

AFRICAN UNION		UNION AFRICAINE
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Communication 427/12

SERAP (on behalf of Daniel Nsofor and Osayinwinde Agbomien)

v.

Nigeria

*Adopted by the
African Commission on Human and Peoples' Rights
during the 57th Ordinary Session, from the 4 to 18 November 2015
Banjul, The Gambia*

F. P. Tlakula



M. Maboreke

**Hon. Commissioner Faith Pansy Tlakula
Chairperson of the African Commission
on Human and Peoples' Rights**

**Dr. Mary Maboreke
Secretary to the African Commission on
Human and Peoples' Rights**

Communication 427 / 12: SERAP (on behalf of Daniel Nsofor and Osayinwinde Agbomien) v Nigeria

**13th Extra-Ordinary Session
57th Ordinary Session**

Summary of the Complaint

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received a Complaint on 25 October 2012 from the Socio-Economic Rights and Accountability Project - SERAP (the Complainant), against the Federal Republic of Nigeria¹ (the Respondent State). SERAP is a Nigerian registered human rights organization with Observer Status with the Commission. The Complaint is submitted in terms of Article 55 and 56 of the African Charter on Human and Peoples Rights, (the African Charter).
2. The Respondent State is a State Party to the African Charter having ratified the same on 1 October 1984.
3. The Complainant alleges that despite its obligations under the African Charter and other international treaties to which it is a Party, the Government of the Respondent State, through the Edo State authorities, has violated the right to a fair trial of Daniel Nsofor and Osayinwinde Agbomien (the Victims), who are two death row inmates at the Edo State Prison. It alleges that the Respondent State has committed serious, persistent and irreparable violations of the Victims' rights: to life; to competent and effective legal representation; to trial by a competent, independent and impartial tribunal established by law; to the presumption of innocence; to appeal to an independent and impartial tribunal; and to fair trial guarantees during appeals.
4. The Complainant further alleges that the Victims are at risk of imminent execution, having been convicted of murder. Under Nigeria's penal laws the death penalty is mandatory for murder. The Complainant states that in March 2010, a Nigerian NGO - Legal Defence and Advocacy Project (LEDAP) - had filed an Appeal on behalf of 840 inmates - including the Victims, following which an injunction was granted by the court upholding the Appeal, but which was later lifted in April 2012. The Complainant states that LEDAP subsequently filed another Appeal in April 2012 following the court's decision, and that the judgment on that Appeal is pending.
5. The Complainant alleges that it has received reports that the gallows at the Benin prison, in Edo State, were inspected and tested on 22 October 2012, and that it

¹ The Federal Republic of Nigeria ratified the African Charter on 22 June 1983.



feared that the Victims would be executed by the Edo State Authorities. The Complainant avers that the decision by the Governor of Edo State to sign the death warrants of the Victims, whilst their Appeal is pending, constitutes a fundamental breach of their right to fair trial, including the right to an appeal to an independent and impartial tribunal.

6. The Complainant further alleges that the Governor of Edo State signed the execution warrants two weeks after prison authorities informed him that death row inmates in the Benin prison were 'becoming unmanageable.' It informs the Commission that some death row inmates had been involved in a recent jailbreak incident in Oko prison in Edo State. The Complainant alleges that as a means to decongest the country prisons, the resumption of executions by Edo State follows an announcement by State Governors in June 2011 that they would review all cases of death row inmates and sign off executions as a means of decongesting the country's prisons.
7. The Complainant argues that the planned execution of the Victims on the sole ground that they are 'becoming unmanageable' while they still have their appeal pending, does not offer a fair and effective solution to the perceived problem of prison overcrowding.
8. The Complainant alleges that not only have the Victims been deprived of their liberty and other fair trial rights, but also alleges that the Victims' conditions are now characterized by depression, loss of sense of reality and physical and mental deterioration; massive deprivation of personal autonomy critical to psychological survival; and emotional emptiness.
9. The Complainant avers that the 2004 National Study Group on Death Penalty and the 2007 Presidential Commission on the Administration of Justice both stressed that the Nigerian criminal justice system cannot guarantee a fair trial, and called for a moratorium on the death penalty.
10. Quoting the Universal Declaration of Human Rights, the Complainant states that "recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world", that "[e]veryone is entitled in full equality to a fair and public hearing... of any criminal charge", and that "[e]veryone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial".
11. It further argues that the right to a fair trial is a fundamental safeguard to ensure that individuals are not unjustly punished. It is indispensable for the protection of other human rights such as the right to freedom from torture and cruel or



inhuman treatment, and the right to life. It states that, however, when people are subjected to unfair trials, justice cannot be served.

12. The Complainant further states that the Commission at its 44th Ordinary Session in Abuja, Nigeria, in November 2008 adopted a resolution calling on African States, including Nigeria, that still retain the death penalty to "observe a moratorium on the execution of death sentences with a view to abolishing the death penalty." It avers that the resolution recalled Article 4 of the African Charter, which recognizes the right of everyone to life, and Article 5(3) of the African Charter on the Rights and the Welfare of the Child, which guarantees the non-application of death penalty for crimes committed by children. The resolution expresses concerns about "the failure of some African states [including Nigeria] to give effect to the UN resolutions and African Commission's own 1999 resolution calling for a moratorium on executions", and about the application of "the death penalty in conditions not respectful of the right to a fair trial guaranteed under the African Charter on Human and Peoples' Rights and other relevant international norms".
13. The Complainant states that the resolution also asked AU member states, including Nigeria, that still retain the death penalty to: fully comply with their obligations under the African Charter and guarantee to every person accused of crimes for which capital punishment is applicable, fair trial standards; and to include in their periodic reports information on the steps they are taking to move towards the abolition of the death penalty in their countries.
14. The Complainant states that it considers that the application of the death penalty in these cases will be illegal and unjust. The Complainant further considers supervening factors such as those highlighted above to be sufficient grounds for stopping the Edo State authorities from going ahead with the planned execution of prisoners on death row with the unjustified and illegitimate ground that the prisoners are "becoming unmanageable". The Complainant argues that prisoners are not denuded of their rights by mere conviction. If carried out, the death sentences on the Victims would amount to inhuman or degrading treatment and unfair trial as many of the prisoners on death row have not exhausted their right to appeal.
15. The Complainant concedes that generally, local remedies must be exhausted prior to submitting a Communication to the Commission. However, it submits that there are exceptions to this general rule, as the Commission has stated that local remedies must be available, effective and sufficient. It avers that a local remedy is considered available if the petitioner can pursue it without impediment; it is effective if it offers a prospect of success and it is sufficient if it



is capable of redressing the complaint. It claims that the Victims' case before the Nigerian court of appeal has been ignored by Respondent State.

Articles alleged to have been violated

16. The Complainant alleges that the Respondent State has violated Articles 1, 2, 3, 4, 5, 6, and 7 of African Charter.

Prayers

17. The Complainant prays the African Commission to:

- (i) Consider the present Communication under Articles 55, 56 and 58 of the African Charter, and to undertake an in-depth study, based on the "series of serious" and "massive" violations alleged in this Communication;
- (ii) Find the Respondent State to be in violation of the Victims' right to life under Article 4 of the African Charter; and
- (iii) Request the Respondent State to pay appropriate compensation to the Victims for the multiple violations of their Charter rights and freedoms.

Procedure

18. The Communication was received at the Secretariat on 25 October 2012. During its 13th Extra-Ordinary Session held from 19 - 25 February 2013, the Commission considered the Communication and was seized of it. On 4 March 2013 and 5 March 2013, Complainant and the Respondent State were respectively informed of the Seizure decision, and the Complainant was requested to forward its submission on the Admissibility of the Communication within two months of notification, in accordance with Rule 105(1) of the Commission's Rules of Procedure; that is, by 3 May 2013.
19. The Communication was considered between the 14th Extra-Ordinary Session of the Commission held from 20 - 24 July 2013 and its 18th Extra-Ordinary Session held from 29 July - 7 August 2015, but deferred due to non-submission of the Complainant's arguments on Admissibility.



Analysis of the Commission to strike out

20. Rule 105(1) of the Commission's Rules of Procedure establishes that when the Commission has decided to be seized of a Communication, it shall request the Complainant to present arguments on Admissibility within two (2) months.
21. Rule 113 of the Commission's Rules of Procedure provides that when a deadline is fixed for a particular submission, either party may apply to the Commission for extension of the period stipulated. The Commission may grant an extension of time for a period not longer than one (1) month.
22. To date, and more than two (2) years after the stipulated deadline, the Complainant has not (i) made any admissibility submissions, and (ii) has not requested for an extension of time to submit.
23. Consequently the Commission does not have sufficient information upon which to make a determination on the admissibility of the Communication.

Decision of the Commission

24. In view of the above, the Commission decides to strike out the Communication for lack of diligent prosecution.

Done in Banjul, The Gambia, during the 57th Ordinary Session of the African Commission on Human and Peoples' Rights, 4 to 18 November, 2015

