and social stigma.

This position contradicts Nigeria's binding obligations under the Maputo Protocol, which permits termination in cases of rape and incest. State non-compliance drives unsafe terminations, causing an estimated **6,000 preventable deaths annually, 13-30% of maternal deaths**, a maternal mortality ratio of **1,047 per 100,000 live births**, and over **60% of terminations performed unsafely**.

NIGERIA DOES NOT IMPLEMENT THE MAPUTO PROTOCOL

The Maputo Protocol (Article 14) guarantees women's reproductive autonomy, including safe medical termination in cases of rape, sexual assault, incest, or where pregnancy endangers life or physical or mental health. Although Nigeria is a signatory to the Maputo Protocol, the current legal framework in Nigeria restricts safe termination of pregnancy to cases where a woman's life is at risk, driving unsafe practices and limiting reproductive autonomy.

2. INTERPRETATION OF EXISTING LAWS IN NIGERIA

Legal & Judicial Barriers:

- Restrictive criminal abortion laws
- Weak domestication of regional treaties
- Limited judicial activism on reproductive rights
- Uneven enforcement and access to justice

Social & Cultural Barriers:

- Pervasive stigma against reproductive choices
- Entrenched cultural and religious norms
- Fear and discrimination

Health System Gaps:

- Inadequate healthcare infrastructure
- Shortage of trained providers
- Limited access to accurate information
- Weak service delivery in rural areas

Economic Barriers:

- High out-of-pocket healthcare costs
- Prohibitive court fees for rights claimants
- Disproportionate impact on poor women and adolescents

3. WHAT JUDGES CAN DO

1. Adopt a Rights-Based Judicial Approach

Ground decisions firmly in constitutional principles and Nigeria's regional/international human rights obligations, setting aside personal moral, cultural, or religious beliefs.

2. Interpretation of Existing Laws

Read existing laws, including criminal law exceptions, in ways that advance rather than restrict access to lawful reproductive healthcare.

3. Facilitate Civil Society Participation

Enable meaningful participation through amicus briefs, public interest litigation, and strategic cases informed by public health evidence and human rights standards.

4. Establish Specialized Judicial Mechanisms

Consider establishing specialized courts, designated benches, or fast-track procedures for SRHR cases to reduce delays and enhance judicial expertise.

5. Remove Financial Barriers to Justice

Waive or subsidize court fees in fundamental rights cases, particularly for women, adolescents, and marginalized groups seeking reproductive healthcare.

6. Affirm Women's Bodily Autonomy as a Fundamental Right

Consistently recognize women's bodily autonomy and self-determination in line with the ECOWAS Court decision in *Dorothy Njemanze & Others v. Federal Republic of Nigeria*.

4. WHAT THE STATE CAN DO

The State's reproductive justice obligations are to reform laws that criminalise safe termination of pregnancy, adopt legislation aligned with the Maputo Protocol, and support national and sub-national initiatives such as Ogun State's Safe Termination of Pregnancy Guidelines. Reinforced through institutional strengthening, integrating reproductive rights into judicial training, establishing multi-sectoral coordination platforms, and developing accountability frameworks to monitor implementation.

The State should also protect healthcare providers, expand access to reproductive healthcare, especially in underserved areas, and strengthen public education to reduce stigma and improve rights literacy.

5. CONCLUSION

Nigeria's obligations under the African Charter on Human and Peoples' Rights and the Maputo Protocol establish a clear legal mandate to respect, protect, and fulfill women's reproductive rights.

The judiciary plays a catalytic role through:

- Interpreting laws in line with constitutional principles and regional human rights standards
- Providing effective remedies and reparations for reproductive rights violations
- Holding the State accountable for implementation and enforcement failures

Nigeria's obligations under the African Charter and the Maputo Protocol impose a clear duty to realise women's reproductive rights, with the judiciary playing a central role through rights-based interpretation, effective remedies, and state accountability. However, lasting impact depends on complementary state action, through legal reform, institutional strengthening, and public accountability, to translate judicial advances into tangible improvements in women's health, lives, and equality.

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