Communication 338/07 - Socio-Economic Rights and Accountability Project (SERAP) v the Federal Republic of Nigeria

Summary of the Complaint:

1. On 14 February 2007, the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received the present Communication from the Complainant - Socio-Economic Rights and Accountability Project (SERAP) on behalf of the people of Awori Community in Abule Egba in Lagos State, Nigeria, against the Federal Republic of Nigeria (the Respondent State or Nigeria).[34]

2. The Complainant alleges that the Respondent State violated the rights of the people of Awori Community, following a pipeline explosion in Abule Egba on 26 December 2006, which resulted in loss of lives, physical and permanent injuries, destruction of properties, environmental degradation, and other human rights violations.

3. The Complainant alleges that, for months, the Respondent State failed to deal with the issue of fuel scarcity in the country, repair damaged pipelines, and inspect these incidents. According to the Complainant, this led to young men and women scooping fuel from damaged pipelines in order to sell and make a living.

4. Furthermore, the Complainant alleges that after the explosion, the fire department was ill-equipped to deal with the fire as they reportedly had no water or equipment.

5. The Complainant alleges that about 700 lives were lost including women and children in the aftermath of the pipeline explosion. Furthermore, it submits that, the environment has not been properly disinfected since the explosion, which could cause an epidemic to the remaining residents of the area.

6. The Complainant alleges that there has been environmental degradation, and potential pollution of water, as a result of the explosion, which may amount to health problems in the long run.

7. According to the Complainant, the injured have also not been adequately treated of their injuries and that some of them have died while in the hospital.

8. The Complainant further alleges that the leaders of the Abule Egba Community reported the matter to the Nigerian authorities and they were ignored.

9. The Complainant alleges that due to the above-mentioned facts, the rights of the people of Awori Community, which are guaranteed under the African Charter on Human and Peoples' Rights (the African Charter), have been violated by the Respondent State.

---

34 Nigeria ratified the African Charter on Human and Peoples' Rights on 22nd July 1983, and is therefore a State Party.

Articles alleged to have been violated:

10. The Complainant alleges that the actions and omissions of the Respondent State resulted in violations of Articles 2, 4, 5, 14, 16, 20 and 24 of the African Charter.

Procedure:

11. The present Communication was received by the Secretariat on 14 February 2007.

12. The Secretariat acknowledged receipt of the Communication to the Complainant by letter ACHPR/LPROT/COMM/CB/338/07/NIG/RE of 21 February 2007, in which the Complainant was informed that the Communication would be scheduled for seizure by the African Commission for Human and People's Rights (the African Commission or the Commission) at its 41st Ordinary Session held from 16 to 30 May 2007, in Accra, Ghana.

13. At its 41st Ordinary Session, held from 16 to 30 May 2007, in Accra, Ghana, the African Commission considered the Communication and decided to be seized thereof.

14. By letter of 13 June 2007 and Note Verbale of 15 June 2007, the Secretariat notified the parties of its decision on seizure and requested them to submit their arguments on the Admissibility of the Communication within three months.

15. At its 42nd Ordinary Session, held from 15 to 28 November 2007, in Brazzaville, Republic of Congo, the African Commission received a submission from the Respondent State and the Complainant was notified accordingly in 19 December 2007.

16. By Note Verbale of 19 December 2007 and by letter of the same date, both parties were notified of the African Commission's decision at its 42nd Ordinary Session. The Complainant was given a three months period to submit its arguments on Admissibility.

17. The African Commission decided to defer consideration of the Communication to the 43rd Ordinary Session to allow the Complainant to submit its arguments on Admissibility.

18. By Note Verbale, of 17 October 2008, the African Commission informed the Respondent State of its intention to take a decision on the Admissibility of the Communication during its 44th Ordinary Session, in November 2008.

19. By letter, dated 22 October 2008, the African Commission informed the Complainant that, during its 43rd Ordinary Session, held from 7 to 22 May 2008, in Ezulwini, the Kingdom of Swaziland, it considered the present Communication and

decided to defer its decision on Admissibility to its 44th Ordinary Session to allow the Complainant to submit its arguments on Admissibility.

20. By letter, of 11 December 2008, the African Commission informed the Complainant that its decision on Admissibility was deferred during the 44th Ordinary Session, held from 10 to 24 November 2008 in Abuja, Federal Republic of Nigeria, to allow the Complainant to submit its arguments on Admissibility within a period of three months.

21. By letter and Note Verbale, of 4 June 2009, the African Commission informed both parties that at its 45th Ordinary Session held from 13 to 27 May 2009 in Banjul, The Gambia, the African Commission decided to defer further consideration of the Communication to allow the Complainant to make its submissions on Admissibility within a period of two months.

22. By letter of 15 March 2009, the Secretariat acknowledged receipt of the Complainant's submission on Admissibility on the same day and forwarded the same to the Respondent State by Note Verbale dated the same day.

23. By letter and Note Verbale, of 14 December 2009, the African Commission informed both parties that at its 46th Ordinary Session held from 11 to 25 November 2009, in Banjul, The Gambia, the Commission considered the Communication and decided to defer it to its 47th Ordinary Session to allow its Secretariat time to prepare a draft decision.

24. By letter and Note Verbale, of 25 June 2010, the African Commission informed both parties that at its 47th Ordinary Session held from 12 to 26 May 2010, in Banjul, The Gambia, the Commission considered the Communication and decided to defer the consideration of Admissibility to its 48th Ordinary Session in November 2010 to allow the Secretariat time to prepare a draft decision.

The Law on Admissibility

The Complainant's Submissions On Admissibility

25. The Complainant submits that the present Communication satisfies all the requirements of Admissibility as contained under Article 56 of the African Charter.

26. The Complainant submits that it complies with Article 56 (1) of the African Charter, because the author of the Communication is identified. It declares that SERAP is the author of the present Communication, on behalf of several victims of the Awori Community affected by the pipeline explosion.

27. The Complainant also submits that it complies with Article 56 (2) of the African Charter, as the present Communication reveals a *prima facie* violation of the African Charter.

28. Concerning Article 56 (3) of the African Charter, the Complainant submits that the present Communication complies with the requirement under the said sub-Article because it is written and presented in a professional and respectful language.

29. The Complainant further submits that the present Communication fulfils the requirement in Article 56 (4) of the African Charter because according to the Complainant, it relies on first hand information from the victims, including testimonies from those directly affected by the pipeline explosion.

30. With respect to Article 56 (5) of the African Charter, the Complainant submits that the present Communication "constitutes a compelling exception to the requirement of exhaustion of local remedies" and requests the African Commission to wave this requirement as potrayed in its jurisprudence. It submits that there is no adequate or effective domestic remedies that exist to address the violations alleged in the present Communication.

31. The Complainant also submits that, although the Nigerian Government is well aware of the human rights violations that the country is subject to, it has not fully or effectively addressed the violations in the present Communication, and that these violations are still ongoing.

32. It further submits that even though the Respondent State has incorporated the African Charter into its national laws, Nigerian courts have ruled that its application in the country is subject to the Nigerian Constitution, which is the supreme law of the land.

33. The Complainant bases its request to wave the requirement of Article 56 (5) of the African Charter on several decisions of the African Commission.[35]

34. The Complainant also submits that the Nigerian legal system lacks availability and effectiveness, because it is not accessible to the poor and the marginalized community.

35. Furthermore, the Complainant submits that, the burden shifts to the Respondent State to submit evidence proving the availability, the accessibility, and the effectiveness of local remedies to redress the violations in the current Communication.

36. With respect to Article 56 (6) of the African Charter, the Complainant avers that the present Communication was filed within days of the pipeline explosion.

---

[35] Communication 147/95 and 149/96 – *Sir Dawda K. Jawara v The Gambia* (*Jawara v The Gambia*) (2000) ACHPR, Communications 54/91, 61/91, 98/93, 164/97 à 196/97, 210/98 – *Malawi Africa Association and Others v Mauritania* (2000) ACHPR, Communications 25/89, 47/90, 56/91, 100/93 *World Organisation Against Torture and Others v Zaire* (1996) ACHPR, Communication 71/92 *Rencontre Africaine pour la Defence des Droits de l'Homme v Zambia* (1997) ACHPR.

37. Regarding Article 56 (7) of the African Charter, the Complainant avers that the present Communication is not being considered by another international or regional mechanism, nor has it been previously settled by any of them.

The Respondent State's Submissions On Admissibility

38. In its submission on Admissibility, the Respondent State urged the African Commission "to strike out the Communication as it is an abuse of the process of the Commission." It submits that the present Communication should not be Admissible for the non-fulfilement of Article 56 (4), (5) and (6) of the Charter.

39. According to the Respondent State, the Complaint does not fulfil the requirement of Article 56 (5) of the African Charter related to the exhaustion of local remedies. It submits that, "the incident complained of is envisaged and effectively covered by local legislation providing for local remedies."

40. It further submits that the Complainant "did not attempt any form of utilization of such local remedies," which are available and accessible, before submitting a Communication about the incident to the African Commission.

41. To substantiate its submission, the Respondent State submits that, the domestic law of Tort; Section 11 (5) of Oil Pipelines Act LFN 2004, provides several remedies for the victims in case of pipeline explosions.

42. Furthermore, the Respondent State submits that, under Sections 33, 35, 36, 42 and 46 of the Nigerian Constitution, victims have the "unfettered right of action." It adds that, Section 46 of the Nigerian Constitution expressly mandates the State to provide them with legal representation.

The African Commission's Analysis On Admissibility

43. In order for a Communication to be admissible before the African Commission, they have to fulfill all the seven requirements of Article 56 of the African Charter. The African Commission has affirmed in its jurisprudence that those requirements are cumulative, meaning that, if any one of them is absent, the Communication will be declared inadmissible.[36]

44. In the present Communication, the Complainant submits that they have complied with six of the seven requirements enumerated in Article 56 of the African Charter. The Complainant requests the African Commission to waive the requirement under Article 56 (5) of the African Charter that is related to the exhaustion of local remedies due to the lack of adequate or effective domestic remedies that exist to address the violations alleged in the Communication.

---

[36] See Communication 284/03 – *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v Republic of Zimbabwe* (2009) ACHPR para 81, and Communication 299/05 - *Anuak Justice Council v Ethiopia* (2006) ACHPR para. 44.

45. In its submission on Admissibility, the Respondent State, however, noted that the present Communication should not be Admissible because of the non-fulfilment of Article 56 (4), (5) and (6) of the African Charter. The Respondent State nonetheless only submitted arguments relating to the non-exhaustion of local remedies requirement, that is, Article 56 (5) of the African Charter.

46. Notwithstanding the fact that the only Article the Respondent State contends to is Article 56 (5) of the African Charter, the African Commission will still proceed to analyse all the seven requirements under Article 56 of the African Charter to ensure that they have been duly complied with by the Complainant.

47. Article 56 (1) of the African Charter provides that Communications should be Admissible if it 'indicates their authors even if the latter requests anonymity.' This Communication is filed by SERAP – a registered human rights NGO based in Lagos, Nigeria. The author of the Communication has not requested anonymity. The Complainant has thus fulfilled the requirement set in Article 56 (1) of the African Charter.

48. Article 56 (2) of the African Charter provides that Communications should be 'compatible with the Charter of the Organisation of African Unity or with the Present Charter.' The present Communication complies with this requirement because it invokes the violation of Articles 2, 4, 5, 14, 16, 20 and 24 of the African Charter, thus it shows a *prima facie* violation of the African Charter.

49. Article 56 (3) of the African Charter provides that in order for Communications to be Admissible, they should 'not [be] written in disparaging or insulting language directed against the State concerned and its institutions or the Organisation of African Unity.' The present Communication has not shown any evidence of disparaging language and therefore fulfils the requirement under Article 56(3) of the African Charter.

50. Article 56 (4) of the African Charter provides that Communications should not be 'based exclusively on news disseminated through the mass media.' The present Communication is submitted based mainly on primary information gathered by the Complainant from victims of the pipeline explosion, and thus fulfills the requirement of Article 56 (4) of the African Charter.

51. Article 56 (5) of the African Charter provides that Communications should be 'sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.'

52. The Complainant argues that, there is no adequate or effective domestic remedy that exists in Nigeria to address the violations alleged. It argues that the African Charter has not been accorded recognition and supremacy in the Nigerian legal system.

53. The Complainant referred the African Commission to its decision in ***Jawara v The Gambia***[37] where the African Commission held that local remedies must be available, effective and sufficient; meaning that it can be pursued without impediment, offers a prospect of success, and is capable of redressing the complaint.

54. The Complainant avers that the Respondent State is aware of the violations and did not remedy the situation. They argue that, given the scale of the human rights violations involved, the large number of victims, and the unaccessibility of the Nigerian legal system to the poor and the marginalized, local remedies could not be exhausted.

55. The Complainant, basing its arguments on ***World Organisation Against Torture and others v Zaire***[38] where the African Commission decided that it is not expected from the complainants to wait for an 'unduly prolonged' procedure of local remedies.

56. The Complainant submits that given the scale of the human rights violations in the present Communication, and the large number of the victims involved, local remedies are unavailable, ineffective and insufficient.[39]

57. The Respondent State on the other hand, contends that the Complainant did not use the available national legislation to remedy the violations alleged before bringing the complaint to the African Commission, and thus has not fulfilled the requirement of Article 56 (5) of the African Charter.

58. In the view of the African Commission, the purpose of the requirement of exhaustion of local remedies under Article 56(5) of the African Charter is based on the principle that 'the Respondent *S*tate must first have an opportunity to redress by its own means within the framework of its own domestic legal system, the wrong alleged to have been done to the individual.'[40] The African Commission has also stated that this well established rule in international law conforms to the principle that international law does not replace national law, and international mechanisms do not replace national judicial institutions.[41]

59. The jurisprudence of the African Commission, in determining compliance with this requirement, laid down '[t]hree major criteria…that is: the local remedy must be ***available, effective and sufficient***.'[42] Nevertheless, for the local remedy to fulfill these criteria, the African Commission elaborates in ***Jawara v The Gambia*** '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.'[43]

---

37 *Jawara v The Gambia*
38 *World Organisation Against Torture and Others v Zaire*
39 The Complainant referenced as well to Communications *Malawi Africa Association and Others v Mauritania*
40 *Rencontre Africaine pour la Defence des Droits de l'Homme v Zambia*
41 *Anuak Justice Council v Ethiopia* para 48
42 Communication 300/05 – *Socio Economic Rights and Accountability Project v Nigeria* (2008) ACHPR para 45
43 *Jawara v The Gambia* para 32

60. The Complainant submits that there are no adequate or effective domestic remedies to address the violations, and the Respondent State on the other hand, provides a specific legislation that it claims is available.

61. According to the Respondent State, Section 11 (5) of Oil Pipelines Act LFN 2004 of the domestic law of Tort provides several remedies for pipeline explosions. In reading the said law, the African Commission is of the view that Section 11 (5) indeed creates a civil liability on the person who owns or is in charge of an oil pipeline. According to the law, the latter would be liable to pay compensation to anyone who suffers physical or economic injury as a result of a break or leak in his pipelines.[44] The Complainant did not adduce any evidence in their submission that it has attempted to use this legislation to redress the violations for compensation to the victims of the pipeline explosion.

62. Furthermore, the case of ***World Organisation Against Torture and others v Zaire***,[45] which the Complainant based their argument upon for waiver of the requirement of Article 56 (5) of the African Charter, cannot be applied in the current Communication because the Complainant did not provide evidence for this general statement, nor any precedent which show that Section 11 (5) of Oil Pipelines Act LFN 2004 is proved to be an unduly prolonged avenue, nor have they attempted to take their case before a court of law.

63. The African Commission is of the view that the initial burden is on the Complainant to prove that they have met the requirement set-out in Article 56 (5) of the African Charter. Thereafter the burden shifts to the Respondent State if it contests the allegations of the former, declaring that there is further available and effective remedy.

64. In the current Communication, the Respondent State provides in its submission that Section 11 (5) of Oil Pipelines Act LFN 2004 is an available and effective remedy for the victims of the pipeline explosion, which, as indicated above, the Complainant failed to refute or prove otherwise.

65. In ***Anuak Justice Council v Ethiopia*** the African Commission declared the Communication Inadmissible because the Complainant did not provide evidence to their claim about why they could not exhaust local remedies. The African Commission said in its decision that:

---

[44] Sec 11 (5) of Oil Pipelines Act LFN 2004: "The holder of a licence shall pay compensation -
(a) to any person whose land or interest in land (whether or not it is land respect of which the licence has been granted) is injuriously affected by the exercise of the rights conferred by the licence, for any such injurious affection not otherwise made good; and
(b) to any person suffering damage by reason of any neglect on the part of the holder or his agents, servants or workmen to protect, maintain or repair any work structure or thing executed under the licence, for any such damage not otherwise made good; and
(c) to any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation, for any such damage not otherwise made good.
If the amount of such compensation is not agreed between any such person and the holder, it shall be fixed by a court in accordance with Part iv of this Act."

[45] *World Organisation Against Torture and Others v Zaire*

> Apart from casting aspersions on the effectiveness of local remedies, the complainant has not provided concrete evidence or demonstrated sufficiently that these apprehensions are founded and may constitute a barrier to it attempting local remedies. In the view of this Commission, the complainant is simply casting doubts about the effectiveness of the domestic remedies. This Commission is of the view that it is incumbent on every complainant to take all necessary steps to exhaust, or at least attempt the exhaustion of, local remedies. It is not enough for the complainant to cast aspersion on the ability of the domestic remedies of the State due to isolated or past incidences. […] The African Commission can therefore not declare the communication admissible based on this argument. If a remedy has the slightest likelihood to be effective, the applicant must pursue it. Arguing that local remedies are not likely to be successful, without trying to avail oneself of them, will simply not sway this Commission.[46]

66. In the present Communication, the African Commission is of the opinion that the Complainant only made generalised statements about the unavailability of local remedies in the Respondent State, without attempting to exhaust them. Accordingly, as was the situation in the ***Anuak Justice Council v Ethiopia*** case, the African Commission concludes that the Complainant in the present Communication has not exhausted local remedies.

67. A waiver of the requirement of Article 56 (5) of the African Charter according to the African Commission's jurisprudence[47] is not automatic, except in cases of serious and massive violations of human rights.

68. Based on the above analyses, the African Commission is of the view that the Communication has not fulfilled the requirement set by Article 56 (5) of the African Charter.

69. Article 56 (6) of the African Charter stipulates that Communications should be "submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter." The Complainant avers that the Communication has been submitted in a timely manner, from the date of the alleged violation, which is not contested by the Respondent State, thus the requirement under Article 56 (6) of the African Charter has been duly complied with.

70. Article 56 (7) of the African Charter stipulates that Communications should "not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity or the provisions of the present Charter." The Complainant avers that the Communication is not being considered by another international or regional mechanism, nor has it been previously settled by one, which

---

46 *Anuak Justice Council v Ethiopia* para. 58

47 Also see Communication 201/97 – *Egyptian Organisation for Human Rights v Egypt* (2000) ACHPR, Communication 307/05 - *Mr. Obert Chinhamo v Zimbabwe* (2007) ACHPR, and Communication 308/05 - *Michael Majuru v Zimbabwe* (2008) ACHPR.

is not contested by the Respondent State, thus the requirement under Article 56 (7) of the African Charter has been duly complied with.

The Decision of the African Commission on Admissibility

71. In view of the above, the African Commission on Human and Peoples' Rights decides:

i) To declare the Communication Inadmissible with respect to Article 56 (5) of the African Charter;
ii) To give notice of this decision to the parties;
iii) To publish this decision in its report on Communications.

Done in Banjul, The Gambia, during the 48th Ordinary Session of the African Commission on Human and Peoples' Rights, from 10 to 24 November 2010.