

SURVIVOR'S WATCH

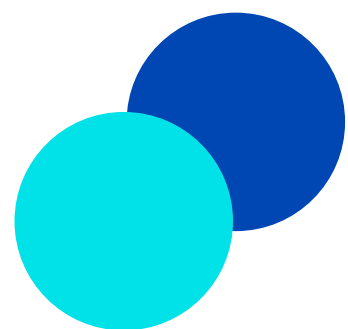
FEBRUARY 2024



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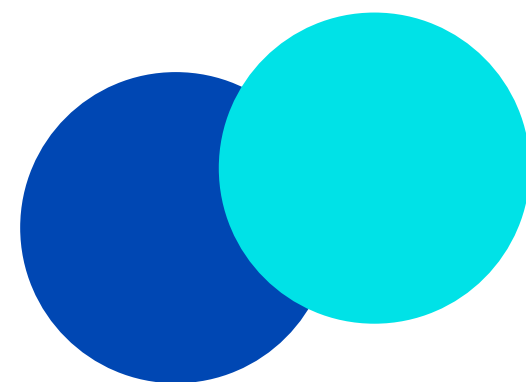
About WACOL

WACOL is an independent, non-political, non-governmental and non-profit organization and registered in 2000 as a company limited by guarantee, i.e. as a charitable organization (RC: 388132) with the Corporate Affairs of Commission (CAC), Nigeria. WACOL's vision is democratic society free from violence and abuse, where human rights of all, in particular women and young people, are recognized in law and practice.

Its mission is to assist in the education, social, economic and political development of women and young people through a wide range of services: training, research, advocacy, shelter, free legal and financial aid, intra-familial/community conflict resolution, and information and library services.

WACOL works throughout Nigeria and beyond. WACOL has established itself as a credible and committed organization whose work is well recognized beyond the shores of Nigeria. It has an observer status with the African Union, African Commission on Human Rights (since 2001) and it also has an NGO Special Consultative status with the United Nations (approved in 2010 by ECOSOC). WACOL is a formidable organization that can boast of institutional capacity for sustainable work in the field of advancing human rights, gender equality, democracy and good governance.

WACOL in general works in four thematic areas, which are gender/human rights, peace advocacy/conflict resolution, democracy/good governance and reproductive health rights. It has also done some work in the area of STEM and climate change.



Editor's Statement

The survivors' watch is a platform created by WACOL to promote a safe space for victims and survivors of Sexual and Gender Based Violence (SGBV) to share their stories without any bias, conflict, intimidation, fear or threat. The survivors' watch seeks to capture the delicate and unique stories of survivors and victims, while empowering them with the strength of anonymity to own their truth and vocalise their lived experiences.

We understand the importance of supporting survivors and victims to tell their story at their own time, giving them the opportunity to

choose what aspect of their story they wish to share. The survivors watch provides the community and safe space for survivors and victims to not only express themselves but also trust that they will be respected while inspiring others to own their story and speak their truth.

This newsletter provides useful information about the issues survivors and victims of abuse experience in the society including emerging areas and trends. The survivors' watch further spotlights anti-SGBV tips and information. Discourse in the survivors' watch negates harmful bias/stereotypes, and promotes healthy practices to enable a safe environment for women and girls to flourish.



Prof Joy Ngozi Ezeilo (SAN, OON)
Executive Director of WACOL

CHILD CUSTODY IN NIGERIA: THE BEST INTEREST OF THE CHILD.

By Onah Ebube

Daily, WACOL receives at least five cases of child custody and maintenance. The alarmingly high rate of divorce cases in Nigeria has become a concern in recent years. This development leaves the fate of the children of these marriages uncertain because the courts must first settle some basic issues pertaining to the custody and welfare of those children.

For the obvious reason that it affects the wellbeing of the kid, custody is a crucial topic in divorce proceedings. Though custody is not defined in the **Child's Right Act 2003**, it is defined by The Black's Law Dictionary as: "the care, control and maintenance of a child which may be awarded by a court to one of the parents as in a divorce or separation proceeding."

It was also defined in the case of **Nwosu v. Nwosu** as "The care, control and maintenance of a child awarded by a court to a responsible adult. Custody involves legal custody (decision making authority) and physical custody (care giving authority), and an award of custody usually grants both rights."

Usually, the kinds of marriages into which these children are born have an impact on the parent-child dynamic and eventually decide who gets custody of the child in the case of a divorce or separation. Nonetheless, child custody is seen as a subject of children's rights regardless of the kind or form of marriage a child is born into.

The **Matrimonial Causes Act** and the **Child's Rights Act of 2003** govern custody of children born during the pendency of a statutory marriage. These laws state that custody is not automatically granted to any individual, but rather is decided upon in the child's best interest. The legal stance that stipulates that both parents have an equal right to child custody before a court issues an order for custody was determined in **Nwosu v. Nwosu**. However, the child may be placed in the care of either parent as the court sees fit, subject to **Section 71(1) of the Matrimonial Causes Act**.

The father has the sole right to custody of his children, whether they are legitimate or not, under the Nigerian customary legal systems. The male head of the father's family inherits custody of the child upon his death, but the mother retains full control over the child's daily care. However, as the court determined in the case of **Febisola Okwueze v. Paul Okwueze**, among other things, that giving custody to the father



would not be in the child's best interest, these customs are now nullified by several legal laws.

Islamic law states that a woman only has custody of a child while the child is a toddler, or younger than seven years old for a boy and nine years old for a girl, at which point the father gets custody. However, as was decided in **Bilyamin Bishir v. Suwaiba Mohammad**, the wellbeing of the children will be considered while determining custody.

In a similar vein, the courts have also made rulings regarding the guiding ideals and factors to consider for an out-of-wedlock child. The Court of Appeal established a guiding principle regarding the custody of an out-of-wedlock child in **Muojekwu v. Ejikeme**. As stated above, it was decided that:

"The Custody of any child born out of wedlock follows that of the mother in the absence of any person claiming custody of the child on the basis of being the natural father. This must be so since the child must belong to a family and should not be rendered homeless for a situation he did not create."

When resolving custody disputes, courts consider diverse factors. The "best interests of the child" is the universal norm applied. **Section 71 of the Matrimonial Causes Act** and **Section 69 of the Child's Rights Act 2003** both statutorily allow for this legal basis.

In cases of older children, the court considers their preferences when making custody rulings.

Courts measure the child's interests according to different standards.

However, some similar factors are considered. Among these are a few of these elements:

1. Physical and emotional well-being of parents.
2. The desires of the kids, assuming they can make decisions at this age.
3. Interactions and relationships with other members of the household.
4. Considering religion and culture.
5. lifestyles of parents.
6. Any domestic abuse history.
7. The parent's capacity to understand and express the child's main concerns.
8. The parent's willingness to take on parental duties and to permit giving the visiting parent some parenting time.

A child's custody may be decided based on several additional considerations; the aforementioned factors are merely broad recommendations. Although judges are instructed to weigh the relative merits of parents in light of the aforementioned considerations, a parent who scores highly on most of the criteria may not ultimately be granted custody of the child. Furthermore, the rulings rendered by courts encompass further factors including the reliability of the witnesses, the significance of their testimony, and the evidence offered. For example, if a complaint is made on the grounds that one parent was violent, the non-violent parent is granted custody.

It is still crucial to remember that the facts of each case and the evidence presented to the court will determine how child custody disputes turn out.

After demonstrating that the child's welfare is the most important factor, it's critical to understand the various custody arrangements that the courts may award.

The initial custodial arrangement that courts most frequently mandate is sole custody. The parent who is granted custody of the child raises and resides with the child. Major decisions pertaining to the welfare of the child must be made by the custodial parent. In addition, the parent has discretion over little matters and is not legally required to get permission from the non-custodial parent.

Physical custody is the second type of custodial arrangement. The parent who was granted physical custody is the one with whom the child spends the most time. The primary caregiver is one parent, while the other parent helps when making important choices that affect the welfare of the child. However, joint legal custody of the child is shared by the non-custodial and custodial parents. In this case, joint legal custody refers to decision-making jointly on the faith, upbringing, health, and welfare of the child, as well as other important problems.

Joint custody is a third kind of parental arrangement that some parents want. When parents share custody, they establish the required plans for the child about similar length of time with both parents. When making important decisions, the law requires both parents to consult one another and

share information about the child. Medical care must be discussed by both parents as well as religious activities, extracurricular activities, discipline, and psychological support.

Split custody is the fourth possible custodial arrangement. This type of child visitation is less common and not as preferred. It is possible for one parent to take care of one or more children, with the other spouse having custody of the remaining children. Consequently, Siblings don't live together. Courts when delivering orders, would rather not split apart siblings. However, convincing, or unusual circumstances might support the decision to keep the siblings apart.

A third party is granted custody in another type of custodial arrangement. If the courts find the natural parents or custodians to be unfit to be given custody of the child, or if there's a chance, they would neglect them in the future the child or neglect to give up-

Courts measure the child's interests according to different standards. However, some similar factors are considered. Among these are a few of these elements:

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keep, safety, and education, then a third party will be given custody.

In conclusion, any determination of child custody must be done bearing the welfare of the children in mind and must be in the best interest of the child. Any discrimination in the allocation of custody that is not in line with the child's best interests and welfare is illegal and illegitimate, and it is subject to legal challenge.

Child's Right Act, Section 1 provides that; In every action concerning a child, whether undertaken by an individual, public, or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.

African Charter on the Rights and Welfare of the Child: Article 4, guarantees that: In all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration.

Did You know?

Section 19 (1) of the VIOLENCE AGAINST PERSONS Act stipulates that it is a criminal offence for a spouse to physically assault his or her partner. The act also stipulates a conviction term of three years or a fine of N300, 000 or both for persons who commit the act of violence against their spouses.

SUCCESS STORIES

*Names have been changed to protect survivors

Case of Sexual exploitation of underaged children



In February, the Women's Aid Collective (WACOL) intervened in a disturbing case involving a 17-year-old girl who was arranging younger girls to meet with older men in local hotels. One of the victims, a 15-year-old girl, had become pregnant as a result of this exploitation.

As the mediation process began, WACOL's legal team discovered that these young girls were often sneaking out of their homes to visit clubs and hotels, skipping school to entertain older men. Recognizing the gravity of the situation, WACOL took swift action.

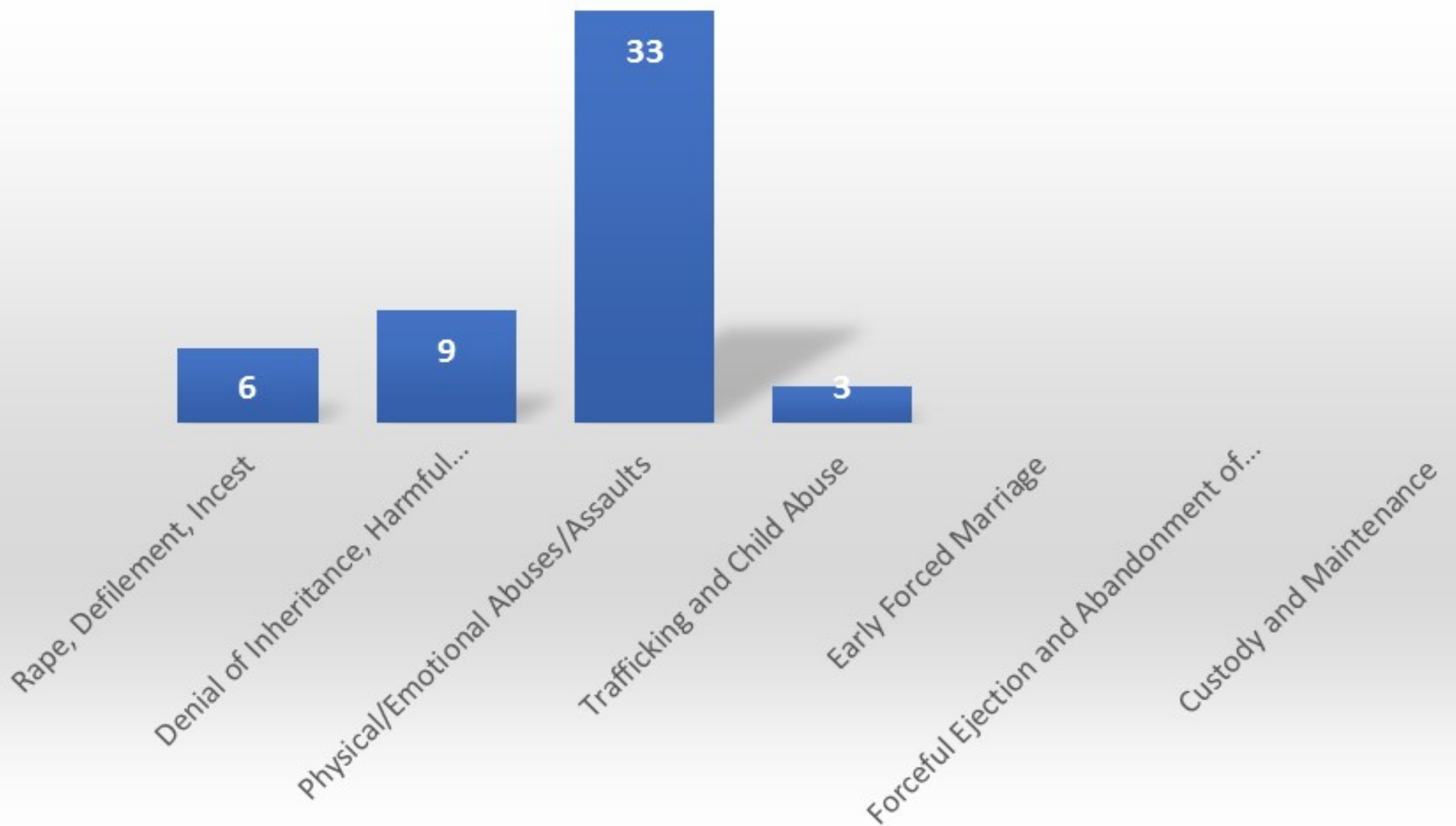
The organization reached out to the National Agency

for the Prohibition of Trafficking in Persons (NAPTIP) and initiated a counseling program for the affected girls. WACOL's team worked tirelessly to help the girls understand the implications of their actions and the dangers they were facing at such a young age.

Through this intervention, WACOL was able to redirect the girls' steps, empowering them to make more informed and responsible choices. The organization's compassionate and comprehensive approach not only addressed the immediate crisis but also sought to instill a sense of self-worth and resilience in the young victims.

CASE BREAKDOWN

for February 2024



Gender Disaggregated data



Female complainants total: 72



Male complainants total: 18



Overall total: 90 cases.

Age Range

Under 18: 5

18-24: 6

25-34: 39

35-44: 20

45-59: 17

60 and above: 3

Unknown: 0

CONTRIBUTORS

Prof. Joy Ngozi Ezeilo (SAN, OON) is the founding director of Women's Aid Collective (WACOL), she is the Emeritus Dean Faculty of Law, University of Nigeria and Former United Nations Special Rapporteur on Trafficking in Persons.

Nkechi Igwe is the Head of Programme and Administration at WACOL, a gender consultant and the pioneer Centre Manager Tamar Sexual Assault Referral Centre (Tamar SARC).

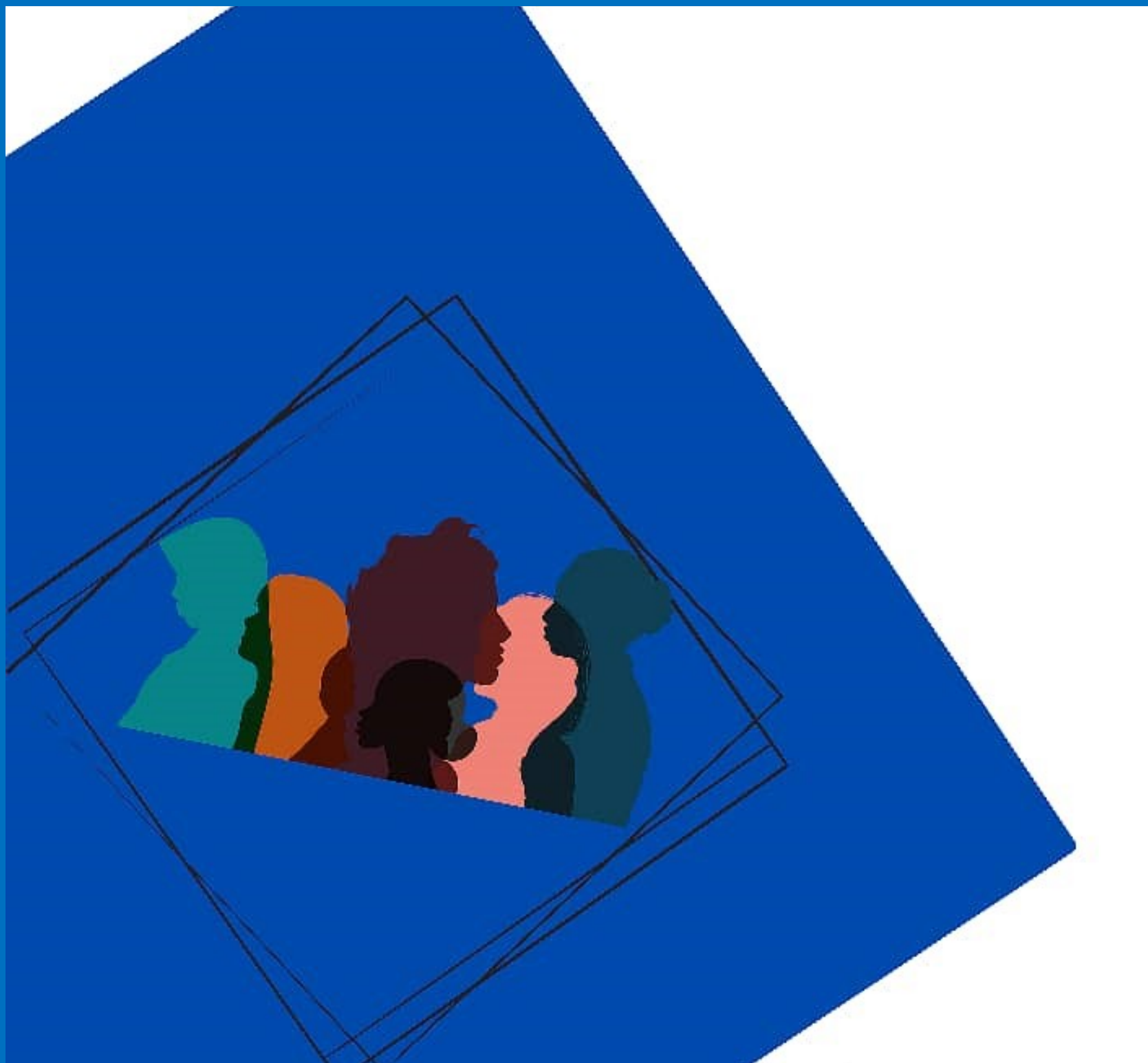
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