

# A Reflection on the African Commission’s Decision on Maternal Healthcare in Community Law Centre and Others (on behalf of the Five Victims) v. Federal Republic of Nigeria (Communication 564 of 2015) [2024]

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May 28 2025 – International Day of Action for Women’s Health



As the global community marks the International Day of Action for Women’s Health on May 28, we are reminded of the urgent need to protect and promote women’s sexual and reproductive health and rights (SRHR).

It is on this backdrop that we reflected on a disappointing and regressive decision by the African Commission on Human and Peoples’ Rights in *Communication 564/15*<sup>1</sup>, the first case before the Commission that highlights the cost of institutional inertia in addressing maternal mortality and obstetric violence.

The case was submitted by the Dullah Omar Institute for Constitutional Law (DOI), Alliance Africa, Women Advocates Research and Documentation Centre (WARDC) and the Center for Reproductive Rights (CRR) on 31 December 2014 against the Federal Republic of Nigeria for failing to provide adequate access to maternal health care services leading to a high mortality rate. This included financial barriers to maternal healthcare including user-fees, detention of women and girls who cannot pay these fees, inconsistency

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<sup>1</sup><https://africanlii.org/akn/aa/judgment/achpr/2024/1/eng@2024-05-23>

in granting of fee-waivers, patients' obligations to pay for medical supplies including syringes, gauze and disinfectants among other essential commodities required by women when giving birth.

The Complainants further noted that the budgetary allocations to health in Nigeria, at the time at 6%, was low in comparison to other allocations such as on the military and defence departing from the 15% budget allocation for health which was agreed in the Abuja Declaration in 2001. These low allocations exacerbated the financial barriers that women face, leading to inadequate infrastructure, stock-outs of essential medications, detention of women for unpaid fees, lack of skilled personnel and ultimately preventable maternal deaths. This further violates the right to life, the highest attainable standard of health including sexual and reproductive health, right to dignity and not to be subjected to torture or cruel, inhumane and degrading treatment, right to equality and non-discrimination, right to access to comprehensive sexual and reproductive health information, right to enjoy the benefits of scientific progress.

The Respondent State did not submit any response to the Communication. The Commission delivered its determination ten years later, during its 75th Ordinary Session in Banjul which was held virtually on 23 May 2024.

In its decision, the Commission did not find the Respondent State liable for the violation of rights under the African Charter. The Commission absolved the Respondent State by observing at paragraph 109 of the decision 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."* Additionally, on the Abuja Declaration, the Commission stated that it is merely symbolic

and an expression of political will and cannot be enforced against States.

This decision is not just a missed opportunity; it is a dangerous precedent. It signals a reluctance to interrogate systemic injustices in maternal health through a human rights lens and places undue faith in domestic systems that have historically failed women, especially the poor and marginalized. In doing so, the Commission neglected its mandate to provide a progressive interpretation of the African Charter.

The Commission's decision contravenes existing regional law by considering State's obligations to realize economic, social and cultural rights as subjective and optional rather than objective and mandatory. It implies that there is no standard, minimum core obligations when it comes to the realization of these rights, which is not the position. As noted by its own Principles and Guidelines<sup>2</sup>, the minimum core obligations include ensuring the right to access to health facilities, access to goods and services on a non-discriminatory basis, provision of essential drugs and provision of education and access to information on key health problems in communities. These minimum core obligations were the subject of the Complaint, nevertheless, the Commission failed to consider that poverty is not an acceptable justification when the State has failed to address the lack of good governance, failure to allocate sufficient resources to health, corruption and mismanagement of financial resources in the State.

The Commission itself stated in the case of **Purohit and Moore v. The Gambia African Commission on Human and Peoples' Rights, Comm. No. 241/2001 (2003)**<sup>3</sup> that *poverty does not free states from their obligations to realize the right to health. Rather, poverty and the resulting insufficiency of resources imposes an obligation on states to take concrete targeted steps and allocate the maximum available resources to realize the right to health.*

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<sup>2</sup>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.

<sup>3</sup><https://www.globalhealthrights.org/wp-content/uploads/2014/09/Purohit-and-Moore-v.-The-Gambia.pdf>



Financing maternal health is not optional. It is a legal and moral imperative. When health systems are starved of resources, it is women's lives that are most at risk.

Further, while it is true that the Abuja Declaration does not impose a binding legal obligation on states, it sets a standard for what African governments agree amounts to adequate allocation of financial resources for the realization of the right to health.

## Call to Action

On this International Day of Action for Women's Health, KELIN joins other organizations and advocates across the continent in reiterating that **maternal health is a human right**. We therefore call upon:-

### 1. The African Commission on Peoples and Human Rights

The Commission must reclaim its position as a champion of human rights on the continent. It must adopt a feminist and transformative approach to justice, one that sees the structural violence women face in health systems not as isolated incidents, but as entrenched patterns of discrimination. This includes affirming that maternal deaths, especially preventable ones, constitute human rights violations.

Decisions like *Communication 564/15* undermine hard-won gains in the fight for reproductive justice. They risk discouraging civil society from engaging with regional mechanisms and offer little solace to victims' families still seeking acknowledgment and redress.

We call on the African Commission to reaffirm its commitment to advancing women's health rights through bold, rights-based jurisprudence. Women in Africa deserve action, accountability, and above all, dignity.

### 2. African Governments

We urge African governments to meet their obligations under regional and international law by:

- Increasing budgetary allocations for maternal and reproductive health services.
- Eliminating user fees that disproportionately harm women in poverty.
- Ensuring access to justice for victims of obstetric violence and maternal health neglect.
- Integrating gender and equity lenses in all health system reforms.

### 3. Civil Society

During the webinar, we emphasized that advancing maternal health requires collaboration, particularly through strategic litigation and evidence-based advocacy. Despite the regressive decision by the African Commission, it demonstrated the power of civil society alliances in bringing issues of maternal mortality and state accountability to the forefront.

We call on all civil society organizations to build on this momentum. Let us continue to document violations, amplify community voices, and jointly pursue legal and policy reforms that uphold women's rights to life, health and dignity. This decision, while disappointing, has opened space for renewed advocacy to ensure no woman dies while giving life.

### Conclusion

Please read a detailed [case analysis](#) on the Commission's decision adopted by the Kenya Legal and Ethical Issues Network on HIV&AIDS (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).