In-Depth Case Analysis on the Decision of The African Commission on Human and Peoples' Rights in Community Law Centre and Others (On Behalf of The Five Victims) v Federal Republic of Nigeria

(Communication 564 of 2015)

KELIN
Reclaiming Rights, Rebuilding Lives

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INTRODUCTION

The Kenya Legal and Ethical Issues Network (KELIN), the Dullah Omar Institute for Constitutional Law, Governance and Human Rights at the University of the Western Cape (DOI); the African Population and Health Research Center (APHRC), and the Centre for Human Rights (CHR) have developed this analysis in response to the decision of the African Commission on Human and Peoples' Rights (hereinafter "**the Commission**") *in Community Law Centre and Others* (on behalf of the Five Victims) v. *Federal Republic of Nigeria* (Communication 564 of 2015) [2024] (hereinafter "the Communication").

The Communication was submitted by DOI, Alliance Africa, WARDC and CRR. It was filed to challenge Nigeria's failure to provide available, accessible, appropriate and quality maternal health care services, without discrimination, to all women in the country. The Communication was important in calling for: the advancement of maternal health in Africa; state accountability for preventable maternal mortality and morbidity; and strengthening the understanding of state obligations relating to maternal health and rights, under international and regional law. However, the Commission rendered a regressive decision. This decision was made in the absence of a response by the Respondent State which, among other implications, means that the Complainants' case and the violations documented in the Communication remained unchallenged.

The analysis details the ways in which the findings in this case are seriously flawed and contravene the provisions of the African Charter on Human and Peoples' Rights (hereinafter "**the Banjul Charter**") and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (hereinafter "**the Maputo Protocol**"). The decision indicates regression in the Commission's work to promote human rights on the Continent and interpret regional law. It also obfuscates state obligations, as imposed by regional and international law. As a result, the key recommendation from this analysis is that the Commission needs to urgently reconsider and review its decision in Communication 564 of 2015.

[1]Article 43 of the Constitution of Kenya, Laws of Kenya

Findings on Admissibility of the Communication

The Commission found the Communication to be admissible for hearing and determination because it met the criteria set out in the Banjul Charter, including:[1]

i. The Communication was based on reports from reputable international and local organizations. In addition to reports from research conducted by the Complainants (including CRR and WARDC), the Communication also relied on reports from key international institutions whose mandates touch on maternal health: World Health Organization (WHO), United Nations Population Fund (UNFPA) and the Guttmacher Institute.
ii. Local remedies were not available to the Complainants because many victims of maternal mortality and morbidity in Nigeria are of low income and unable to access legal aid.
iii. Local remedies were also found to be ineffective as Section 6(6) of the Constitution of Nigeria states that the right to health is not a justiciable right in Nigeria.
iv. Local remedies were also found to be insufficient because the number of victims of maternal mortality and morbidity in Nigeria are so many as to make it impractical for all of them to exhaust local remedies.

Notwithstanding the above findings on local remedies, the Commission, in its analysis of the merits of the Communication, found that the Complainants had not demonstrated that the 5 victims, were prevented by law or practice from approaching the relevant, competent bodies or denied this access; or that the channels for seeking redress did not exist. On this basis the Commission incorrectly found that there had been no violation of the right to an effective remedy.[2]

Analysis of the Findings on the Merits of the Communication

1. Findings on Economic, Social and Cultural Rights

The Commission found that economic, social and cultural rights are *"programmatic rights"* which they interpreted to mean "*… each state sets itself objectives to achieve in order to fulfil them. Therefore, their implementation depends on the means available to each state. Unlike civil and political rights, where each state is obliged to refrain from violating them, the State is obliged to realize economic, social and cultural rights…*[3]"

This position contravenes existing regional law and the Commission's own interpretation of state obligations arising from social, economic and cultural rights because:

- It considers states' obligation to realize economic, social and cultural rights as subjective and optional rather than objective and mandatory. This contravenes the provisions of Article 1 of the Banjul Charter which places on states the obligation to give effect to all the rights guaranteed therein, whether civil, political, economic, social or cultural.[4]
- It implies that economic, social and cultural rights are separate from and inferior to civil and political rights, and

[1] African Charter On Human And Peoples' Rights (Banjul Charter), Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986, Art. 56.

[2] Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23, (accessed November 15, 2024), para. 158-164

[3] Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), para. 102.

[4] Association of Victims of Post Electoral Violence & Interights v. Cameroon (Communication 272/03), https://achpr.au.int/sites/default/files/files/2022-11/achpr4627203eng.pdf (accessed on November 27, 2024), Para. 87. See also the Preamble of the Banjul Charter, para 8.

infers that each category of rights results in different obligations. This contradicts the Preamble of the Banjul Charter, and the Pretoria Declaration on Economic, Social and Cultural Rights in Africa (hereinafter "**the Pretoria Declaration**") which expressly recognizes that all rights enshrined in the Charter and the Maputo Protocol are indivisible, interdependent and universal.[5] It also contravenes the Commission's own guidance that civil and political rights impose the same four general obligations on states as economic, social and cultural rights, that is, the obligations to respect, protect, promote and fulfil.[6]

- It implies that there are no standard, minimum core obligations when it comes to the realization of social, economic and cultural rights. This contravenes the Pretoria Declaration, which expressly recognizes states' obligations to ensure the satisfaction of, at the very least, the minimum essential levels of each of the economic, social and cultural rights contained in the Banjul Charter.[7] In the context of health, the Commission has specified that minimum core obligations include: ensuring the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; ensuring provision of essential drugs to all those who need them; and provision of education and access to information on key health problems in communities, including methods of preventing and controlling these health problems.[8]

2. Findings on the Right to Life

In its decision, the Commission looked at the indivisibility and interdependency of the right to maternal health services and information and the right to life. It reiterated that preventable maternal mortality amounts to deprivation of life and, as such, is a violation of women and girls' rights to life, dignity and equality.[9] The Commission also acknowledged that Nigeria has one of the highest rates of maternal mortality on the continent and the world. However, the Commission found that the Complainants did not show that Nigeria has sufficient resources to prevent maternal mortality or that despite the existence of such resources, it has failed to ensure continuous and sustainable improvement of maternal healthcare.[10]

This finding is factually incorrect because the Complainants provided both evidence and arguments on the availability of resources in Nigeria and the failure to allocate those resources to healthcare, including maternal healthcare. They relied on the 2018 World Bank report, discussed above, which confirmed Nigeria's large reserves of both natural and human resources as well as the fact that Nigeria is one of the largest economies on the continent.[11]

[5]Pretoria Declaration on Economic, Social and Cultural Rights in Africa, adopted December 2004, ACHPR/Res.73(XXXVI)04, Preamble.

[6]Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. the Federal Republic of Nigeria (Communication 155/96), https://achpr.au.int/en/decisions-communications/social-and-economic-rights-action-center-serac-and-center-economic-15596, (accessed on November 15, 2024), Paras. 43-47

[7]Pretoria Declaration on Economic, Social and Cultural Rights in Africa, adopted December 2004, ACHPR/Res.73(XXXVI)04, Art. 2.

[8]African Commission on Human and Peoples' Rights, Principles And Guidelines On The Implementation Of Economic, Social And Cultural Rights In The African Charter On Human And Peoples' Rights, (2011), Pg 24.

[9]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), paras. 99-103

[10]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Para. 103- 104

[11]World Bank, "Nigeria Health Financing System Assessment," June 2018, https://documents1.worldbank.org/curated/ar/782821529683086336/pdf/127519-WP-PUBLIC-add-series-NigeriaHFSAFINAL.pdf (accessed on November 26, 2024), Paras. 4-6.

They also provided information and evidence showing the low allocation of resources to healthcare by the government of Nigeria at the federal, state and local government levels and how corruption and mismanagement results in wastage of this small allocation.[12]

Finally, the Complainants provided information and evidence on how the high rate of maternal mortality in Nigeria is a result of the state's inability to establish functional maternal health systems. This failure results in denial of access to antenatal care; financial barriers; obstetric violence; and lack of consistent access to electricity in health facilities among other challenges and barriers.[13]

In addition to the evidence and information provided by the Complainants, the Commission was also independently aware of Nigeria's high rate of preventable maternal mortality and had directed the government to address it through eliminating all barriers to maternal health services and increasing budgetary allocations to health.[14] This is also evidenced by the Commission's findings on admissibility where the Commission found the Communication to be admissible because of the "… *significant number of victims involved*…" which indicates both awareness of the maternal health situation in Nigeria and an acknowledgement that the women and girls who die in this way are victims of rights violations.[15]

In previous communications, the Commission has acknowledged that obligations imposed by the Banjul Charter are obligations of result. This means that whatever measures are taken by governments to implement the Charter must actually give effect to rights.[16] Nigeria has consistently been among the countries with the highest rates of maternal mortality on the continent and has only reduced its rate of maternal mortality by 12 percent since 2000. This indicates that whatever measures the state is taking are not giving effect to women and girls' right to life.[17] In light of this, the duty to prove that there was continuous and sustainable improvement of the right to maternal health, and therefore the right to life, was on Nigeria, not the Complainants as the Commission indicated.

Additionally, the obligations imposed on African countries by the Banjul Charter are obligations of due diligence and, as such, governments are required to put in place measures specified by the Charter, including laws and institutions, to guarantee rights and enable their realization.[18] Consequently, in this case, Article 4 of the Banjul Charter and Article 4 of the Maputo Protocol, which recognize the right to life, impose due

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[12]Center for Reproductive Rights and Women Advocates Research and Documentation Centre, "Broken Promises: Human Rights, Accountability, and Maternal Death in Nigeria," https://reproductiverights.org/broken-promises-human-rights-accountability-and-maternal-death-in-nigeria/ (accessed on November 26, 2024).

[13]Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research and Documentation Centre and the Center for Reproductive Rights, " Communication 564/15 Before The African Commission On Human And Peoples' Rights: In The Matter Between Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research And Documentation Centre And The Center For Reproductive Rights (On Behalf Of Thousands Of Women) And The Federal Republic Of Nigeria (The Respondent): Argument On Merits" May 30, 2020, https://reproductiverights.org/wp-content/uploads/2024/04/Communication_on_maternal_mortality_final_draft_-30-May_2020.pdf (accessed on November 26, 2024), paras. 1-17.

[14]African Commission on Human and Peoples' Rights, "Concluding Observations and Recommendations on the 5th Periodic Report of the Federal Republic of Nigeria on the Implementation of the African Charter on Human and Peoples' Rights (2011 – 2014)" November 2015, https://www.rightofassembly.info/assets/downloads/ACHPR_Concluding_Observations_on_Nigeria_(2015).pdf, (accessed on November 15, 2024),Para 117.

[15]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Paras. 34-54.

[16]Association of Victims of Post Electoral Violence & Interights v. Cameroon (Communication 272/03), https://achpr.au.int/sites/default/files/files/2022-11/achpr4627203eng.pdf (accessed on November 27, 2024), Paras. 93-112

[17] World Health Organization (WHO), "Trends in maternal mortality 2000 to 2020 Estimates by WHO, UNICEF, UNFPA, World Bank Group and UNDESA/Population Division" (2023), https://iris.who.int/bitstream/handle/10665/366225/9789240068759-eng.pdf?sequence=1 (accessed on November 25, 2024), Annex 16, Pg. 85.

[18]Association of Victims of Post Electoral Violence & Interights v. Cameroon (Communication 272/03), https://achpr.au.int/sites/default/files/files/2022-11/achpr4627203eng.pdf (accessed on November 27, 2024), Paras. 93-112

diligence obligations on states including the obligation to take preventative steps to address chronic and pervasive threats to life including preventable maternal mortality through progressive realization of the right to health.[19] Thus, the burden should have been on the government of Nigeria to demonstrate that the state does not have enough resources to prevent maternal deaths, not on the Complainants to prove the opposite.

3. Findings on the Right to Health

a. Poverty in Africa and the Right to Health

The Commission also made findings on women's right to sexual and reproductive health, specifically maternal health, which warrant close examination. Building on the incorrect interpretation of the obligations imposed on states by economic, social and cultural rights, the Commission absolved the respondent by observing that "*…African Countries are generally plagued by poverty making them incapable of providing the facilities, infrastructure and resources that facilitate the full enjoyment of [the right to health]…*"[20] In making this finding, the Commission misquoted its own jurisprudence. In the case from which the above finding was quoted, *Purohit and Moore v. The Gambia*, the Commission found that poverty does not free states from their obligation to realize the right to health. Rather, poverty and the resulting insufficiency of resources, imposes on states an obligation to take concrete targeted steps and allocate the maximum available resources to realize the right to health.[21]

Since the Commission issued the Purohit decision, research into the financial situation in African countries has found that Africa has been a net creditor to the world for decades and that the poverty experienced by people in the region results, in large part, from illicit outflows and increase in Africa's external debt burden. This holds especially true for Nigeria.[22] This is reflected in the Pretoria Declaration which correctly observes that social, economic and cultural rights "*remain marginalized in their implementation*" not because of poverty but because of factors including: lack of political will to implement these rights; lack of good governance; failure to allocate sufficient resources; corruption and mismanagement of financial resources; and poor utilization of human resources.[23] Accordingly, where states have failed to address the above-mentioned constraints, poverty is not an acceptable justification for failing to realize the right to health. As Nigeria did not provide any information or evidence to the Commission regarding its resources and justification for its low budgetary allocations to health, it appears that the Commission, on its own motion, inferred poverty as a justification on behalf of Nigeria.

b. The Abuja Declaration and the Right to Health

The Commission also found that the 15 percent budget allocation to the health sector required by the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases (hereinafter "**the Abuja Declaration**")[24] is merely an expression of political will that only has recommendatory value and a symbolic scope. Consequently, Nigeria's failure to meet

[19] African Commission on Human and Peoples' Rights, General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), (2015), Paras. 41-43

[20] Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Para. 109

[21] Purohit and Moore v. The Gambia (Communication 241/01), https://achpr.au.int/sites/default/files/files/2022-11/achpr3324101eng.pdf (accessed on November 15, 2024), Para. 84.

[22] African Development Bank, Illicit Financial Flows and the Problem of Net Resource Transfers from Africa: 1980–2009, 2012, https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Illicit%20Financial%20Flows%20and%20the%20Problem%20of%20Net%20Resource%20Transfers%20from%20Africa%201980-2009.pdf (accessed on November 26, 2024), Pg. 21-29.

[23] Pretoria Declaration on Economic, Social and Cultural Rights in Africa, adopted December 2004, ACHPR/Res.73(XXXVI)04, Art. 3.

[24] Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases, adopted April 2001, OAU/SPS/ABUJA/3, Para. 26

this allocation threshold “*cannot be used as a legal basis to conclude*” that there has been any violation of the right to health.[25]

While it is true that the Abuja Declaration does not impose a binding legal obligation on states to allocate at least 15 percent of their annual budgets to health,[26] it sets a standard for what African governments agree amounts to adequate allocation of financial resources for the realization of the right to health.[27] A 2016 analysis of Nigeria’s national budget, which was the most recent analysis available to the Commission at the time of its decision, confirmed that Nigeria allocated only 6 percent of its annual budget to health.[28] This trend of poor resource allocation to health has persisted for over 20 years[29] as Nigeria has consistently spent less on health than other countries on the continent with much smaller economies.[30] For instance, in 2021, Nigeria only allocated 4 percent of its national budget to health.[31]

When this evidence is viewed against the recommended 15 percent that states committed to allocating to health in 2001, it indicates that there is a legal basis to find that the Nigerian government has chosen not to allocate adequate funds, rather than being unable to, and thus violated the right to health as it is enshrined in Article 16 of the Banjul Charter and Article 14 of the Maputo Protocol.

c. Women’s Right to Control their Fertility

The Commission found that the Complainants did not demonstrate how women and girls’ rights as guaranteed by Article 14(1)(a)(b) (c) and (f) of the Maputo Protocol had been impeded. The Commission stated it could not see a link between the facts of the case and the limits to or denial of: women and girls’ right to control their fertility; right to decide whether to have children and the number and spacing of their children; right to choose any method of contraception; and right to family planning education.[32] Additionally, the Commission found that the Complainants failed to establish a causal link between the lack of access to family planning education and the high rate of preventable maternal mortality.[33]

A review of the Complainants’ arguments finds that they presented information and evidence relevant to these provisions of the Maputo Protocol as they relate to the right to information on sexual and reproductive health and services. The Complainants presented evidence that Nigeria’s high rate of preventable maternal mortality and morbidity arises, in part, because women and girls lack information on contraception and family planning necessary to help them control their fertility, and prevent unplanned pregnancies and resulting unsafe

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[25]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Para. 110-111.

[26]African Commission on Human and Peoples’ Rights and UNAIDS, “ Right to Health and Its Financing in Africa: End Epidemics and Strengthen Systems that Uphold the Right to Health for All: Draft Study,” 2023, https://achpr.au.int/sites/default/files/files/2023-03/right-healtheng.pdf (accessed on November 27, 2024). Pg. 7

[27]African Commission on Human and Peoples’ Rights, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c)of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, (2014), Para. 62

[28]World Bank, “Nigeria Health Financing System Assessment,” June 2018, https://documents1.worldbank.org/curated/ar/782821529683086336/pdf/127519-WP-PUBLIC-add-series-NigeriaHFSAFINAL.pdf (accessed on November 26, 2024), Para 17-20.

[29]Nike Adebowale, “2023 Budget: Health Gets Highest Allocation Ever but Fails to Meet AU Commitment,” Premium Times, October 10, 2022, https://www.premiumtimesng.com/news/headlines/559213-2023-budget-health-gets-highest-allocation-ever-but-fails-to-meet-au-commitment.html?tztc=1 (accessed on November 29, 2024).

[30]World Bank, “Nigeria Health Financing System Assessment,” June 2018, https://documents1.worldbank.org/curated/ar/782821529683086336/pdf/127519-WP-PUBLIC-add-series-NigeriaHFSAFINAL.pdf (accessed on November 26, 2024), Figure 1.6, Pg 24.

[31]Human Rights Watch, “Global Failures on Healthcare Funding,” April 11, 2024, https://www.hrw.org/news/2024/04/11/global-failures-healthcare-funding.

[32]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Para. 117

[33]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Para. 145-150.

abortions.[34] This argument was closely tied to the arguments on lack of formal education discussed above.

In addition to the Complainants' arguments, the Commission was aware of the barriers and challenges faced by women and girls in Nigeria when it comes to realizing the above listed Article 14 rights. In its concluding observations to Nigeria in 2015, the Commission directed Nigeria to take steps to "improve access to contraceptives and family planning options".[35] In Nigeria's subsequent periodic state report to the Commission in 2017, Nigeria claimed improvements in access to contraceptives and family planning options as detailed in the 2013 National Demographic and Health Survey.[36] A comparison of the 2008 and 2013 Demographic and Health Survey reports finds that although there was a marked improvement when it comes to knowledge of at least one modern method of contraception from 71 percent[37] to 84 percent[38], there were minimal increases, if any, in all other indicators of women and girls' control of their fertility. For example:

- There was less than a five percent increase in the number of women and girls whose contraceptive needs were being met.[39] Only 39-45 percent of women and girls have their contraceptive needs met by modern contraceptives, with the lowest percentage of satisfied demand for contraception being among adolescent women and girls, ages 15-19.[40] Even when traditional methods of contraception are considered in addition to modern methods, the percentage of demand for contraception that is being met remains between 45-60 percent across all age groups.
- There was a minimal increase in use of modern contraception among all women from about 10 percent[41] to 11 percent[42]. Both the 2008[43] and 2013[44] Demographic and Health Surveys record the lowest contraception use among women and girls in rural areas, as well as those with the least income and education.

[34]Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research and Documentation Centre and the Center for Reproductive Rights, " Communication 564/15 Before The African Commission On Human And Peoples' Rights: In The Matter Between Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research And Documentation Centre And The Center For Reproductive Rights (On Behalf Of Thousands Of Women) And The Federal Republic Of Nigeria (The Respondent): Argument On Merits" May 30, 2020, https://reproductiverights.org/wp-content/uploads/2024/04/Communication_on_maternal_mortality_final_draft_-30-May_2020.pdf (accessed on November 26, 2024), Pg. 29-30.

[35]African Commission on Human and Peoples' Rights, "Concluding Observations and Recommendations on the 5th Periodic Report of the Federal Republic of Nigeria on the Implementation of the African Charter on Human and Peoples' Rights (2011 – 2014)" November 2015, https://www.rightofassembly.info/assets/downloads/ACHPR_Concluding_Observations_on_Nigeria_(2015).pdf, (accessed on November 15, 2024), Para. 118.

[36]Federal Ministry of Justice, "Nigeria's 6th Periodic Country Report: 2015–2016 on the Implementation of the African Charter on Human and Peoples' Rights," https://achpr.au.int/sites/default/files/files/2022-08/nigeriastatereport6th20152016eng.pdf (accessed on November 26, 2024), Para. 118, Pg. 16-17.

[37]National Population Commission (NPC) [Nigeria] and ICF Macro, "Nigeria Demographic and Health Survey 2008," Abuja, Nigeria: NPC and ICF Macro, 2009, https://dhsprogram.com/pubs/pdf/FR222/FR222.pdf (accessed on December 2, 2024), Pg. 63.

[38]National Population Commission (NPC) [Nigeria] and ICF International, "Nigeria Demographic and Health Survey 2013," Abuja, Nigeria, and Rockville, Maryland, USA: NPC and ICF International, 2014, https://dhsprogram.com/publications/publication-fr293-dhs-final-reports.cfm (accessed on December 2, 2024), Pg. 90

[39]National Population Commission (NPC) [Nigeria] and ICF International, "Nigeria Demographic and Health Survey 2013," Abuja, Nigeria, and Rockville, Maryland, USA: NPC and ICF International, 2014, https://dhsprogram.com/publications/publication-fr293-dhs-final-reports.cfm (accessed on December 2, 2024), Table 7.13.2, Pg. 108

[40]National Population Commission (NPC) [Nigeria] and ICF Macro, "Nigeria Demographic and Health Survey 2008," Abuja, Nigeria: NPC and ICF Macro, 2009, https://dhsprogram.com/pubs/pdf/FR222/FR222.pdf (accessed on December 2, 2024), Table 7.3.2, Pg. 112.

[41]National Population Commission (NPC) [Nigeria] and ICF Macro, "Nigeria Demographic and Health Survey 2008," Abuja, Nigeria: NPC and ICF Macro, 2009, https://dhsprogram.com/pubs/pdf/FR222/FR222.pdf (accessed on December 2, 2024), Table 5.4, Pg. 70.

[42]National Population Commission (NPC) [Nigeria] and ICF International, "Nigeria Demographic and Health Survey 2013," Abuja, Nigeria, and Rockville, Maryland, USA: NPC and ICF International, 2014, https://dhsprogram.com/publications/publication-fr293-dhs-final-reports.cfm (accessed on December 2, 2024), Table 7.3, Pg. 93

[43]National Population Commission (NPC) [Nigeria] and ICF Macro, "Nigeria Demographic and Health Survey 2008," Abuja, Nigeria: NPC and ICF Macro, 2009, https://dhsprogram.com/pubs/pdf/FR222/FR222.pdf (accessed on December 2, 2024), Table 5.5, Pg. 70-71

[44]National Population Commission (NPC) [Nigeria] and ICF International, "Nigeria Demographic and Health Survey 2013," Abuja, Nigeria, and Rockville, Maryland, USA: NPC and ICF International, 2014, https://dhsprogram.com/publications/publication-fr293-dhs-final-reports.cfm (accessed on December 2, 2024), Table 7.4, Pg 95-96

- There was a minimal increase in women and girls' knowledge on their fertility period from about 19 percent[45] to 20 percent[46].
- There was a decrease in the recognition of women's autonomy as it relates to their health. In 2008, about 44 percent of married women and girls were involved in decisions about their own health either individually or with their husbands.[47] In 2013, about 39 percent of married women and girls were involved in making decisions about their health: 6 percent of married women and girls were the main decision makers and 33 percent of married women and girls made these decisions jointly with their husbands. Further 61 percent of married women and girls were left out of decision making about their health.[48]

d. Women's right to maternal healthcare and safe abortion

Article 14(2) (a) of the Maputo Protocol requires states to ensure availability, accessibility and affordability of maternal health care. Article 14(2)(c) requires states to ensure access to safe abortion in cases of: sexual violence; where the pregnancy endangers the mental and physical health of the pregnant woman or girl; or where the pregnancy endangers the life of the pregnant woman or girl or the foetus. The Commission found that the Complainants had not demonstrated that these rights had been violated. Specifically, the Commission stated that the Complainants did not show that: the costs of healthcare are unsustainable in relation to the cost of living in Nigeria; that the distance to health facilities results in women and girls incurring unaffordable costs; or that safe abortion is not protected in accordance with the provisions of the Maputo Protocol.[49]

This finding was factually inaccurate. In addition to the issues discussed in the section on harmful practices (below) regarding barriers to healthcare created by the requirement blood donations from husbands and other intimate partners, the Complainants also provided other research that detailed the experiences of Nigerian women with regards to financial barriers to maternal healthcare. These include: user-fees; detention of women and girls who cannot pay these fees; inconsistency in granting of fee waivers; patients' obligation to pay for maternal health supplies such as syringes, disinfectants, gauze and sanitary pads; and long distances to healthcare facilities and the resulting transportation and lodging costs.[50]

The Complainants also provided legal arguments and evidence that unsafe abortion is one of the leading causes of preventable maternal mortality in Nigeria. They provided information and evidence that Nigeria's restrictive abortion laws are a key barrier that limits access to safe abortion from qualified healthcare professionals and pushes women and girls to seek unsafe abortions.[51] The Commission was aware that, as

[45]National Population Commission (NPC) [Nigeria] and ICF Macro, "Nigeria Demographic and Health Survey 2008," Abuja, Nigeria: NPC and ICF Macro, 2009, https://dhsprogram.com/pubs/pdf/FR222/FR222.pdf (accessed on December 2, 2024),Table 5.10, Pg. 77

[46]National Population Commission (NPC) [Nigeria] and ICF International, "Nigeria Demographic and Health Survey 2013," Abuja, Nigeria, and Rockville, Maryland, USA: NPC and ICF International, 2014, https://dhsprogram.com/publications/publication-fr293-dhs-final-reports.cfm (accessed on December 2, 2024), Table 7.12, Pg. 102

[47]National Population Commission (NPC) [Nigeria] and ICF Macro, "Nigeria Demographic and Health Survey 2008," Abuja, Nigeria: NPC and ICF Macro, 2009, https://dhsprogram.com/pubs/pdf/FR222/FR222.pdf (accessed on December 2, 2024),Table 15.5.1, Pg. 245.

[48]National Population Commission (NPC) [Nigeria] and ICF International, "Nigeria Demographic and Health Survey 2013," Abuja, Nigeria, and Rockville, Maryland, USA: NPC and ICF International, 2014, https://dhsprogram.com/publications/publication-fr293-dhs-final-reports.cfm (accessed on December 2, 2024), Table 15.5, Pg. 288.

[49]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Para. 121

[50]Center for Reproductive Rights and Women Advocates Research and Documentation Centre, "Broken Promises: Human Rights, Accountability, and Maternal Death in Nigeria," https://reproductiverights.org/broken-promises-human-rights-accountability-and-maternal-death-in-nigeria/ (accessed on November 26, 2024), Pg. 39- 45 and Pg. 49.

[51]Center for Reproductive Rights and Women Advocates Research and Documentation Centre, "Broken Promises: Human Rights, Accountability, and Maternal Death in Nigeria," https://reproductiverights.org/broken-promises-human-rights-accountability-and-maternal-death-in-nigeria/ (accessed on November 26, 2024), Pg. 50-51.

of 2017, Nigeria had yet to amend its abortion laws,[52] to align them with the provisions of Article 14(2)(c) of the Maputo Protocol.[53] It is worth noting that to date, Nigeria still has not amended its abortion law which criminalizes abortion in all cases except where it is necessary to save the life of the pregnant woman or girl.[54]

Further, the obligation to show that the cost of healthcare is sustainable in relation to the cost of living, falls on the state, not the Complainants. The obligation to progressively realize economic, social and cultural rights, including the right to health, imposes a complementary obligation on states to not take retrogressive measures unless they can "*prove that their actions comply with the 'totality of the rights' provided for in the Charter and reflect the States immediate obligation to use the maximum available resources to progressively realise economic, social and cultural rights.*"[55] Retrogressive measures are defined as any measures that diminish *"…the enjoyment of a right's full normative content, including its availability, accessibility, acceptability, adaptability, or quality"*.[56] The evidence and information provided by the Complainants documents how user fees, the requirement that women and girls pay for medical supplies and commodities, and other financial barriers reduce their enjoyment of the right to health by preventing women from seeking maternal healthcare. Where women seek care and are unable to pay for it, they are either denied services or detained thereafter for inability to pay. The evidence and information provided by the Complainants documents how user fees, the requirement that women and girls pay for medical supplies and commodities, and other financial barriers reduce their enjoyment of the right to health by preventing women from seeking maternal healthcare.

In this way, the Complainants demonstrated that the costs levied on maternal healthcare in Nigeria amount to retrogressive measures. Therefore, contrary to the Commission's findings, the duty was on Nigeria to prove either that these measures are not regressive or that these regressive measures are necessary and reasonable, including proving that the costs of health care are sustainable in relation to the cost of living in Nigeria.[57]

4. Findings on the Right to Dignity and Freedom from Torture, Cruel, Inhuman or Degrading Treatment

The Complainants provided evidence and information on obstetric violence in Nigeria- identifying it as another factor that contributes to the high rate of preventable maternal mortality in the country. Obstetric violence is violence meted out against women and girls when they seek sexual and reproductive health services and information, including maternal health care.[58] The forms of obstetric violence that the Complainants provided information on included denial of services, detention of women for inability to pay for the maternal health

[52]Federal Ministry of Justice, "Nigeria's 6th Periodic Country Report: 2015–2016 on the Implementation of the African Charter on Human and Peoples' Rights in Nigeria," https://achpr.au.int/sites/default/files/files/2022-08/nigeriastatereport6th20152016eng.pdf (accessed on October 13, 2024), Pg. 16-17.

[53]African Commission on Human and Peoples' Rights, Principles And Guidelines On The Implementation Of Economic, Social And Cultural Rights In The African Charter On Human And Peoples' Rights, (2011), Para. 67 (qqq) (2).

[54]Center for Reproductive Rights, "The World's Abortion Laws Map: Nigeria," https://reproductiverights.org/maps/worlds-abortion-laws/?country=NGA (accessed on December 5, 2024).

[55]African Commission on Human and Peoples' Rights, General Comment 7: State Obligations under the African Charter on Human and Peoples' Rights in the Context of Private Provision of Social Services (accessed on February 3, 2025), para. 28.

[56]African Commission on Human and Peoples' Rights, General Comment 7: State Obligations under the African Charter on Human and Peoples' Rights in the Context of Private Provision of Social Services (accessed on February 3, 2025), para. 28.

[57]African Commission on Human and Peoples' Rights, Principles And Guidelines On The Implementation Of Economic, Social And Cultural Rights In The African Charter On Human And Peoples' Rights, (2011), Para. 20.

[58]United Nations General Assembly, "A Human Rights-Based Approach to Mistreatment and Violence Against Women in Reproductive Health Services with a Focus on Childbirth and Obstetric Violence," Report of the United Nations Special Rapporteur on Violence Against Women, A/74/137, July 2019, https://documents.un.org/access.nsf/get?OpenAgent&DS=a/74/137&Lang=E (accessed on November 26, 2024), Para. 9

services they had received, and the inhumane conditions of this detention including denial of food, water, and post-natal care as well as being forced to sleep on the floor and being denied access to their newborns.[59]

The Commission found that these acts do not qualify as torture, cruel, inhuman and degrading treatment (hereinafter "**torture and ill-treatment**") because the Complainants did not show that the health service providers had the "…*specific and well-defined objective of humiliating victims or inducing them to act against their will and conscience…"* and that the acts complained of "… *created in the victims feelings of fear, anguish and inferiority such as to humiliate them, debase them and possibly break their physical or moral resistance…"*.[60]

This finding of the Commission is incompatible with the recent growing and progressive interpretation of torture and ill-treatment by international and regional human rights bodies to include abuses and mistreatment in the context of sexual and reproductive health and rights. Torture is defined to include acts that cause severe pain or suffering which are inflicted on a person for any reason based on discrimination of any kind with the consent or acquiescence of the state.[61]

Although the difference in threshold between torture and ill-treatment is not clear, it is well-established that there is no need to develop sharp distinctions between the two[62] since the conditions that give rise to ill-treatment frequently facilitate torture and, as a result, the state's unconditional obligation to prevent torture extends to prevention of all forms of ill-treatment as well.[63]

The Complainants did not need to show an intention to humiliate on the part of healthcare providers. They merely needed to show that the actions they complained of were based on discrimination against women and girls on the basis of their gender and other identities such as social or economic class , including that, the effect of receiving treatment in a poorly funded health care system compounded the discrimination that the complainants experienced.[64] Obstetric violence has its roots in gender-based discrimination against women and girls as well as the lack of respect for women and girls' equality and human rights.[65] Further, the Complainants provided the Commission with reports, albeit from Kenya,[66] confirming that the denial of maternal healthcare to women who cannot afford to pay for it and the detention of women and girls for their inability to pay causes severe pain and suffering in the

[59]Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research and Documentation Centre and the Center for Reproductive Rights, " Communication 564/15 Before The African Commission On Human And Peoples' Rights: In The Matter Between Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research And Documentation Centre And The Center For Reproductive Rights (On Behalf Of Thousands Of Women) And The Federal Republic Of Nigeria (The Respondent): Argument On Merits" May 30, 2020, https://reproductiverights.org/wp-content/uploads/2024/04/Communication_on_maternal_mortality_final_draft_-30-May_2020.pdf (accessed on November 26, 2024), Para. 43.

[60]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Para. 130.

[61]United Nations Convention Against Torture, adopted December 10, 1984, G.A Res. 39/46, entry into force 26 June 1987, Art. 1

[62]United Nations Human Rights Committee, General comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), (1992), Para 4.

[63]United Nations Committee Against Torture, General Comment No. 2: Implementation of article 2 by States parties, CAT/C/GC/2, (2008), Para. 3.

[64]United Nations Committee Against Torture, General Comment No. 2: Implementation of article 2 by States parties, CAT/C/GC/2, (2008), Para. 20-22.

[65]United Nations General Assembly, "A Human Rights-Based Approach to Mistreatment and Violence Against Women in Reproductive Health Services with a Focus on Childbirth and Obstetric Violence," Report of the United Nations Special Rapporteur on Violence Against Women, A/74/137, July 2019, https://documents.un.org/access.nsf/get?OpenAgent&DS=a/74/137&Lang=E (accessed on November 26, 2024), Para. 9

[66]Center for Reproductive Rights, "Failure to Deliver: Violations of Women's Human Rights in Kenyan Health Facilities," 2007, http://reproductiverights.org/sites/crr.civicactions.net/files/documents/pub_bo_failuretodeliver.pdf (accessed on November 26, 2024), Pg. 52-54.

form of death and long-term and short-term conditions due to: untreated and unmanaged pregnancy conditions; women and girls being forced to give birth outside; and harassment and humiliation by healthcare professionals and other staff in health facilities.[67]

Detention in health facilities for inability to pay medical fees is a form of arbitrary detention, that is, detention that lacks a legal basis.[68] It is also well-established that the detention of women in health facilities for inability to pay medical costs is a form of gender-based violence that may amount to torture, cruel, inhuman and degrading treatment.[69] This is especially the case where the conditions of detention are below the standards required by international law[70] as was demonstrated by the Complainants. In fact, the Commission itself, in a prior communication against Nigeria found that such conditions of detention violate the right to freedom from torture and ill-treatment.[71]

5. Findings on the Right to Equality and Non-discrimination

The Commission found that Article 2 of the Maputo Protocol, which lays out state obligations to eliminate discrimination against women, only recognizes discrimination on the basis of sex and therefore any arguments on discrimination contrary to the Maputo Protocol must relate to equality of women and men.[72] This interpretation contravenes Article 31 of the Vienna Convention on the Law of Treaties which requires international laws to be interpreted based on their objects and purpose and taking into account their full text, preamble and annexes. A review of the full text of the Maputo Protocol reveals that it calls on states to not only eliminate discrimination against women so that they can enjoy rights on an equal basis as men but also eliminate discrimination among different groups of women:

- Paragraph 2 of the Preamble to the Maputo Protocol imports Article 2 of the Banjul Charter which prohibits discrimination on various grounds including ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.
- All through its text, more so from Articles 20-24, the Maputo Protocol takes an intersectional approach to discrimination against women and girls as it expressly recognizes the rights of different marginalized and vulnerable groups of women and girls including widows, elderly women, women living in rural areas, women with disabilities and women with low income.

The Commission also found that the Complainants did not make any arguments that show discrimination on any of the grounds indicated in Article 2 of the Banjul Charter and did not demonstrate how patriarchy caused differential treatment to the five victims as

[67]Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research and Documentation Centre and the Center for Reproductive Rights, " Communication 564/15 Before The African Commission On Human And Peoples' Rights: In The Matter Between Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research And Documentation Centre And The Center For Reproductive Rights (On Behalf Of Thousands Of Women) And The Federal Republic Of Nigeria (The Respondent): Argument On Merits" May 30, 2020, https://reproductiverights.org/wp-content/uploads/2024/04/Communication_on_maternal_mortality_final_draft_-30-May_2020.pdf (accessed on November 26, 2024), Para. 51.

[68]United Nations Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), U.N. Doc. CCPR/C/GC/35, (2014), Para. 11

[69]United Nations Human Rights Council, "Violence and Its Impact on the Right to Health," Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, A/HRC/50/28, May 17, 2022, https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/50/28&Lang=E (accessed on November 26, 2024), Para. 50.

[70]African Commission on Human and Peoples' Rights, "The Robben Island Guidelines: Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa," 2nd ed., 2021, https://achpr.au.int/sites/default/files/files/2021-07/robbenislandguidelines2nd.pdf (accessed on November 26, 2024), Para. 33-37

[71]Civil Liberties Organisation v Nigeria (Communication 151 of 1996) [1999] ACHPR 5 (15 November 1999), https://africanlii.org/akn/aa-au/judgment/achpr/1999/5/eng@1999-11-15/source, (accessed December 6, 2024), para. 27

[72]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Para. 133-135.

compared to other people in the same situation as the victims.[73] Further, the Commission found that the Complainants did not show how the five victims benefitted from differential protection by the law and the courts in Nigeria and therefore did not prove any violation of Article 3 of the Banjul Charter which provides for equality before the law and equal protection under the law.[74]

The five victims in the Communication were women who had died or suffered from lifelong injuries as a result of preventable causes of maternal mortality and morbidity in Nigeria.[75] A review of the Complainant's arguments on non-discrimination and equality finds that the victims in the Communication were, and represented, women who were marginalized in one or more ways: they had low income, lived in rural locations, did not have husbands and/or had husbands who were unwilling to donate blood to guarantee their access to maternal healthcare. The Complainants detailed how these different, often intersecting identities operated to block marginalized women from receiving quality maternal healthcare in Nigeria's poorly resourced healthcare system.[76]

The Commission also found that the financial barriers to accessing maternal healthcare detailed by the Complainants did not amount to discrimination contrary to Article 2 of the Banjul Charter and Article 2 of the Maputo Protocol because there was no evidence that these fees were introduced with the objective of discriminating against women with low income.[77] This interpretation fails to take into account the test for discrimination is the effect not the intent. It also ignores a critical manifestation of discrimination - indirect discrimination, that is, discrimination arising from law, policies, programs or practices that appear neutral but have a discriminatory effect because they fail to address pre-existing inequalities. Governments' obligations to eliminate discrimination extend to indirect discrimination.[78] In this regard, the Commission failed to take into account, on the basis of substantive equality, that there was no need to prove differentiation of treatment between men and women.

Consequently, the Complainants did not need to establish the intention behind the laws, policies and practices that impose fees for maternal healthcare in Nigeria. They merely had to prove the discriminatory effect of these laws, policies and practices, which they did.

Finally, the Commission found that the Complainants did not provide evidence on compulsory blood donations and therefore it could not make a finding on discrimination in this context.[79] This finding was factually incorrect as the Complainants provided detailed evidence and arguments on the practice of compulsory blood donation and the discrimination arising therefrom.

[73]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Para. 136

[74]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Para. 140-144.

[75]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Para. 1

[76]Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research and Documentation Centre and the Center for Reproductive Rights, " Communication 564/15 Before The African Commission On Human And Peoples' Rights: In The Matter Between Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research And Documentation Centre And The Center For Reproductive Rights (On Behalf Of Thousands Of Women) And The Federal Republic Of Nigeria (The Respondent): Argument On Merits" May 30, 2020, https://reproductiverights.org/wp-content/uploads/2024/04/Communication_on_maternal_mortality_final_draft_-30-May_2020.pdf (accessed on November 26, 2024), Para. 53-71

[77]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Para. 137

[78]Committee on the Elimination of Discrimination against Women, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, (2010), Para. 16

[79]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Para. 138

6. Findings on the Right to Protection from Harmful Practices

The Commission found that the Complainants[80] did not bring claims regarding violations of Article 5 of the Maputo Protocol, which provides for women and girls' right to protection from harmful practices. Consequently, the Commission declined to make a finding regarding violations of this article.[81]

A review of the arguments made by the Complainants, however, as summarized by the Commission in its decision[82], indicates that the Complainants did in fact make submissions and provide information regarding violations of this right. Harmful practices are defined in Article 1(g) of the Maputo Protocol as "… *all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity…*".

The arguments relating to Article 5 of the Maputo Protocol were made alongside the arguments on equality and freedom from discrimination. It was the Complainants' position that patriarchy and adherence to patriarchal cultural practices results in women and girls being subjected to discrimination including through child marriage and lack of formal education. These violations result in poor maternal health outcomes and, in this way, contribute to the persistent, high rate of maternal mortality and morbidity in Nigeria.[83]

Child marriage is a persistent human rights violation in Nigeria. In the 2024 Nigeria Demographic and Health Survey, approximately 21 percent of respondents were aged between 15-19 years and majority of these respondents were married or living together with a partner as if they were married.[84] The 2018 Nigeria Demographic and Health Survey found that 43 percent of girls are married before the age of 18.[85] This was a slight improvement from the findings of the 2013 Nigeria Demographic and Health Survey which found that the rate of child marriage was 49 percent.[86] In 2023, the African Union Campaign to End Child Marriage found that two in five girls in Nigeria will be married before the age of 18.[87] The Nigerian government itself has raised concerns about the country's high rate of child marriage in its 5th and 6th periodic state reports submitted to the Commission in 2014 and 2017 respectively.[88] The correlation between adolescent pregnancy and maternal mortality is well established globally: 2011 guidance from the World Health Organization found that adolescents aged 15 to 19 are twice as likely to die during pregnancy or childbirth as women aged above 19 years, and girls aged below 15 are five times more

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[80]Community Law Centre of the University of the Western Cape (now, Dullah Omar Institute for constitutional Law, Governance and Human Rights at the University of the Western Cape); Alliances for Africa (AFA); the Women Advocates Research and Documentation Centre; the Center for Reproductive Rights; and 5 victims of maternal mortality in Nigeria.

[81]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23, (accessed November 15, 2024), para. 91.

[82]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), para. 74-80.

[83]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), para. 74-76.

[84]Federal Ministry of Health and Social Welfare of Nigeria (FMoHSW), National Population Commission (NPC) [Nigeria], and ICF, "Nigeria Demographic and Health Survey 2023–24: Key Indicators Report" (accessed on January 23, 2025), https://dhsprogram.com/pubs/pdf/PR157/PR157.pdf, pg. 9

[85]National Population Commission (NPC) [Nigeria] and ICF, "Nigeria Demographic and Health Survey 2018", (Abuja, Nigeria, and Rockville, Maryland, USA: NPC and ICF, 2019), https://dhsprogram.com/pubs/pdf/FR359/FR359.pdf (accessed November 18, 2024), pg. 81.

[86]National Population Commission (NPC) [Nigeria] and ICF, "Nigeria Demographic and Health Survey 2018", (Abuja, Nigeria, and Rockville, Maryland, USA: NPC and ICF, 2019), https://dhsprogram.com/pubs/pdf/FR359/FR359.pdf (accessed November 18, 2024). Pg. 57

[87]The African Union Campaign to End Child Marriage, "Nigeria Country Profile on Child Marriages", https://www.aucecma.org/nigeria-country-profile-on-child-marriages/ (accessed on November 14, 2024)

[88]Federal Ministry of Justice, "Nigeria's 5th Periodic Country Report: 2011–2014 on the Implementation of the African Charter on Human and Peoples' Rights in Nigeria," https://www.maputoprotocol.up.ac.za/images/files/countries/state_reporting_english/Nigeria.%20Federal%20Republic%20of%20Nigeria.%205th%20Periodic%20Report,%202011-2014.%20State%20Reporting.pdf (accessed on November 13, 2024), para. 34, p. 63.

likely to die during pregnancy or childbirth as girls aged above 15 years.[89]

In relation to access to formal education, the 2018 Nigeria Demographic and Health Survey found that while access to formal education is lacking for both women and men in Nigeria, girls and women have less access to education than boys and men.[90] Only about 11 percent of women have completed secondary school as compared to about 15 percent of men, and about 40 percent of women had no education at all as compared to about 30 percent of men. This situation was noted by the Commission in its concluding observations on Nigeria's 2014 periodic state report[91] and the concluding observations of the African Committee of Experts on the Rights and Welfare of the Child to Nigeria in 2019.[92] Lack of access to education, girls' low attainment of sufficient levels of education, and barriers to accessing information on sexual and reproductive health are underlying determinants of poor reproductive and maternal health outcomes. This is recognized in Article 14 of the Maputo Protocol, and the Commission's General Comment No. 2 which provides that governments should ensure that educational institutions at all levels include comprehensive information and education on human sexuality, reproduction, and sexual and reproductive rights.[93] The Commission's joint General Comment with the African Committee of Experts on the Rights and Welfare of the Child on Ending Child Marriage outlines that comprehensive sexuality education should form part of the school curriculum, and should be disseminated widely in non-school settings.[94]

The barriers women and girls face to accessing reproductive healthcare services in Nigeria are compounded by corruption and insufficient funding to the country's health sector. This results in poor infrastructure and the unavailability and inaccessibility of healthcare services, particularly for women living in rural areas and women with low income.[95]

The Complainants accurately linked these factors to the high rate of preventable maternal mortality in the country and to harmful practices that occur when women and girls seek maternal health services. In particular, the Complainants relied on research reports they had themselves developed on the maternal health situation in Nigeria[96] and exposés by investigative journalists[97] that documented obstetric violence in the form of detention of women and girls in healthcare facilities for

[89]World Health Organization, WHO Guidelines on Preventing Early Pregnancy and Poor Reproductive Outcomes Among Adolescents in Developing Countries, (2011), https://www.who.int/publications/i/item/9789241502214, Pg. 2.

[90]National Population Commission (NPC) [Nigeria] and ICF, "Nigeria Demographic and Health Survey 2018", (Abuja, Nigeria, and Rockville, Maryland, USA: NPC and ICF, 2019), https://dhsprogram.com/pubs/pdf/FR359/FR359.pdf (accessed November 18, 2024). Tables 2.11.1 and 2.11.2, Pg. 23-25

[91]African Commission on Human and Peoples' Rights, "Concluding Observations and Recommendations on the 5th Periodic Report of the Federal Republic of Nigeria on the Implementation of the African Charter on Human and Peoples' Rights (2011 – 2014)" November 2015, https://www.rightofassembly.info/assets/downloads/ACHPR_Concluding_Observations_on_Nigeria_(2015).pdf, (accessed on November 15, 2024),Para 88, Pg. 14.

[92]African Committee of Experts on the Rights and Welfare of the Child, "Concluding Observations and Recommendations of the African Committee of Experts on the Rights and Welfare of the Child to the Government of the Federal Republic of Nigeria on its Periodic Report on the Implementation of the African Charter on the Rights and Welfare of the Child", December 2019, https://www.acerwc.africa/sites/default/files/2022-09/Nigeria%202-3rd-periodic%20Concluding%20observation.pdf, (accessed on November 20, 2024), Pg. 9-10.

[93]African Commission on Human and Peoples' Rights, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c)of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (2014), Para. 51-52.

[94]African Commission on Human and Peoples' Rights and African Committee of Experts on the Rights and Welfare of the Child, Joint General Comment on Ending Child Marriage, 2017, https://www.acerwc.africa/sites/default/files/2022-09/Joint_General_Comment_ACERWC-ACHPR_Ending_Child_Marriage_March_2018_English.pdf, para. 36.

[95]Center for Reproductive Rights and Women Advocates Research and Documentation Centre, "Broken Promises: Human Rights, Accountability, and Maternal Death in Nigeria," https://reproductiverights.org/broken-promises-human-rights-accountability-and-maternal-death-in-nigeria/ (accessed on November 26, 2024), Pg. 17-26

[96]Center for Reproductive Rights and Women Advocates Research and Documentation Centre, "Broken Promises: Human Rights, Accountability, and Maternal Death in Nigeria," https://reproductiverights.org/broken-promises-human-rights-accountability-and-maternal-death-in-nigeria/ (accessed on November 26, 2024).

[97]Samuel Oakford, "Nigerian Hospitals Are Holding Women Hostage Until Their Families Pay," Vice News, February 19, 2015, https://www.vice.com/en_us/article/59xxkd/nigeria-hospital-detention-folake-oduyoye (accessed on November 15, 2024).

inability to pay fees. These reports and exposés also documented the subsequent violations arising from the inhumane conditions in which women and girls are detained, including denial of post-delivery care and any further treatment, inadequate access to food and clean water, and being required to sleep on the floor, among other violations. In addition to these acts being rights violations in and of themselves, they also can result in serious harm to the health of the woman or girl and their newborn, and even death. For instance, one of the five victims who was joined as a Complainant had died from pneumonia and sepsis contracted during her detention.[98]

The Complainants also provided the Commission with information on the practice by some hospitals of requiring pregnant women or girls to bring their intimate male partners or husbands to donate blood or, otherwise pay a fee to receive services.[99] This practice has various negative effects that operate to violate the rights of women and girls to life, health and dignity:

- **Women and girls being denied maternal healthcare services**: Denial of maternal healthcare services is a form of obstetric violence.[100] The Complainants provided the Commission with reports that documented the challenges that women face with the practice of forced blood donation. One of the reports included a verbatim testimony from a woman who was denied information and services at the public teaching hospital to support her to manage her fibroids during her pregnancy, because her husband was unwilling to donate blood.[101]
- **Husbands blocking their wives' access to maternal healthcare:** In Nigeria only about 29 percent of married women make decisions on their sexual and reproductive health.[102] By refusing to donate blood, husbands can effectively block their wives from seeking services.[103]
- **Exposing women to the risk of gender-based violence from husbands and intimate male partners** if they try to push them to donate blood so that they can access maternal healthcare.[104] In Nigeria 36 percent of married, separated and divorced women and girls reported being subjected to intimate partner violence committed by their husbands[105] and a majority of people believe that it

[98]Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research and Documentation Centre and the Center for Reproductive Rights, " Communication 564/15 Before The African Commission On Human And Peoples' Rights: In The Matter Between Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research And Documentation Centre And The Center For Reproductive Rights (On Behalf Of Thousands Of Women) And The Federal Republic Of Nigeria (The Respondent): Argument On Merits" May 30, 2020, https://reproductiverights.org/wp-content/uploads/2024/04/Communication_on_maternal_mortality_final_draft_-30-May_2020.pdf (accessed on November 26, 2024), Para. 43.

[99]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), para. 76-78.

[100]United Nations General Assembly, Report of the Special Rapporteur on the right to health: A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence, Dubravka Šimonovic A/74/137, July 11, 2019, https://www.ohchr.org/en/calls-for-input/report-human-rights-based-approach-mistreatment-and-obstetric-violence-during (accessed November 18, 2024), Para 56

[101]Center for Reproductive Rights and Women Advocates Research and Documentation Centre, "Broken Promises: Human Rights, Accountability, and Maternal Death in Nigeria," https://reproductiverights.org/broken-promises-human-rights-accountability-and-maternal-death-in-nigeria/ (accessed on November 18, 2024), Pg. 44-45.

[102]Federal Ministry of Health and Social Welfare of Nigeria (FMoHSW), National Population Commission (NPC) [Nigeria], and ICF, "Nigeria Demographic and Health Survey 2023–24: Key Indicators Report," Abuja, Nigeria, and Rockville, Maryland, USA: NPC and ICF, September 2024, https://dhsprogram.com/pubs/pdf/PR157/PR157.pdf, (accessed on November 20, 2024), Table 40, Pg. 86-87.

[103]Center for Reproductive Rights and Women Advocates Research and Documentation Centre, "Broken Promises: Human Rights, Accountability, and Maternal Death in Nigeria," https://reproductiverights.org/broken-promises-human-rights-accountability-and-maternal-death-in-nigeria/ (accessed on November 18, 2024), Pg. 44-45.

[104]Center for Reproductive Rights and Women Advocates Research and Documentation Centre, "Broken Promises: Human Rights, Accountability, and Maternal Death in Nigeria," https://reproductiverights.org/broken-promises-human-rights-accountability-and-maternal-death-in-nigeria/ (accessed on November 18, 2024), Pg. 44-45.

[105]National Population Commission (NPC) [Nigeria] and ICF, "Nigeria Demographic and Health Survey 2018", (Abuja, Nigeria, and Rockville, Maryland, USA: NPC and ICF, 2019), https://dhsprogram.com/pubs/pdf/FR359/FR359.pdf (accessed November 18, 2024), Pg. 431

is acceptable for a husband to beat his wife for arguing with him or leaving the house without telling him.[106] This belief has even been codified in law as Section 55(1)(d) of the Penal Code, which is the primary criminal law in the Northern states, provides that, *"Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and* ***which is done by a husband for the purpose of correcting his wife,*** *such husband and wife being subject to any native law or custom in which such correction is recognized as lawful".*

- **Discrimination against women and girls living in poverty:** The requirement that women get their husbands or intimate partners to donate blood or pay a fee disproportionately harms women and girls with low income who cannot afford to simply pay for services. It also imposes a discriminatory requirement on women who are not married or partnered but are pregnant and either are unaware of or unable to afford to exercise the alternate option to pay a fee which, at the time of the research which informed the Communication, amounted to 11,000 Nigerian Naira (then, approximately USD $90).[107] This includes women and girls who become pregnant as a result of sexual violence, which is prevalent in Nigeria, as the Commission noted in its concluding observations to Nigeria in 2019.[108] Finally, this replacement-donor practice amounts to a requirement for third-party inclusion which is a recognized barrier to accessing sexual and reproductive health services and information, including maternal healthcare. It thus contradicts Nigeria's obligation to protect and respect rights.[109]

From the foregoing, we see that the Complainants made detailed arguments on the different kinds of harmful practices that women and girls are subjected to and provided the evidence of these practices and other related violations. The Commission also had information on these violations from reports published by Nigeria and shared with the Commission by the Complainants such as the Demographic and Health Surveys. The Commission had further relevant information through: periodic state reports submitted to the Commission by Nigeria; concluding observations issued by the Commission itself based on analysis and review of these periodic reports; the reports provided by the Complainants from their own work and the work of reliable investigative journalists; and General Comments issued by the Commission itself.

7. Findings on the Right to Peace

The Commission also found that the Complainants did not elaborate on or refer to violations of Article 10 of the Maputo Protocol and, consequently, it declined to make findings on the violation of this article.[110]

A review of the arguments made by the Complainants show that information was provided on violations relating to Article 10(3) of the Maputo Protocol, which requires states

[106] National Population Commission (NPC) [Nigeria] and ICF, "Nigeria Demographic and Health Survey 2018", (Abuja, Nigeria, and Rockville, Maryland, USA: NPC and ICF, 2019), https://dhsprogram.com/pubs/pdf/FR359/FR359.pdf (accessed November 18, 2024), Pg 415-418.

[107] Center for Reproductive Rights and Women Advocates Research and Documentation Centre, "Broken Promises: Human Rights, Accountability, and Maternal Death in Nigeria," https://reproductiverights.org/broken-promises-human-rights-accountability-and-maternal-death-in-nigeria/ (accessed on November 18, 2024), Pg. 44-45.

[108] African Commission on Human and Peoples' Rights, "Concluding Observations and Recommendations on Nigeria's 6th Periodic Report (2015)", November 2019, https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-nigeria-6th-periodic-report-2015 (accessed on November 18, 2024). Para. 47(iv), Para. 59(v) and para 64 (viii).

[109] African Commission on Human and Peoples' Rights, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c)of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,(2014), para. 43.

[110] Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), para. 91

to "*…take the necessary measures to reduce military expenditure significantly in favor of spending on social development in general, and the promotion of women in particular.*" The Complainants argued that Nigeria has failed to allocate sufficient funds to healthcare, including maternal healthcare.[111] In so doing, Nigeria has violated not only Article 10(3), but also Article 14 of the Maputo Protocol which provides for women and girls' sexual and reproductive rights.

The Complainants relied on a 2018 World Bank analysis of Nigeria's Health financing system. This analysis found that Nigeria is one of the largest economies on the continent with one of the highest reserves of natural and human resources. However, the government's expenditure on health in 2016 stood at approximately six percent of its annual budget and such low allocation had persisted since 1998 resulting in poor health outcomes including the high rate of preventable maternal mortality.[112] Similar findings were made by the Complainants when they investigated maternal healthcare in Nigeria in 2008. They found that not only was there low government expenditure on health but there was also significant corruption and mismanagement of funds within the healthcare system.[113] This trend has continued to date, as the government only allocated 4.8% of its annual budget to health for FY2024/2025.[114]

The 2018 World Bank Report notes that Nigeria has a history of focusing government expenditure primarily on payment of international debts and government administration, defense and internal security, to the detriment of economic, social and community services such as health.[115] This downward trend in allocation of resources to health directly contravenes Article 10(3) of the Maputo Protocol.

Accordingly, it becomes clear that the Complainants did provide evidence to support their claim of a violation of Article 10(3) of the Maputo Protocol.

8. Findings on the Right to Enjoy the Benefits of Scientific Progress

The Complainants argued that the consistent high rates of preventable maternal mortality in Nigeria, especially when compared with other countries with similar sized economies, indicates the lack of quality health care and that Nigeria has not taken steps to ensure that scientific progress on maternal health permeates its health sector.[116]

The Commission agreed with the Complainants that the right to enjoy the benefits of scientific

[111] Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research and Documentation Centre and the Center for Reproductive Rights, "Communication 564/15 Before The African Commission On Human And Peoples' Rights: In The Matter Between Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research And Documentation Centre And The Center For Reproductive Rights (On Behalf Of Thousands Of Women) And The Federal Republic Of Nigeria (The Respondent): Argument On Merits" May 30, 2020, https://reproductiverights.org/wp-content/uploads/2024/04/Communication_on_maternal_mortality_final_draft_-30-May_2020.pdf (accessed on November 26, 2024), Paras. 18-23.

[112] World Bank, "Nigeria Health Financing System Assessment," June 2018, https://documents1.worldbank.org/curated/ar/782821529683086336/pdf/127519-WP-PUBLIC-add-series-NigeriaHFSAFINAL.pdf (accessed on November 26, 2024), Para 17-20.

[113] Center for Reproductive Rights and Women Advocates Research and Documentation Centre, "Broken Promises: Human Rights, Accountability, and Maternal Death in Nigeria," https://reproductiverights.org/broken-promises-human-rights-accountability-and-maternal-death-in-nigeria/ (accessed on November 26, 2024), Pg. 17-26

[114] Nigeria Health Watch, "Shaping a Healthier Future for Nigeria in 2025," https://articles.nigeriahealthwatch.com/shaping-a-healthier-future-for-nigeria-in-2025/#:~:text=Looking%20ahead%2C%20President%20Bola%20Ahmed,its%20health%20spending%20more%20effective (accessed on November 26, 2024)

[115] World Bank, "Nigeria Health Financing System Assessment," June 2018, https://documents1.worldbank.org/curated/ar/782821529683086336/pdf/127519-WP-PUBLIC-add-series-NigeriaHFSAFINAL.pdf (accessed on November 26, 2024), Para. 6.

[116] Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research and Documentation Centre and the Center for Reproductive Rights, " Communication 564/15 Before The African Commission On Human And Peoples' Rights: In The Matter Between Community Law Centre (Dullah Omar Institute), Alliance For Africa, Women Advocate Research And Documentation Centre And The Center For Reproductive Rights (On Behalf Of Thousands Of Women) And The Federal Republic Of Nigeria (The Respondent): Argument On Merits" May 30, 2020, https://reproductiverights.org/wp-content/uploads/2024/04/Communication_on_maternal_mortality_final_draft_-30-May_2020.pdf (accessed on November 26, 2024), Para. 75-80.

progress, while not expressly provided for in the Banjul Charter and the Maputo Protocol, is implied by Article 14 of the Maputo Protocol. Further the Commission acknowledged that the right to enjoy the benefits of scientific progress enables the realization of the right to health. However, the Commission found that the Complainants had not shown that scientific progress in healthcare is available and sufficient in Nigeria to overcome its persistently high rate of maternal mortality or that this scientific progress, while available, has not been made accessible to women.[117]

Governments' obligation to provide quality health care includes the obligation to ensure that facilities, goods, information and services must be scientifically and medically appropriate and up to date.[118]

Further, as part of their core obligations, governments are required to be guided by contemporary human rights instruments and jurisprudence as well as the most current guidance from bodies such as the World Health Organization (WHO).[119] This obligation takes into account that in the context of health, while scientific discoveries may occur in a local context, the classification of these discoveries as "progress" is based on the evaluation and acceptance of such discoveries at the global level, specifically by the WHO. As detailed above, the Complainants provided information and evidence on the different practices in the maternal health sector in Nigeria that contravene both international law and guidance from the WHO and contribute to the country's high rate of preventable maternal mortality and morbidity such as third-party involvement as a requirement of access to maternal health services and obstetric violence. The existence of these practices confirms that scientific progress in maternal health is readily available, globally, but women and girls in Nigeria are not enjoying the benefits of it.

9. Findings on Nature of Evidence and Burden of Proof

The Commission's findings that Complainants had not provided evidence in relation to women's right to protection from harmful practices, right to peace, and freedom from discrimination, is factually incorrect. Further, it contradicts Rule 120(2) of the Rules of Procedure of the African Commission on Human and Peoples' Rights which states that "*where no submissions on merit have been received from the respondent State within the time-limit fixed, the Commission shall proceed to adopt a decision by default based on the information before it*". This finding also raises questions on whether the Commission has changed its rules regarding the nature of evidence it considers and the burden of proof it applies. Guidance from the Commission on the nature of evidence and burdens of proof states that communications must: present a prima facie case; meet the provisions of Article 56 of the Banjul Charter; include precise allegations of fact; and include relevant documents.[120] In our view, the case built by the Complainants met these criteria but was held to a different standard by the Commission.

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[117]Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015), https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23 (accessed November 15, 2024), Para. 151-157

[118]United Nations Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), U.N Doc. E/C.12/GC/22, (2016), Para. 21.

[119]United Nations Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016) on the right to sexual andreproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), U.N Doc. E/C.12/GC/22, (2016), Para. 49.

[120]African Commission on Human and Peoples' Rights, "Information Sheet No. 3: Communication Procedure," (2014), https://achpr.au.int/sites/default/files/files/2021-04/achprcommunicationprocedureeng.pdf (accessed on November 18, 2024), Pg. 7.

Conclusions and Recommendations

The decision of the Commission in Communication 564 of 2015 contradicts regional law, international law, and the interpretation of the rights enshrined therein, as interpreted by treaty monitoring bodies at the United Nations and Africa Union levels, including the Commission itself. The decision represents a regression on the continent by walking back decades of developments in women and girls' rights including as they relate to: their right to life; their economic, social and cultural rights, including their right to the best attainable state of sexual and reproductive health; freedom from torture and ill-treatment; and their right to equality and freedom from discrimination.

This negative decision will effectively embolden the Nigeria Government to neglect its maternal health obligations, including their obligation to address preventable maternal mortality and morbidity and their obligation to address obstetric violence. This decision sets a bad precedent for both Nigeria and other states on the continent: the threshold for evidence and proof has been raised so high that it may now be impossible for complainants to prove their cases before the Commission. Additionally, other states can begin to use this decision to justify their neglect of maternal health rights, undermining national, regional and domestic advocacy efforts.

It is also noted that the Commission took nearly a decade to render the decision in the Communication. This delay in addition to the negative decision that ignored the evidence that demonstrated the violations against women and girls has eroded confidence in the Commission as a reliable mechanism for protecting women and girls' rights. This could discourage parties from seeking justice through not only the Commission but also other African human rights mechanisms. We therefore recommend that the Commission review this decision and adopt findings aligned with human rights law, and in particular, the Banjul Charter and the Maputo Protocol, and provide an updated analysis and adequate remedies for the violations of women's rights occurring in Nigeria.

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