



ACHPR
African Commission on
Human and Peoples' Rights

Human Rights our
Collective Responsibility

Communication 564 /15

**Community Law Centre and three Others
(on behalf on the Five Victims)**

v

The Federal Republic of Nigeria

*Adopted by the
African Commission on Human and Peoples' Rights
During the 75th Ordinary Session done virtually from 03 to 23 May 2023*



**Hon. Commissioner Remy Ngoy Lumbu
Chairperson to the African Commission
on Human and Peoples' Rights**



**Mme Abiola Idowu-Ojo
Executive Secretary to the African
Commission on Human and Peoples'
Rights**

Communication 564 /15: Community Law Centre and three Others (on behalf on the Five Victims) v. The Federal Republic of Nigeria

Summary of the Complaint:

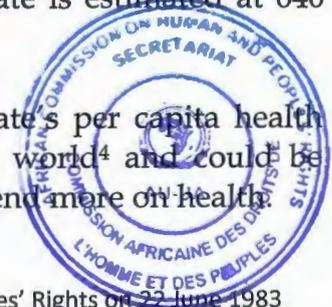
1. On 31 December 2014, the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received a Communication submitted jointly by the Community Law Centre of the University of the Western Cape, Alliance Africa, the Women Advocacy Research and Documentation Centre and the Centre for Reproductive Rights (the Complainants) on behalf of five (5) women in Nigeria (the victims) who suffer from lifelong injuries such as obstetric fistulas, haemorrhage, and those who have died as a result of complications related to pregnancy or childbirth.
2. The complaint was filed against the Federal Republic of Nigeria (Respondent State), a State party to the African Charter on Human and Peoples' Rights (the African Charter).¹
3. The Complainants argue that thousands of Nigerian women have lost their lives because the Respondent State failed to provide adequate access to maternal health care services. The Complainants further argue that most of those deaths could have been prevented, as the reasons why women die during pregnancy or childbirth are well known. These include problems such as haemorrhage, unsafe abortion, eclampsia, infection, dystocia and other direct causes.²
4. The Complainants assert that maternal mortality is a matter of social injustice and deserves urgent responses from the Respondent State. They claim that the low status of women, gender inequality and lack of respect for their human rights often worsen the maternal mortality situation in the country.
5. The Complainants submit that although the Respondent State is one of the world's leading oil producers and the largest exporter in the region, the maternal mortality situation in the country is appalling and one of the highest in the world. They add that the maternal mortality rate is estimated at 640 deaths for 100,000 live births.³
6. The Complainants also claim that the Respondent State's per capita health expenditure (sic) of \$136 is among the lowest in the world⁴ and could be compared to other less well-endowed countries that spend more on health.

¹ The Federal Republic of Nigeria ratified the African Charter on Human and Peoples' Rights on 22 June 1983

² Complaint, para. 3

³ *Ibid*, para. 5.

⁴ *Id*, para. 7.



7. The Complainants contend that, according to their analysis of budgetary allocations to health and defence in the Respondent State over the last three years, the State spends more on the military and defence than on the health of its population. The Complainants state that this is contrary to the provisions of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which urges States to reduce military expenditure in order to free up more resources to address the challenges facing women in the region.
8. The Complainants contend that since only women get pregnant and run the risk of dying during childbirth, spending more on the military and defence at the expense of women's development is an act of discrimination and therefore a violation of women's rights.
9. The Complainants highlight that the Respondent State's average expenditure on health is about 6%, which is far from the 15% budget allocation agreed in the Abuja Declaration in 2001. The Complainants further argue that a rights-based approach to maternal mortality requires a State to devote the maximum of its available resources to sexual and reproductive health services.
10. The Complainants aver that the allegations they raise concern massive violations of women's rights to health, life and dignity and that, as such, the Respondent State is expected to be aware of the situation. The Complainants assert that several reports of the Respondent State suggest that maternal mortality is a major challenge in the country.
11. The Complainants also argue that the Respondent State, although aware of the deaths of thousands of women during pregnancy and childbirth in the country, has done little to effectively remedy the situation. They add that the lack of action by the State, according to some of the Commission's decisions, means that local remedies are not available or, even if they are, that they are not effective or sufficient to remedy the alleged violations.

Articles alleged to be violated

12. The Complainants allege violation of Articles 2, 3, 4, 5 and 16 of the African Charter.

Prayers

13. The Complainants pray the African Commission on Human and Peoples' Rights (the Commission) to:
 - i. Find that the Respondent State has violated Articles 2, 3, 4, 5 and 16 of the African Charter and Articles 2, 4, 5, 10 and 14 of the Maputo Protocol;



- ii. Order the Respondent State to provide free access to prenatal and maternal care services for all women, particularly those in rural areas, and to establish health care centres in rural areas throughout the country;
- iii. Request the Respondent State to invest more of its resources in improving the health care sector as a whole;
- iv. Award the sum of 5 billion naira in damages or compensation to women and their families who have suffered physical and psychological trauma, including debilitating injuries, as a result of pregnancy and childbirth related complications in the country;
- v. Request the Respondent State to devote more resources to the health sector in order to curb the maternal mortality rate in the country.

Procedure

14. The Secretariat received the Communication on 31 December 2014 and acknowledged receipt on 7 January 2015. On 16 July 2015, the Community Law Centre requested that the Women Advocacy and Research Documentation Centre and the Centre for Reproductive Rights be added as complainants in the Communication.
15. The Commission decided to be seized of this Communication at its 18th Extraordinary Session held from 29 July to 7 August 2015 in Nairobi, Kenya.
16. On 26 October 2015, the Complainants were informed of the Commission's decision to be seized of the matter and were invited to submit evidence and arguments on admissibility within two months. The Respondent State was informed of the seizure by Note Verbale on the same date, which also included the Communication and the Seizure decision.
17. On 11 January 2016, the Complainants submitted their arguments on admissibility to the Secretariat, which were forwarded to the Respondent State on 26 February 2016. The deadline for the Respondent State to submit its observations on admissibility was 26 April 2016. On 18 May 2018, the Complainant's submissions on admissibility were retransmitted to the Respondent State by mail. However, to date, the Respondent State has not submitted its observations on admissibility to the Commission.
18. On 18 May 2018, the Secretariat sent a letter to the Complainants requesting information regarding the identity of the victims. On 5 August 2018, the Complainant submitted a list of five (5) victims, and indicated that "for personal reasons, the family members of those listed have requested that they remain anonymous in order to protect their identity." On 15 February 2019, the

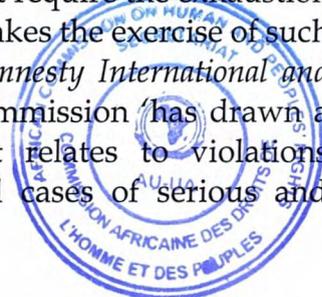
Complainants submitted letters from the families of two (2) victims, who agreed to be represented in this Communication.

19. Information letters were sent to the Parties to the Communication from the 58th to the 65th Ordinary Session.
20. At its 27th Extraordinary Session held from 12 February to 4 March 2020, the Commission declared the Communication admissible.
21. On 5 March 2020, the Complainants were informed of the Admissibility decision and were requested to submit their arguments on the Merits to the Secretariat within 60 days in accordance with Rule 108(1) of the Commission's Rules of Procedure. The Respondent State was also informed.
22. On 30 May 2020, the Secretariat of the Commission received the Complainants' arguments on the Merits, which were forwarded to the Respondent State on 1 June 2020 by Note Verbale. In the same note verbale, the Secretariat of the Commission requested the Respondent State to submit its observations on the Merits within a period not to exceed 60 days from the date of receipt of the notification.
23. The Respondent State did not submit its observations within the required time limit.

Admissibility

Complainants' arguments on Admissibility

24. The Complainants maintain that the Communication meets the admissibility requirement of Article 56(5) of the African Charter as it falls within the scope of the three derogations to the principle of exhausting local remedies. The Complainants contend that local remedies are not available, effective and sufficient to provide redress due to the large number of victims, the serious and massive nature of the violations and the low level of income of victims who cannot access legal aid.
25. The Complainants argue that the Commission does not require the exhaustion of local remedies where the large number of victims makes the exercise of such remedies neither practicable nor desirable. Citing *Amnesty International and Others. v. Sudan*, the Complainants claim that the Commission has drawn a distinction between cases in which the complaint relates to violations committed against identified or named victims and cases of serious and



massive violations in which it may be impossible for the complainants to identify all victims'.⁵

26. The Complainants also refer to the case of the *African Institute for Human Rights and Development v. Guinea*, regarding 5,000 detained Sierra Leonean refugees, in addition to an unknown proportion of the 300,000 Sierra Leonean refugees who also suffered violations, in which the Commission found that an impractical number of potential complainants would severely overburden the national judicial system if even a slight majority of victims chose to pursue legal redress.⁶ The Complainants argue that the Commission found the Communication admissible because it fell within the scope of a derogation, that exhausting remedies was impractical due to the large number of victims.
27. The Complainants claim that a similar situation arises in the present Communication. They submit that the Respondent State is unable to provide effective redress through local remedies to the large number of victims, who cannot be identified. The Complainants also contend that Nigeria has the second highest number of maternal deaths in the world, with more than 40,000 women dying each year from causes related to pregnancy or childbirth, or about 110 women a day, and 20 to 30 times as many women suffering from maternal morbidity.
28. The Complainants claim that the Communication also includes the thousands of women who survive pregnancy and childbirth, but who nonetheless suffer violations of their rights due to the denial of quality care as a result of financial, institutional and infrastructural barriers. This is compounded by the conflict in northern Nigeria, which has displaced 1.5 million people and resulted in the pregnancy by rape of hundreds of women and girls captured by Boko Haram. The Complainants state that as a result of the conflict, essential reproductive and maternal health care remains inaccessible to tens of thousands of women, which has exacerbated the already disproportionately high rates of maternal mortality and morbidity in the northern regions.
29. The Complainants claim that they represent all the victims of a single year, which may amount to one million women, but also the cumulative number of millions of victims from previous years. The Complainants further argue that it would be neither possible nor reasonable to require each of the thousands, if not millions, of Nigerian women who have suffered preventable maternal health violations to exhaust local remedies.

⁵ Communication 48/90, 50/91, 89/93: Amnesty International, Comité Loosli Bachelard, Lawyers Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v. Sudan (1999) ACHPR, para 39

⁶ Communication 249/02: Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Guinea (2004) ACHPR, para 34. *See also* Communication 54/91-61/91-96/93-98/93-164/97_196/97-210/98 : Malawi Africa Association, Amnesty International, Ms Sarr Diop, Union interafricaine des Droits de l'Homme and RADDHO, Collectifs des Veuves et Ayants-droits, Association Mauritanienne des Droits de l'Homme v. Mauritania, (2000) ACHPR, para 22-24, 26, 85



30. The Complainants also argue that the Commission's jurisprudence does not require the exhaustion of local remedies in the context of serious and massive violations.
31. The Complainants refer to the case of *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions v. Sudan*, in which the Commission found that "the scale and nature of the alleged abuses, the number of persons involved ipso facto make local remedies unavailable, ineffective and insufficient".⁷
32. The Complainants maintain that this Communication contains serious and massive violations. They further argue that, unlike in the Communication *Socio-Economic Rights and Accountability Project (SERAP) v. Nigeria*, which the Commission found inadmissible because a single incident, an oil pipeline explosion that caused 700 deaths and other permanent injuries, did not qualify as a case of serious and massive violations and could have been the subject of a single tort lawsuit case under the Oil Pipelines Act (2004),⁸ in the present Communication, each of the 40,000 daily maternal deaths and the estimated one million additional cases of maternal morbidity would be the subject of separate lawsuits to address the violations that occurred in a single year.⁹ The Complainants further claim that they represent all the victims of a single year, in addition to the cumulative total number of victims of past years, when maternal mortality and morbidity were even higher.
33. The Complainants argue that domestic law does not provide for any cause of action capable of grouping the countless number of distinct violations into a manageable number of legal actions, and that tort law cannot provide sufficient redress that would bring about a structural change in the health care system.
34. The Complainants further contend that the present Communication is comparable to the *Sudan Human Rights Organisation v. Sudan*¹⁰ and *Malawi Africa Association v. Mauritania*¹¹ communications, in that the violations of maternal health care are serious and massive, occurring on a large scale and on a continuous basis. In addition, the Complainants allege that women in Nigeria have suffered serious and massive violations as a result of the conflict with Boko Haram in northern Nigeria. The Complainants state that hundreds of women were abducted, raped and gotten pregnant, and that even those who were released did not have access to adequate maternal health care.

⁷ Communication 279/03-296/05: Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan (2009) ACHPR, para 102. *See also*, Communication 54/91-61/91-96/93-98/93-164/97_196/97-210/98 v. Mauritania, para-85

⁸ Communication 338/07: Socio-Economic Rights and Accountability Project (SERAP) v. Nigeria (2010) ACHPR, para 5, 61, 64, 67

⁹ Complainant's Submissions on Admissibility, para. 8.

¹⁰ *Supra* note. 9.

¹¹ Communication 54/91-61/91-96/93-98/93-164/97_196/97-210/98 v. Mauritania



35. The Complainants further argue that the violations of a serious and massive nature meet the principle that the Respondent State should be informed of a human rights violation to provide it with an opportunity to redress it before being brought before an international jurisdiction.¹²
36. As a result, the Complainants submit that local remedies do not fulfil the three criteria for exhaustion, due to the excessively high number of victims who would have to exhaust the remedies individually and due to the serious and massive nature of the violations.
37. Furthermore, the Complainants submit that the Communication is admissible because it falls within the scope of the derogation from the requirement to exhaust local remedies for low-income victims. The Complainants cite the case of *Purohit and Moore v. The Gambia*, in which the Commission found the Communication admissible because mental health patients were generally low-income people who could not afford legal aid and therefore had no real possibility of obtaining redress at the domestic level.¹³
38. The Complainants argue that, in this Communication, it is generally women with low levels of income who are denied access to maternal health care due to financial barriers, resulting in preventable maternal mortality and morbidity.
39. Therefore, the Complainants contend that the Communication falls within the scope of three derogations to the requirement under Article 56(5), as local remedies are unavailable, ineffective or insufficient due to the large number of victims, the serious and massive nature of the violations and the low income of the victims.

Analysis of the Commission on Admissibility

40. Article 56 of the African Charter sets out seven conditions, applicable jointly and cumulatively, which a communication under Article 55 of the African Charter should meet in order to be admissible.
41. The Commission notes that the Complainants submitted arguments on admissibility solely in respect of Article 56 (5) of the African Charter. However, the Commission will undertake its analysis on Admissibility in the light of the Complainants' arguments in relation to Article 56(5), in addition to the other information provided in the Communication.
42. Furthermore, although the Commission requested the Respondent State to present its arguments and evidence on admissibility pursuant to Rule 105(2) of the Commission's Rules of Procedure, no reply was received. In such cases, the Commission has taken the view that, in the absence of a reply from the

¹² *Supra* note 6, para. 36.

¹³ Communication 241/01: *Purohit and Moore v. The Gambia* (2003) ACHPR, paras. 34-35.



Respondent State, it can issue a decision on the basis of the submissions of complainant(s).¹⁴ Consequently, the Commission makes the following analysis on Admissibility relying on the information at its disposal.

43. As indicated above, the Complainants' observations relate solely to the exhaustion of local remedies. However, before analysing Article 56(5) of the African Charter, the Commission notes that the other conditions set out in Article 56 of the African Charter have been met. In particular, the author of the Communication has been identified, the Communication reveals *prima facie* violations of the African Charter by a State Party, is not inconsistent with the Constitutive Act of the AU or the African Charter and the Commission finds no insulting or disparaging language in the Communication. Furthermore, the Commission notes that the Communication is based on various reports from international and national organisations such as the World Health Organization, UNFPA, Allan Guttmacher, the Center for Reproductive Rights and the Women Advocacy Research and Documentation Centre,¹⁵ and is therefore not exclusively based on media reports. Finally, the Commission has found no evidence that the issues and claims contained in the Communication have been brought before or resolved by any other international jurisdiction.
44. Consequently, the Commission is of the view that the requirements under Articles 56(1), (2), (3), (4) and (7) of the African Charter have been met.
45. Regarding Article 56(5), the Commission notes that communications should be submitted after local remedies, if any, have been exhausted, unless it is clear that this procedure is unduly prolonged. The rule requiring the exhaustion of local remedies as a condition for bringing a complaint before the Commission is premised on the principle that the Respondent State should first have the opportunity to redress by its own means, within the framework of its own domestic legal system, the wrong that has allegedly been done to the individual.¹⁶
46. The Commission notes that communications should be submitted after local remedies, if any, have been exhausted, unless it is clear that this procedure is unduly prolonged. In its jurisprudence, the Commission has considered that the three main criteria for determining the exhaustion of local remedies are that the remedy must be available, effective and sufficient,¹⁷ noting further that "a remedy is considered available if the petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint".¹⁸

¹⁴ See Communication 25/89, 47/90, 56/91-100/93, para. 40, Communication 159/96, para. 9, Communication 276/03, para 57 and Communication 292/04, para. 34.

¹⁵ Complaint, para. 7.

¹⁶ Communication 241/01: Purohit and Moore v. The Gambia (2003) ACHPR, para, 25.

¹⁷ Communication 147/95-149/96: *Sir Dawda K. Jawara v. The Gambia* (2000) ACHPR, para.31.

¹⁸ *Id*, para. 32.



47. If one of these criteria is lacking, the requirement to exhaust local remedies under Article 56(5) of the African Charter can therefore not be met.
48. In this Communication, the Complainants contend that local remedies are not available, effective and sufficient to provide redress due to the large number of victims, the serious and massive nature of the violations and the low income of victims who cannot access legal aid.
49. In this regard, the Commission refers to its jurisprudence on the futility of exhausting local remedies in cases of serious and widespread human rights violations. In *Open Society Justice Initiative v. Côte d'Ivoire*, the Commission concluded that the seriousness of the violations and the large number of victims concerned made the remedies unavailable and their exhaustion practically useless.¹⁹
50. Regarding this Communication, the Commission notes that the prospect of success is a determining factor in the exhaustion of local remedies, given the low level of income of victims who are unable to access legal aid.
51. The Commission also notes that one of the rights allegedly violated in the present Communication, namely the right to health, is included under Chapter II on Fundamental Objectives and Directive Principles of State Policy, which cannot be litigated under Section 6(6)(c) of the Constitution.
52. Section 6(6)(c) of the Constitution seeks to make economic, social and cultural rights immune from litigation; however, Nigerian courts and the Commission have taken a progressive view on the litigation of such rights, as evidenced in *Socio Economic Rights and Accountability Project v. Nigeria*, in which the Commission concluded that "all the Nigerian cases cited above are aimed at establishing the fact that socio-economic rights can be litigated in Nigerian courts".²⁰
53. Irrespective of this, the Commission observes that Section 6(6)(c) of the Constitution, which has not been repealed or amended by the Respondent State, will have an impact on the prospect of success of cases at the national level regarding violations of economic, social and cultural rights, in particular the right to health.
54. Therefore, in light of the provision that local remedies are considered effective if they offer a prospect of success, taking into account the low level of income of the victims in the present Communication and the fact that economic, social and cultural rights are immune from litigation under the Constitution, in addition to the significant number of victims involved in the Respondent State,

¹⁹ Communication 318/06: *Open Society Justice Initiative v. Côte d'Ivoire* (2016) ACHPR, para. 45.

²⁰ Communication 300/05: *Socio Economic Rights and Accountability Project v. Nigeria* (2008) ACHPR, para. 68.

the Commission considers that these factors meet the requirements for derogation from exhausting local remedies provided for in Article 56(5) of the African Charter.

55. Concerning Article 56(6) of the African Charter, which provides that communications should be submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, the Commission notes that the timeliness requirement of Article 56(6) of the Charter is dependent on the exhaustion of local remedies provided for in Article 56(5) of the African Charter.²¹ Given that the Communication falls within the scope of the derogation relating to the principle of exhausting local remedies, the requirement to respect time limits is also considered to fall within the scope of this derogation.

Decision of the African Commission on Admissibility

56. For the above reasons, the Commission declares the Communication admissible in accordance with Article 56 of the African Charter.

On the Merits

Complainant's Submissions on the Merits

Violation of the right to life

57. The Complainants contend that the failure of the Nigerian government to reduce the high levels of preventable maternal deaths and injuries constitutes a violation of the right to life under Article 4 of the African Charter on Human and Peoples' Rights (African Charter) and Article 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).
58. The Complainants assert that under Article 4 of the African Charter, States should take positive steps and measures to prevent loss of lives and that they should address in particular preventable maternal deaths as part of their obligations under Article 4 of African Charter. In their submissions, the Complainants refer to various documents of the Commission including Resolutions, Communications and Reports in which the Commission has stated that preventable maternal mortality is a violation of the rights to life, health and dignity of women in Africa and that the denial of health care services violates the right to life.

²¹ Communication 322/2006: Tsatu Tsikata v. Ghana (2006) ACHPR para. 37.

59. The Complainants also submit that the right to life is also enshrined in Section 33 (1) of the Nigerian Constitution and in international human rights instruments that Nigeria has ratified. They conclude that the right to life requires States to take measures to protect individuals from arbitrary and avoidable loss of life and that this right should not be interpreted in a restrictive manner.

Violation of the right to health and sexual and reproductive health

60. The Complainants avow that Nigeria's per capita spending on health is USD 72, one of the lowest in the world. They add that despite Nigeria's commitment in the 2001 Abuja Declaration to allocate at least 15% of its annual budget to improving the health sector, the Nigerian government has failed miserably to meet this commitment. They claim that, on the contrary, the budget allocation to the health sector has continued to be around 5-6%. According to the Complainants, for a country endowed with so many natural resources, low spending on health, including maternal health, is not only unacceptable, but the failure of the Nigerian Government to reduce preventable maternal injuries and deaths is a violation of the right to health.
61. The Complainants consider that the right to health, fully guaranteed by Article 16 of the African Charter, requires States to ensure the right to health of every individual by taking the necessary measures to protect the health of their populations and ensuring that this includes access to medical care in the event of illness. Relying on previous decisions of the Commission, the Complainants insist that African governments should ensure the provision of adequate health care services to all women, particularly poor women and those living in rural areas.
62. In their submissions, the Complainants also refer to the Commission's Concluding Observations on Nigeria's 5th Periodic Report where it expressed concern about the lack of a legal framework for health in Nigeria that clearly defines the roles and responsibilities of health professionals, as well as the oversight responsibilities of Government in the health sector as a whole. The Commission therefore recommended the establishment of a comprehensive legal framework to address these issues.
63. The Complainants thus consider that there is a violation of Article 16 of the African Charter and Article 14 of the Maputo Protocol. According to the Complainants, Nigeria has fully incorporated the African Charter into its domestic law and is under an obligation to guarantee the right to health as provided for in the African Charter. Moreover, it has developed several pieces of legislation containing health standards and policies that it is required to comply with. The National Health Policy includes the reduction of maternal mortality and morbidity as one of its main objectives and provides strategies to achieve

this, through inter alia, improving equitable access to reproductive health services and ensuring the availability of equipment to deliver such services.

64. The National Health Act states that no citizen may be refused emergency medical treatment and, in Section 20, provides for a fine and imprisonment for non-compliance. The Complainants add that in reality however, pregnant women are frequently denied emergency obstetric care, particularly women with low levels of income and women living in rural areas.
65. They further state that the right to life is also enshrined in international human rights instruments that Nigeria has ratified. In this respect, based on the interpretation of the UN Committee on Economic, Social and Cultural Rights, the Complainants maintain that the realisation of the right to health requires that governments guarantee the availability, accessibility, acceptability and quality of this right to all.
66. In their submissions, the Complainants reiterate the African Commission's Principles and Guidelines on the Implementation of Socio-Economic Rights in the African Charter and General Comment No. 14 of the International Covenant on Economic, Social and Cultural Rights on the Right to Health, which address some key principles, including the existence of minimum core obligations that States should guarantee, that are not subject to the requirements of resource availability and that cannot be waived.

Violation of the right to dignity and the right not to be subjected to torture or cruel, inhuman and degrading treatment

67. The Complainants claim that dignity is the foundation of all human rights and, therefore, the right to life has been widely interpreted by the courts as the right to live in dignity. They add that the fundamental principle of human dignity requires States to protect women from maternal deaths caused by gender-based violence and denial of access to reproductive health care and information. The right not to be subjected to torture or cruel, inhuman or degrading treatment (ill-treatment) is closely related to the right to dignity.
68. The Complainants allege that some of the victims of maternal morbidity and mortality in Nigeria are women who have suffered unnecessary delays in obtaining maternity care in health facilities or who have been detained in health facilities because they were unable to pay their medical bills in full, and who have subsequently been subjected to abuse and ill-treatment by health care providers, resulting in debilitating injuries or death. They list the following instances of abuse and mistreatment: denial of access to post-delivery care, inadequate access to food and drinking water, being forced to sleep on the bare floor so that beds could be made available for patients who could afford to pay, consequent sleep deprivation, and denial of access to their new room.



69. They assert that health services, including maternal health care, should be provided in a manner that respects women's dignity and their right to be free from abuse. When women are abused in the area of reproductive rights, the responsibility of the State is often brought into play through the enforcement of restrictive and discriminatory laws or policies, actions by health professionals who do not respect ethical standards, lack of appropriate regulation of private health facilities, or lack of punishment for violence perpetrated by individuals.
70. The Complainants point out that Article 5 of the African Charter combines a wide range of rights, including the protection of the right to dignity and liberty against ill-treatment. To substantiate their allegations, they refer to the jurisprudence of the African Commission, where the latter explained that this provision is violated when a person is exposed to suffering or treated in an undignified manner and that coercive acts, including the denial of reproductive health services, constitute cruel, inhuman and degrading treatment in violation of Article 5 of the African Charter.
71. The Complainants further point out that the Article 4 of the Maputo Protocol guarantees the right of women to be treated with dignity. Addressing the issue of detention of pregnant women in health facilities, the Complainants contend that States must ensure that women are not treated in an inhumane, cruel, and degrading manner when seeking sexual and reproductive health services. They insist that in its most recent Concluding Observations, the Commission repeatedly expressed concern about violence against women, recommending that Nigeria strengthen its operational and institutional capacity to address violence against women by ensuring that cases of violence are properly investigated and prosecuted and by raising public awareness.
72. The Complainants note that the right to dignity and to non-abuse is also enshrined in a number of international human rights instruments, all of which Nigeria has ratified. The Complainants add that States parties to these instruments have an obligation to refrain from committing acts of ill-treatment and to take effective judicial and other measures to prevent, punish and redress such acts.
73. According to the Complainants, the recognition of reproductive rights violations as rising to the level of abuse in certain circumstances, such as maternity care, highlights the urgent and inviolable nature of Nigeria's legal obligations to ensure that the denial of antenatal care, detention, abuse and ill-treatment of women seeking maternal health services are effectively prevented, addressed and remedied. The pervasiveness of these actions in Nigeria's public and private health facilities and the attention focused on them in human rights reports, parallel letters submitted to the African Commission and other treaty monitoring bodies and human rights mechanisms, and by investigative journalists, clearly demonstrate that the Nigerian government was aware of these violations, even when they occurred in private facilities.

Violation of the right to equality and non-discrimination

74. The Complainants allege that due to patriarchy and adherence to cultural practices, women are often subjected to daily discriminatory practices and human rights violations. The Complainants argue that these and other factors, such as low income, lack of formal education, rural location, early marriage and low status of women, combined with corruption and mismanagement of resources, poor infrastructure and lack of funding for the health sector, exacerbate the poor maternal health situation in Nigeria.
75. According to the Complainants, these factors have underpinned seemingly insurmountable financial barriers that include a system of user fees that prevents poor women from accessing antenatal and intrapartum care in Nigeria. Women who receive maternity-related health care risk being detained in health facilities if they are unable to pay later. As a result of this practice, women avoid treatment if they cannot afford it, or may expose themselves to danger by leaving the hospital before the end of treatment to avoid hospital charges.
76. They also point to another financial barrier related to the practice of compulsory blood donation by the spouses of pregnant women. According to the Complainants, although Nigeria's blood donation policy requires all donations to be voluntary, human rights reports confirm that pregnant women attempting to access maternal health services in many public or government hospitals, as well as private facilities, are often forced to bring their husbands to donate blood. Although patients can sometimes opt out of this widespread practice of compulsory blood donation by paying a fee, this option is not always known and has a discriminatory impact on the poor who may prefer to pay - but cannot afford - a fee instead of donating blood.
77. Compulsory blood donation by their spouses can have multiple negative consequences, for pregnant women who cannot or will not force their husbands to donate blood are disadvantaged, in particular by the husbands' refusal to allow their wives to access prenatal, intrapartum, and postpartum services and by the women's exposure to domestic violence if they try to force their husbands to donate blood. The requirement to donate blood also disadvantages unmarried pregnant women, including those who become pregnant as a result of sexual violence, or whose husbands become ill, abandon them or die during pregnancy. These women have no choice but to pay the fee in lieu of blood donation, which many of them may not be able to afford. The discriminatory impact of the fee on poor and unmarried women results in reduced access to reproductive health services, lower quality of care and poorer health outcomes.
78. The Complainants also point to provisions of the Maputo Protocol that prohibit discriminatory practices against women, including Article 1 of the Maputo Protocol which prohibits discriminatory practices and Article 2 which calls on

States to adopt a holistic approach to address the root causes of discrimination against women. They add that Article 5 of the Maputo Protocol requires States to eradicate harmful practices that undermine the human rights of women.

79. The Complainants state that ensuring equality means addressing not only formal (*de jure*) inequality, which is discrimination based on law, but also substantive (*de facto*) inequality or discrimination based on practice. Formal equality, they argue, requires ensuring that laws and policies treat all people in the same way. Substantive equality, on the other hand, offers a more comprehensive understanding of equality, requiring equality of outcome and opportunity. According to the Complainants, the practice of compulsory blood donation by the spouses of pregnant women and the detention of women in health care facilities should they be unable to pay their maternity bills in full, because they are based on widespread practice and not on law, fall within the scope of violations that formal equality alone will not address.
80. The Complainants state that various international standards require Nigeria to fully account for the high levels of preventable maternal deaths by addressing the roles that formal and material gender-based inequalities play in women's predisposition to die or suffer debilitating injuries, as well as the different maternal health outcomes experienced by women based on their socioeconomic status.

Violation of the right to information

81. The Complainants allege that access to comprehensive sexual and reproductive health information is essential to prevent health problems and ensure the well-being of all individuals. In addition, access to sexual and reproductive health information can help prevent unplanned pregnancies, unsafe abortions and minimise the incidence of maternal death and morbidity. The Complainants point out that a large proportion of maternal deaths in Nigeria could easily be prevented if women and girls had adequate access to information about their health.
82. According to the Complainants, the right to information guaranteed by Article 9 of the African Charter is a gateway to the rights to health, life, dignity and equality. With specific reference to health, the Complainants point to Article 14(2) of the Maputo Protocol which recognises the right to health information as an essential component of the right to health, stressing the importance of information, education and communication services in the provision of adequate, affordable and accessible health care services.
83. They also refer to Article 14 (1) (f) of the Maputo Protocol which guarantees the right to family planning education. More specifically, the Complainants allege that in its last Concluding Observations, the Commission recommended that Nigeria revise its abortion law and adopt measures to improve access to

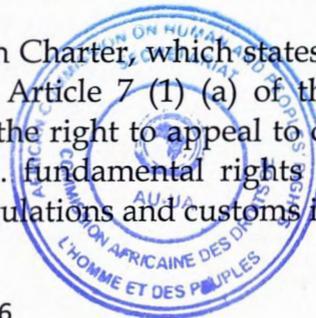
contraceptives and family planning. They add that the Commission also urged States to take appropriate measures to provide comprehensive sex education for girls in schools.

The right to enjoy the benefits of scientific progress

84. The Complainants state that women in Nigeria have a right to benefit from scientific progress, including progress in access to quality maternal health services. According to them, the high levels of preventable maternal injuries and deaths in the country, especially in comparison to other countries in the region and around the world, indicate that women receiving maternal care services are not enjoying this right. They point out that by failing to reduce the high rates of preventable maternal injury and death in Nigeria through the provision of quality maternal care services – a reproductive health service that only women need – women are deprived of the opportunity and right to access modern maternity services like their counterparts in countries with similar resources and capacity to those in Nigeria. This constitutes a violation of women's right to enjoy the benefits of scientific progress as envisaged.
85. The Complainants argue that although there is no specific provision on the right to the benefits of scientific progress in the African Charter or the Maputo Protocol, it can be argued that this right is intertwined with the enjoyment of the right to health guaranteed by Article 16 of the African Charter and Article 14 of the Maputo Protocol.
86. They insist that the Nigerian government should provide an enabling legal and financial environment which will ensure that the benefits of scientific progress permeate the health sector and make it accessible to all categories of women without discrimination. Without such measures, Nigeria is likely to maintain its position among the countries with the highest maternal mortality rates in the world.

Violation of the right to an effective remedy

87. The Complainants argue that the high rates of preventable maternal injury and death in Nigeria have been experienced for more than a decade, with hundreds of thousands of women dying, yet there is still not a single case of judicial or administrative admissibility or remedy available to the victims or their families. For victims to obtain redress, violations must be investigated, perpetrators prosecuted, and reparations - including compensation - provided.
88. They point to Article 7 of the African Charter, which states that everyone has the right to have their case heard. Article 7 (1) (a) of the African Charter emphasises that this right includes 'the right to appeal to competent national organs against acts of violation of... fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force'.



Respondent State's arguments on the merits

89. As already mentioned in the section on procedure, the Respondent State did not submit its observations on the merits, although it had been given sufficient time in accordance with the Commission's Rules of Procedure.

Commission's observations on the merits

Preliminary observations

The absence of the Respondent State's submissions on the merits

90. Given that the Respondent State has failed to conclude, the Commission, in accordance with its jurisprudence²², will proceed with this Communication based on the elements at its disposal.

On the alleged violations

91. The Commission observes that, in their initial submissions, the Complainants identified certain provisions of the Maputo Protocol as having been violated, but unfortunately did not elaborate on or refer to them in their substantive submissions to show what the violation was. This is the case, for example, of Articles 5 and 10 of the Maputo Protocol.
92. In the absence of the Complainants' arguments as to whether these provisions have been violated, the Commission cannot find a basis for a decision on whether they have been violated or not. It will only rule on those provisions in respect of which the Complainants have developed their observations.

On the competence of the Commission to interpret the Maputo Protocol

²² See **Communication 155/96 - Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v/ Nigeria** (2001) ACHPR para 49; See also **Communication 292/04 - Institute for Human Rights and Development in Africa v/ Angola** (2008) ACHPR para 34 and **Communication 159/96 - Inter-American Union for Human Rights, International Federation of Human Rights Leagues, African Meeting for Human Rights, National Organisation for Human Rights in Senegal and Malian Association for Human Rights v/ Republic of Angola** (1997) ACHPR para. 10.

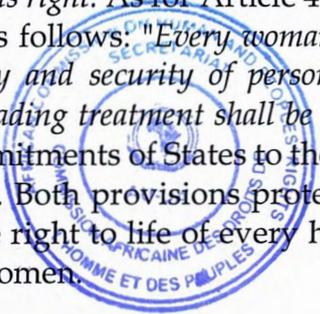


93. In this Communication, in addition to the allegations of violation of the provisions of the Charter, the Complainants allege violation of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, known as the Maputo Protocol. It is therefore important for the Commission to recall its competence in relation to the interpretation of this Protocol.
94. Under Article 45(3) of the African Charter, the Commission is mandated to interpret any provision of the African Charter.
95. The Maputo Protocol being a complement to the African Charter by virtue of the expression "Protocol to the African Charter on Human and Peoples' Rights", it therefore forms an integral part thereof. This is also expressed in Article 66 of the African Charter when it provides for the adoption of special protocols or agreements where necessary to 'supplement the provisions of the Charter'.
96. In particular, the Maputo Protocol finds its legal basis in the provisions of Article 18 (3) of the African Charter which provides that it is the duty of every State to eliminate all forms of discrimination against women and to ensure the protection of women's rights, as provided for in international declarations and conventions. Thus, for example, in Article 26, the Maputo Protocol requires States to include in their periodic reports submitted in accordance with the terms of Article 62 of the African Charter, information on the legislative or other measures they have taken for the full realisation of the rights recognised in this Protocol.
97. From the foregoing, the Commission concludes that it is vested with the powers to interpret the Maputo Protocol which, by virtue of its very nature, is an integral part of the African Charter.

On the violation of the right to life

98. The right to life is guaranteed by Article 4 of the African Charter and Article 4 of the Maputo Protocol.

On the violation of Article 4 of the African Charter

99. Article 4 of the African Charter states: "*The human person is inviolable. Every human being has the right to respect for his life and to the physical and moral integrity of his person: No one shall be arbitrarily deprived of this right.* As for Article 4 of the Maputo Protocol, it stipulates in its 1st paragraph as follows: "*Every woman shall have the right to respect for her life, physical integrity and security of person. All forms of exploitation, punishment and inhuman or degrading treatment shall be prohibited.* The second paragraph refers to the various commitments of States to the realisation of the right highlighted in the first paragraph. Both provisions protect the right to life. However, while the first focuses on the right to life of every human person, the second is specific to the right to life of women.
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100. As the Commission has already emphasised in *Forum of Conscience v Sierra Leone*, the right to life is the basis of all other rights; it is the source from which other rights flow; and any unjustified violation of this right amounts to an arbitrary deprivation²³. In the *Ogiek* case, the African Court on Human and Peoples' Rights (the African Court) returned to this fundamental character of the right to life, indicating that all other rights and freedoms depend on this right²⁴. The African Court considers that to deprive someone of life is to eliminate the very holder of those rights and freedoms.

101. The United Nations Human Rights Committee considers that "the right to life encompasses the right of persons to be free from acts and omissions intended to cause, or expected to cause, their unnatural or premature death, and to live with dignity"²⁵. It is in this sense that this Committee indicated that deprivation of life involves deliberate or at least foreseeable and preventable harm (damage or injury) caused by an act or omission, which results in the termination of life²⁶. The Commission is of the opinion that the State has a duty to take positive and concrete measures to guarantee the right to life, especially in the case of vulnerable and exposed persons, whose care becomes a high priority²⁷.

102. The Commission would first like to recall that economic, social and cultural rights are programmatic rights. This means that 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.

103. In its Resolution No. 135 on Maternal Mortality in Africa, the Commission also stated that preventable maternal mortality is a violation of women's rights to life, dignity and equality protected by the African Charter on Human and Peoples' Rights and the Maputo Protocol²⁸. This same idea was expressed by the Commission in its General Comment No. 3 where it stated that States must address chronic yet pervasive threats to life including preventable maternal mortality by building operational health systems and eliminating discriminatory laws and practices that impact on the ability of individuals and groups to seek health care²⁹.

²³ **Communication 223/98- *Forum of Conscience v/ Sierra Leone*** (2000) ACHPR para. 20

²⁴ Application 006/ 2012- African Commission on Human and Peoples' Rights v Kenya (2017) AfCHPR para. 152.

²⁵ General Comment No. 36 of the UN Human Rights Committee on Article 6 of the International Covenant on Civil and Political Rights", para 3

²⁶ General Comment No. 36 of the UN Human Rights Committee on Article 6 of the International Covenant on Civil and Political Rights", para 6

²⁷ **Communication 276/03 - Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v/ Kenya**, (2009) ACHPR para 217

²⁸ See Resolution 135 on maternal mortality in Africa

²⁹ 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), para 42



104. In the case under analysis, the Complainants note that Nigeria is identified as having the second highest number of maternal deaths.³⁰ The Commission observes that, in their submissions, the Complainants do not show how this maternal death is the result of a failure by the Nigerian State to take the necessary measures to prevent such death. In particular, it has not been demonstrated that the Respondent State has sufficient resources to prevent maternal death and, more importantly, that despite the existence of resources, it has failed to take the necessary steps to ensure the continuous and sustainable improvement of the right to maternal health. Nor have the Complainants demonstrated that the Respondent State has promoted or adopted measures that undermine access to health care or social security benefits, including through laws, policies or practices that have discriminatory effects.

105. In the absence of this explanation, the Commission concludes that the right to life under Article 4 of the African Charter and Article 4 of the Maputo Protocol was not violated.

Violation of the right to health and sexual and reproductive health

106. The Complainants allege violation of the right to health and sexual and reproductive health, which are respectively protected by Article 16 of the African Charter and Article 14 of the Maputo Protocol.

On the violation of Article 16 of the African Charter

107. Article 16 of the Charter states that: "1. *Every individual shall have the right to enjoy the highest attainable standard of physical and mental health, and that States Parties should take the necessary measures to protect the health of their people and to provide medical assistance in the event of sickness.*" The right to the highest attainable standard of health includes the right to health facilities, goods and services which shall be guaranteed to all without discrimination of any kind³¹. In reality, the right to the highest attainable standard of health refers to the existence of health care, services and conditions, their accessibility, acceptability and quality, and imposes a duty on the State to respect, fulfil and protect it.

108. In its Pretoria Declaration on Economic, Social and Cultural Rights in Africa, the Commission explained that such care, services and conditions include, inter alia, universally accessible health services, access to the minimum amount of food necessary to avoid malnutrition, access to housing, safe drinking water, reproductive health and protection from the majority of infectious diseases³².

³⁰ Report, p.13

³¹ Communication 241/01 - *Purohit and Moore v Gambia* (2003) ACHPR para 80

³² See Pretoria Declaration on Economic, Social and Cultural Rights in Africa, 17 September 2004, para 7

109. As with most other economic, social and cultural rights, the implementation of the right to the highest attainable standard of health is dependent on the economic capacity of countries and, therefore, its fulfilment is a long-term process. With this in mind, the Commission considers that a large majority of people in Africa do not enjoy the highest attainable standard of physical and mental health because African countries are generally plagued by poverty, making them incapable of providing the facilities, infrastructure and resources that facilitate the full enjoyment of this right³³.

110. Therefore, mindful of this key parameter in determining what this right entails, the Commission considers that the obligation of States under Article 16 of the African Charter is to take positive and selective steps, while making full use of available resources, towards the full realisation of the right to health in all its aspects, without discrimination of any kind³⁴. In the present case, the Complainants note that expenditure on health in Nigeria is among the lowest in the world, amounting to only USD 72. More importantly, they reveal that Nigeria's budget allocation to the health sector is between 5-6%, despite the fact that the country committed in 2001 to allocate at least 15% of its budget to improving the health sector under the 2001 Abuja Declaration.

111. The Commission considers that the 15% budget allocation for the health sector referred to in the Abuja Declaration cannot be enforced against States. Indeed, a declaration has a symbolic scope and is essentially an expression of the political will of the States that have made it. In particular, through declarations, States express their wish that the elements of the declaration be transformed, in a second stage, into a binding legal instrument in the form of conventions or treaties. Thus, it follows that by its nature, a declaration has only a recommendatory value and, consequently, cannot be used as a legal basis to conclude that the rights expressed therein have been violated.

112. As a result, Article 16 of the African Charter has not been violated.

On the violation of Article 14 of the Maputo Protocol

113. The Complainants point to the violation of Article 14. 1 (a), (b), (c), (f), and 2 (a) and (c) of the Maputo Protocol which protects women's right to sexual and reproductive health.

On the violation of Article 14.1 (a) (b) (c) (f) of Maputo Protocol

114. Article 14.1 (a) (b) (c) (f) of the Maputo Protocol states as follows: "1. States shall ensure the respect and promotion of the rights of women to health, including sexual and reproductive health. These rights include: a) the right to control their fertility; b) the right to decide on the number and spacing of their children; c) the free choice of contraceptive

³³ Communication 241/01, *op.cit.*, para 84.

³⁴ Communication 241/01, *op.cit.*, para 84.

methods; f) the right to family planning education". The provisions of this article explicitly guarantee the right to family planning.

115. The Commission considers that family planning refers to all measures taken on behalf of an individual to control fertility, including the use of contraception, if the individual chooses not to have children now or in the future³⁵. The right to exercise control over fertility, to decide on childbearing, the number and spacing of children, and to freely choose a method of contraception are inextricably linked, interdependent and inseparable³⁶. All these rights are based on respect for women's dignity and enshrine women's freedom to make their own decisions without interference from State or non-State actors.³⁷

116. The right to family planning education enshrined in Article 14.1.f) of Maputo Protocol requires States to provide full and accurate information necessary for the respect, protection, promotion and enjoyment of health, including the choice of contraceptive methods.

117. In the present case, the Complainants fail to demonstrate the causal link between the facts described and the allegations of the above-mentioned provisions of Article 14 of Maputo Protocol. Indeed, the Complainants' submissions do not demonstrate how the facts described impeded the victims' personal decision-making on the right to exercise control over their fertility, on the right to decide on their maternity, the number of children and the spacing of births, or on family planning in general.

118. In the absence of such justification, the Committee concludes that Article 14.1 (a) (b) (c) (f) of the Maputo Protocol has not been violated.

On the violation of Article 14.2 (a) and (c) of Maputo Protocol

119. Article 14.2 (a) and (c) of the Maputo Protocol states as follows: "*States shall take all appropriate measures to: a) Ensure that women have access to adequate health care services at affordable cost and within reasonable distances, including information, education and communication programmes for women, in particular those living in rural areas; c) protect the reproductive rights of women, especially by permitting safe abortion, in cases of sexual assault, rape, incest and when the pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.*

120. The provisions of this Article guarantee women access to affordable health care within reasonable distances and the right to safe abortion, in cases of sexual

³⁵ 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*, para 9

³⁶ 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*, para 23.

³⁷ *Idem*, para 24.

assault, rape, incest and when the pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus. This provision calls on States to ensure the availability, affordability, accessibility and quality of sexual and reproductive health care services for women without discrimination on the basis of age, health status, disability, property status or place of residence³⁸. This provision also calls on States to ensure that women are not subject to criminal prosecution and legal sanctions for receiving health services reserved for them, such as abortion and post-abortion care.³⁹

121. In the present case, the Commission notes that the Complainants do not provide the details necessary to conclude that this right has been violated. In particular, they have allegedly provided information showing that the costs of health care are unsustainable in relation to the cost of living in Nigeria or that the distances to access health care are not affordable. Nor do the Complainants provide arguments that women's reproductive rights such as safe abortion are not protected in the cases listed in Article 14.2. a) and c) of the Maputo Protocol.

122. In the absence of all these details, the Commission concludes that Article 14.2. a) and c) has not been violated.

On the violation of the right to dignity and the right not to be subjected to torture or cruel, inhuman and degrading treatment

123. The right to dignity and the right not to be subjected to torture or cruel, inhuman and degrading treatment is guaranteed by Article 5 of the Charter which states as follows "*Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, in particular slavery, trafficking in persons, physical or moral torture, and cruel, inhuman or degrading treatment or punishment, shall be prohibited.*

124. Human dignity is a fundamental right that all human beings must enjoy without discrimination of any kind, irrespective of their mental capacities or disabilities, as the case may be⁴⁰. For this reason, in *Purohit and Moore v Gambia*, the Commission considered it as a natural right which every human being is obliged to respect, by all means, and which also confers on every human being the duty to respect it.⁴¹

125. The provisions of Article 5 of the African Charter suggest that torture or cruel, inhuman or degrading treatment is one of the acts that lead to the violation of the right to dignity. In this sense, the Commission considers that dignity is a concept around which the prohibition of torture, cruel, inhuman or degrading treatment

³⁸ 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*, para 29

³⁹ *Idem*, para 32

⁴⁰ *Communication 241/01 - Purohit and Moore v The Gambia* (2003) ACHPR para 57

⁴¹ *Communication 241/1-* op.cit, para 57

or punishment is based. Indeed, as it stated in *Egyptian Initiative for Personal Rights and Interights v. Egypt*, cruel, inhuman or degrading treatment necessarily violates human dignity.⁴² This means that any act of torture or other cruel, inhuman or degrading treatment or punishment constitutes an affront to human dignity.

126. Neither the African Charter nor the Maputo Protocol defines the concept of torture, cruel, inhuman or degrading treatment or punishment. In the absence of such a definition, the Commission can only look to other international human rights instruments to understand its scope. In its General Comment No. 20 interpreting Article 7 of the ICCPR, which prohibits torture, cruel, inhuman or degrading treatment or punishment, the UN Human Rights Committee has indicated that the prohibition in Article 7 relates not only to acts that cause physical pain to the victim, but also to acts that inflict mental suffering⁴³.

127. Furthermore, in the Committee's view, the prohibition should extend to corporal punishment, including excessive punishment as a penal, educational or disciplinary measure⁴⁴. In the case of *Egyptian Initiative for Personal Rights and Interights v. Arab Republic of Egypt*, the Committee noted that the acts covered by Article 5 are not only acts causing severe physical or mental suffering but also acts that humiliate or coerce the person against his or her will or conscience.⁴⁵

128. The Human Rights Committee does not provide an exhaustive list of what constitutes torture, cruel, inhuman or degrading treatment or punishment. However, some of the treatments already considered by the Committee as torture, cruel, inhuman or degrading treatment or punishment can serve as a basis for understanding the scope of torture. For example, it considered that allegations of ill-treatment or abuse against prisoners, including beatings, burnings, electric shocks, burial alive in sand until death and rape of women, constitute evidence of widespread use of torture or cruel or inhuman treatment⁴⁶.

129. In this case, the Commission is called upon to determine whether the alleged facts constitute torture or cruel, inhuman or degrading treatment within the meaning of Article 5 of the African Charter. The Complainants allege in particular that the victims are subjected to ill-treatment by health care providers resulting in debilitating injuries or death as women die due to unnecessary delays in obtaining

⁴² Communication 323/06- *Egyptian Initiative for Personal Rights and Interights v. Egypt* (2011) ACHPR, para 196.

⁴³ General Comment No. 20 of the UN Human Rights Committee adopted at its forty-fourth session (1992), para 5.

⁴⁴ General Comment No. 20 of the UN Human Rights Committee adopted at its forty-fourth session (1992); para 5.

⁴⁵ Communication 334/2006- *Egyptian Initiative for Personal Rights and Interights v. Arab Republic of Egypt* (2011), ACHPR para 190.

⁴⁶ Communication 54/91-61/91-98/93-164/97-196/97-210/98 - *Malawi Africa Association, Amnesty International, Ms Sarr Diop, Union interafricaine des droits de l'Homme and RADDHO, Collectif des Veuves et Ayants-Droit, Association Mauritanienne des Droits de l'Homme / Mauritanie* (2000) ACHPR para 118.



maternity care. They list other cases of mistreatment such as denial of access to post-delivery care, etc.

130. After careful analysis of the arguments and evidence submitted by the Complainants in support of their allegations, the Commission is of the opinion that these acts do not qualify as torture or cruel, inhuman or degrading treatment within the meaning of Article 5 of the African Charter. In particular, it has not been proven that the facts described by the Complainants, which amount to omissions on the part of the health service providers, had a specific and well-defined objective of humiliating the victims or of inducing them to act against their will or their conscience. In particular, the Commission considers that these acts cannot be considered degrading or humiliating because the Complainants have not been able to establish that these acts 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, as explained by the European Court in *Ireland v. United Kingdom* (1978)⁴⁷.

131. The Commission concludes that Article 5 of the African Charter has not been violated.

On the violation of the right to equality and non-discrimination

132. The Complainants allege a violation of the right to equality and the right to non-discrimination. These rights are protected by the Charter in Articles 2 and 3. The Commission proposes to analyse them one by one.

On the violation of the right to non-discrimination

133. This right is protected by Article 2 of the African Charter which states that "*Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind, such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or any status*". It is also protected by Article 2 of the Maputo Protocol which states as follows: "*States shall combat discrimination against women in all its forms by adopting appropriate legislative, institutional and other measures*". While Article 2 of the African Charter advocates non-discrimination towards all persons, Article 2 of the Maputo Protocol is very specific and focuses on one aspect only, that of non-discrimination on the basis of sex, i.e., non-discrimination against women.

134. In its previous decisions, the Commission has already indicated that discrimination is an unlawful or unjustified differentiation, i.e., based on one of the distinctions listed in Article 2 of the African Charter⁴⁸. These distinctions are

⁴⁷ Application No. 5310/71, Case of Ireland v. the United Kingdom (1978) ECHR para 167

⁴⁸ Communication 325/06- World Organisation Against Torture and the African Zone League for the Defence of Children's and Students' Rights (on behalf of Céline) v. Democratic Republic of Congo (2015) ACHPR para 74

mainly race, ethnicity, colour, sex, language, religion, political opinion or any other status. Recognising in *Zimbabwe Lawyers for Human Rights & Institute for Human Rights and Development in Africa (on behalf of Andrew Barclay Meldrum) v Zimbabwe*, the Commission defined discrimination as: "any act aimed at a distinction, exclusion, restriction or preference on the grounds of race, colour [...] or any other status and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms".⁴⁹

135. As a result, in order to prove that there has been discrimination within the meaning of the Charter, it must be shown that the differentiation concerned the elements listed in Article 2 of the African Charter. In particular, as the African Court on Human and Peoples' Rights stated in *Isiaga v. Tanzania*, the right to non-discrimination strictly prohibits differential treatment between persons in similar circumstances on the basis of one or more of the grounds listed in Article 2 of the African Charter⁵⁰. It follows that, in the specific context of the discrimination described by the Maputo Protocol in its Article 2, differential treatment must be based on the sole ground of sex. In particular, the equality of women and men must be clearly guaranteed by law.

136. In this case, the Complainants point out that the patriarchal system and adherence to cultural practices subject women to daily discriminatory practices. They list a series of other factors that they claim exacerbate maternal health in Nigeria. The Complainants do not show the kind of discriminatory treatment the victims have been subjected to in relation to the grounds indicated in Article 2 of the African Charter. In particular, in analysing their arguments and the evidence supporting their allegations, the Committee notes that the Complainants have not demonstrated how the patriarchal system and cultural practices have caused differential treatment of the victims compared to the treatment accorded to other similar categories in the same situation as the victims.

137. The Complainants' argument that financial barriers prevent poor women from accessing antenatal and intrapartum care in Nigeria and thus make it clear that they are being discriminated against is not sufficient to find a violation of Article 2 of the African Charter or Article 2 of the Maputo Protocol. Indeed, in order to conclude that there is discrimination, the act of differentiation must be aimed at a distinction, exclusion, restriction or preference of some kind that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. In the present case, this objective is not apparent. Indeed, while fees for access to maternity services exist, it is not established that they were introduced with the particular objective of preventing access by a certain category, that of poor women.

138. As for the Complainants' allegation that compulsory blood donation by the spouses of pregnant women would discriminate against women who do not have

⁴⁹ Communication 29/04 - ZLHR & IHRDA v/ Zimbabwe (2006) ACHPR, para. 91.

⁵⁰ Application 032/2015, *Kijiji Isiaga v United Republic of Tanzania* (2018) AfCHPR para. 88.

to pay a fee in lieu of blood donation, the Commission finds that these are statements of fact that are not supported by any legal argument or supporting documentation. In particular, it is not enough to say that there is a compulsory blood donation by the spouses of pregnant women or the payment of a consideration in terms of money, it must also be supported by evidence. In the absence of such evidence, the Commission concludes that there is no discrimination based on this allegation.

139. As a result, Article 2 of the African Charter and Article 2 of the Maputo Protocol have not been violated.

On the violation of the right to equality

140. The right to equality is protected by Article 3 of the African Charter, which states: "(1) All persons shall enjoy full equality before the law. 2. All persons are entitled to equal protection of the law. This has two components, on the one hand the right to equality before the law and on the other hand the right to equal protection of the law.

141. In *Isiaga v Tanzania*, the African Court noted that the right to equal protection of the law means that "the law shall prohibit discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".⁵¹ Thus, the right to equality before the law means that all are equal before the courts and tribunals.

142. As for the right to equal protection of the law envisaged in Article 3 of the African Charter, the Commission stated in *Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v Botswana* that it consists of the right of all persons to have equal access to the law and the courts and to be treated equally by the law and the courts⁵². As a result, to prove a violation of Article 3 of the African Charter, it must be shown that the victims did not receive favourable protection similar to that accorded to others in the same situation.

143. In the present case, the Complainants do not show how the victims have benefited from differential protection by the law and courts of the Respondent State.

144. As a result, Article 3 of the African Charter has not been violated.

On the violation of the right to information

145. The right to information is protected by Article 9 of the African Charter which states that "every individual shall have the right to receive information". This is the right of every person to access information. In its Declaration on the Principles of

⁵¹ Application 032/2015, *Kijiji Isiaga v United Republic of Tanzania* (2018) AfCHPR para. 84.

⁵² Communication 277/03- *Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v. Botswana* (2011), ACHPR para. 159.



Freedom of Expression in Africa, the Commission indicated that the information referred to in Article 9 of the African Charter is information "originating from" or held by public bodies, as well as information held by private bodies, which is necessary for the exercise or protection of a right⁵³.

146. In this sense, the Commission agrees with the Complainants that the right to information is a gateway to all other human rights, including the right to health at issue in the case under review. Thus, as the Commission stated in *Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt*, States have an obligation to provide information they hold "without the need to demonstrate a direct interest in obtaining it or personal harm, except in the case of legitimate restrictions".⁵⁴

147. In the case under review, the Complainants mainly invoke the violation of Article 14 of the Maputo Protocol, which refers to the right to information on sexual and reproductive health. More specifically, they allege a violation of Article 14 (1) f of the above mentioned Protocol which states that "*States shall ensure respect for and promotion of the rights of women to health, including sexual and reproductive health. These rights include: ...f) the right to family planning education*".

148. Under this right, States Parties are obliged to provide complete and accurate information necessary for the respect, protection and enjoyment of health, including contraceptive methods.⁵⁵ Measures that States should take include training and upgrading health care providers and educators on methods of contraception, ensuring that information on contraceptive methods is provided by any possible means, enabling health systems structures, educational institutions and programmes and civil society organisations with the requisite training to provide family planning education and information to those concerned, and ensuring that information is disseminated in languages accessible to communities.⁵⁶

149. In the present case, as already explained, it is evident from various reports that the maternal mortality rate in Nigeria is among the highest. More importantly, it is observed from the Complainants' allegations that the likelihood of a woman dying as a result of pregnancy in Nigeria is high. However, the Complainants have not shown how the ignorance of Nigerian women about contraception has contributed to this risk and, more importantly, how the Respondent State has played a passive role in providing family planning education. In their submissions, the Complainants fail to establish a causal link between family planning education and the maternal mortality rate.

⁵³ Declaration on the Principles of Freedom of Expression in Africa, ACHPR/ Res.62, 23 October 2002, para IV (2).

⁵⁴ Communication 323/ 06- *Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt* (2013) ACHPR para 251

⁵⁵ 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, para 28.

⁵⁶ 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, para 28.

150. By failing to provide this clarification, the Commission concludes that Article 14.1. f) of the Maputo Protocol has not been violated.

On the right to enjoy the benefits of scientific progress

151. The right to enjoy the benefits of scientific progress is not expressly provided for in either the African Charter or the Maputo Protocol. However, this does not mean that this right, which is found in many other human rights instruments, is not protected by the two African instruments mentioned above. It is embedded in some of their provisions.

152. For example, in its General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Maputo Protocol, the Commission referred to the right to enjoy the benefits of scientific progress as one of the rights referred to in Article 14.2(c)⁵⁷. The Commission stated that women are denied the right to enjoy the benefits of scientific progress when they are denied the means to safely terminate an unwanted pregnancy using modern, effective services⁵⁸.

153. In its General Comment No. 25, the Committee on Economic, Social and Cultural Rights noted that the term "scientific advancement", found in the Universal Declaration of Human Rights and the Covenant on Economic, Social and Cultural Rights, emphasises the capacity of science to contribute to the well-being of individuals and humanity⁵⁹. Thus, the Committee has observed that the development of science for peace and human rights should be given priority by States over other uses⁶⁰.

154. The Commission is of the view that there is an important link between the right to enjoy scientific progress and the right to health. Indeed, the right to participate in and enjoy scientific progress undoubtedly enables the realization of the right to health. In its General Comment No. 25, the Committee noted that scientific progress creates medical applications that prevent diseases, such as vaccines, or allow them to be treated more effectively⁶¹. It thus stated that "States Parties are

⁵⁷ 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, para 33

⁵⁸ 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, para 33

⁵⁹ Committee on Economic, Social and Cultural Rights, *General Comment No. 25 (2020) on science and economic, social and cultural rights (Article 15, paragraphs 1(b), 2, 3 and 4 of the International Covenant on Economic, Social and Cultural Rights)*; para 6

⁶⁰ *Ibid*

⁶¹ Committee on Economic, Social and Cultural Rights, *General Comment No. 25 (2020) on science and economic, social and cultural rights (Article 15, paragraphs 1(b), 2, 3 and 4 of the International Covenant on Economic, Social and Cultural Rights)*; para 67

under an obligation to make available and accessible to all, without discrimination, particularly the most vulnerable, all the best available applications of scientific progress necessary for the realisation of the highest attainable standard of health.⁶²

155. In this case, the Complainants consider that women in Nigeria are not benefiting from the scientific progress of Nigeria's health care system because, according to them, by failing to reduce the high levels of preventable maternal injuries and deaths in Nigeria through a quality maternal health service and a reproductive health service that they need, women are being denied the opportunity and right to access modern maternity services.

156. The Commission considers that one of the constituent elements of the right to enjoy scientific progress is its availability. The latter means that scientific progress actually exists. This condition is fundamental because one cannot claim the enjoyment of a right that does not exist. It is only when its existence has been demonstrated that it can be confirmed that it is accessible to all without discrimination. In our case, while the Complainants have demonstrated that there are many maternal deaths and injuries in the Respondent State, they have not established how scientific progress in health care in the Respondent State is available and sufficient to overcome all of these challenges, and if it is available, that it has been made inaccessible to women.

157. In the absence of such a demonstration, the Commission concludes that the right to enjoy scientific progress has not been established.

On the violation of the right to an effective remedy

158. The right to an effective remedy is not expressly stated in the Charter. However, in interpreting Article 7 of the African Charter in *Groupe de Travail sur les Dossiers Judiciaires Stratégiques v. Democratic Republic of Congo*, the Commission indicated that this right may be implicitly or automatically reflected in many of the rights protected by the African Charter.⁶³ In the Commission's view, an instrument cannot protect such a wide range of rights without providing for a right of remedy and appeal in the event of a violation of the rights established. Without the right of remedy and appeal, the other rights in the Charter would be mere illusions and empty proclamations.⁶⁴

159. The right to an effective remedy has also been referred to by the Commission in its Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in

⁶² Committee on Economic, Social and Cultural Rights, *General Comment No. 25 (2020) on science and economic, social and cultural rights (Article 15, paragraphs 1(b), 2, 3 and 4 of the International Covenant on Economic, Social and Cultural Rights)*; para. 70

⁶³ Communication 259/2002 - *Working Group on Strategic Court Cases v. Democratic Republic of Congo (2011) ACHPR para 78*

⁶⁴ Communication 259/2002 - *Working Group on Strategic Court Cases v. Democratic Republic of Congo (2011) ACHPR para 78*

Africa indicating that everyone has the right to an effective remedy before the competent national courts against acts violating rights granted by the Constitution, law or charter, even if the acts were committed by persons acting in an official capacity⁶⁵. This right is also reflected in Article 7(1) (a) of the African Charter, which defines one aspect of the right to have one's case heard as the right to have recourse to the competent national courts against any act violating one's fundamental rights as recognised and guaranteed by the conventions, laws, regulations and customs in force.⁶⁶

160. As the Commission has already indicated, the right to an effective remedy includes access to justice, redress for harm suffered and access to factual information about violations⁶⁷. In *Association of Victims of Post Electoral Violence & INTERIGHTS v Cameroon*, the Commission further clarified that an effective remedy is one that not only exists *de facto*, but is also accessible to the party concerned and is also appropriate to allow for the denunciation of the alleged violations and the payment of appropriate compensation.⁶⁸

161. In particular, the right to an effective remedy guarantees the individual the possibility to seek redress from the State through the competent judicial bodies. Thus, this right would be jeopardised if, for example, a law prevented violated rights from being asserted before the competent bodies or when legal action is used to obstruct their referral. The guarantee of the right to an effective remedy also includes the administration of justice. The latter must be organised in such a way as to ensure fairness for all, regardless of the identity of the parties to the proceedings and the nature of the proceedings themselves.

162. In the present case, the Commission is called upon to determine whether there is no avenue open to the victims to apply to the competent bodies to establish the alleged violations and award reparations where appropriate. In particular, the Complainants allege that the high rates of preventable maternal injury and death in Nigeria have lasted for more than a decade with hundreds of thousands of women dying and that there is still no judicial or administrative admissibility or remedy available to the victims or their families.

163. However, the Complainants have not demonstrated whether the victims were prevented, by *de facto* or *de jure* means, from seizing the competent bodies or that they were denied such an opportunity or that such channels do not exist at all in the Respondent State. It is indeed this refusal or absence that is the basis for determining the existence of a violation of the right to an effective remedy.

⁶⁵ Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa, Section C

⁶⁶ Article 7 (1) (a) of the Charter which states that: "Everyone is entitled to a fair hearing. This right includes: a.) the right to have recourse to the competent national courts in respect of any act violating the fundamental rights recognised and guaranteed to him by the conventions, laws, regulations and customs in force"

⁶⁷ Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa, Section C

⁶⁸ Communication 272/ 03- *Association of Victims of Post Electoral Violence & INTERIGHTS v Cameroon* (2009) ACHPR, para 128.

164. In the absence of such justification, the Commission concludes that the right to an effective remedy has not been violated.

Claim for Compensation

165. The Complainants request a series of reparations. As the Commission did not find any violation of the Maputo Protocol or the Charter, it cannot grant reparations.

Commission's Decision on the Merits

For these reasons,

166. **The Commission declares that:**

- i. Articles 2, 3, 4, 5 and 16 of the Charter and Articles 2, 4 and 14(1) (b) (c) (f) and (2) (a) and (c) of the Maputo Protocol have not been violated;
- ii. The right to an effective remedy and the right to enjoy the benefits of scientific progress have not been violated.

167. Consequently, the Commission rejects all the claims for compensation made by the Complainants.

Adopted by the African Commission on Human and Peoples' Rights at its 75th Ordinary Session in Banjul held virtually from 3 to 23 May 2023