



**African Court
Coalition**

Stakeholders' Platform on the Margins of the 76th Ordinary Session of the
African Court on Human and Peoples' Rights
30 January - 3 February 2025
PAPU Tower, Arusha Tanzania

DAY 2:

SESSION 4:

CSOs litigation initiatives: Leveraging synergies to strengthen strategic litigation and enhance engagement with the African Court including more engagements to address violations on the rights of women

PANELISTS:



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SESSION 4:

CSOS LITIGATION INITIATIVES: LEVERAGING SYNERGIES TO STRENGTHEN STRATEGIC LITIGATION AND ENHANCE ENGAGEMENT WITH THE AFRICAN COURT INCLUDING MORE ENGAGEMENTS TO ADDRESS VIOLATIONS ON THE RIGHTS OF WOMEN

Panellists:

- Michael Gyan Nyarko, Deputy Executive Director, Institute for Human Rights and Development in Africa – IHRDA
- Maxwell Kadiri, Senior Legal Counsel, Open Society Justice Initiative – OSJI
- Deborah Nyokabi, Program Officer, Legal Equality Program – Equality Now
- David Sigano, CEO, East Africa Law Society – EALS

Panel Chair:

Esther Muigai –Mnaro, Programme Manager, Pan-African Lawyers Union – PALU

For this session, focus was placed on the discussions on how CSOs that have direct access to the African Court can effectively coordinate strategic litigation initiatives with other CSOs/individuals that do not have direct access through collective efforts by taking advantage of amicus curiae procedures and other strategies.

The house was advised that there is not a lot of litigation especially on women's rights in Africa though challenges remain in terms of access to the African Court as discussed by earlier panels. Five cases over 20 years which were filed by the IHRDA is not a good rating. Yet, patriarchy and discrimination of women was observed to be still rife across the continent.

Women's rights were correctly interpreted as naturally justiciable but obstacles such as the exhaustion of local remedies rule and locus standi remain a hindrance to the utilisation of the contentious and advisory jurisdiction of human rights organs.

As for opportunities, they include positive jurisprudence enforcing the rights of women and girls in Africa being developed. Although the case against Tanzania was dismissed (Application 042/2020 - Tike Mwambipile & Equality Now Vs Tanzania) due to the same case pending before the African Committee of Experts, the African Court lost a chance to pronounce itself on this case despite receiving a lot of amicus briefs including from the NHRI of Tanzania.

Like in other sessions, the panellists again endeared the African Court to adopt a purposive approach to eliminate the narrow approach of the definition of 'African organisation recognised by the AU' where there are cases of systematic marginalisation of people especially women. The narrow approach has restricted the space especially where advisory opinions take the place of contentious proceedings.

Another challenge observed was that generally organisations across the continent do not have the capacity to litigate at regional level other than specialised ones such as IHRDA; CHR; PALU and a few others. There is need to build that synergy with such organisations and build enduring collaborations. Such collaborations would ensure access to victims and contacts on the ground, which is difficult without cooperation of organisations working with grass root organisations. There is a need to capacitate a lot of institutions to be able to litigate. For instance, most IHRDA cases begin at Case Identification Workshops and developed into full blown litigation cases. These platforms should be utilised.

The challenge relative to the specific question of implementation of decisions regarding women's rights was noted. Though monetary decisions against EA States were honoured, but very few cases were complied with especially those that required changes such as reform of national law. As a follow-up strategy, the EALS has written letters to these States and conducted missions but not much have changed. This has left litigants to self-help including filing cases at the EAC states for non-compliance.

Speakers also alluded to the question of the shrinking donor basket to fund strategic litigation because its impact take long to be realised, it was recommended that there is need for OSJI to partner with other donors and support this. A few other suggestions from the panellists were as follows;

- Explore building a global strategic litigation fund to achieve a balance between the global north and south, where all organisations have access to the fund on the basis of an objective criterion.
- We should consider local or continental (domestic) funding of CSO work, but the question that remained was how to go about it.
- Participants were urged to consider the role of bar associations in providing expertise and funding (human capacity); pro bono; private legal aid etc. In fact, the EALS has filed several cases in which it funded its own expenses. Only in a few cases where the matter is complex and requires synergies with experts in the area and collaborations, and that's when we look for resources.
- There is need to interpret impact in a broad way such as developing the case itself; point of filing the case; and obtaining a positive remedy, should all be understood as impact, not merely the changes the decision could cause on the ground.
- The amicus curiae is an important procedure to join on-going proceedings as alternative where direct access to the African Court is impeded by restrictive locus standi requirements.
- Raising awareness of the Court's work and its existence is a reality even in top government offices.

In the final analysis, the house was advised that there are several guidelines in existence guiding the implementation of decisions or monitoring the same, yet State parties remain difficult nuts to crack. The discussions of the Opening Session were again put in perspective as an example of State parties' attitude and thought process when faced with the obligation to implement decisions. The question of the role played by the Court's decisions in the implementation process was explored in the following session.



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