



THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

In the Matter of

**THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC &
ACCOUNTABILITY PROJECT (SERAP) V. FEDERAL REPUBLIC OF
NIGERIA**

Application No: ECW/CCJ/APP/09/19 Judgment NO. ECW/CCJ/JUD/12/22

JUDGMENT

ACCRA

25th March, 2022

SUIT NO: ECW/CCJ/APP/09/19

JUDGMENT NO. ECW/CCJ/JUD/12/22

**THE REGISTERED TRUSTEES OF THE
SOCIO-ECONOMIC & ACCOUNTABILITY
PROJECT (SERAP)**

- APPLICANT

V.

FEDERAL REPUBLIC OF NIGERIA

- RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Gberi-Be OUATTARA

- Member

Hon. Justice Dupe ATOKI

-Member

Hon. Justice Keikura BANGURA

- Member/RAPPORTEUR

ASSISTED BY:

Mr. Aboubacar DIAKITE

- Assistant Registrar

REPRESENTATION OF PARTIES:

Femi FALANA (SAN)

-

Counsel for the Applicants

Kolawole OLUWADARE

Adelanke AREMO

Oeyemi OWOLABI

Olayinka OLORUNTOGBE

-

Counsel for the Respondent





I. JUDGMENT:

This is the judgment of the Court.

II. DESCRIPTION OF THE PARTIES

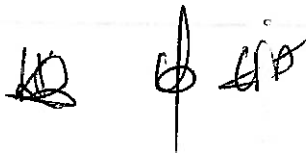
1. The Applicant is the Socio-Economic Rights and Accountability Project (SERAP), a Non-Governmental Organization registered and situated in the Federal Republic of Nigeria (hereinafter referred to as the "Applicant").
2. The Respondent is the Federal Republic of Nigeria, a Member State of ECOWAS (hereinafter referred to as the "Respondent").

III. INTRODUCTION

3. The subject matter of this application borders on the legality and compatibility of the provisions of the Cybercrime (Prohibition, Prevention, etc.) Act 2015, specifically Section 24 (hereinafter Cybercrime Act) as against the guarantees of the rights to freedom of expression and information in the African Charter on Human and People's Rights (hereinafter ACHPR) and the International Covenant on Civil and Political Rights (hereinafter ICCPR).

IV. PROCEDURE BEFORE THE COURT

4. An application initiating a claim for the violation of human rights was filed by the Applicant in the Registry of the Court on the 26th February, 2019.



5. The Respondent filed its Statement of Defense against the Applicant's originating application pursuant to Article 35 of the Rules of the Community Court of Justice on the 9th April, 2019.
6. The Applicant, by way of Motion on Notice pursuant to Article 90 of the Rules of the Community Court of Justice, requested an extension of time within which it could file its reply to the Respondent's Defense.
7. The Applicant's Reply to the Respondent's Statement of Defense was filed in the Registry of the Court on the 29th July, 2019.
8. The Applicant filed a Motion on Notice pursuant to Article 43(1) – (3) of the Rules of the Community Court of Justice on the 1st June, 2021 seeking to bring witnesses before the Court.
9. The Court adjourned the case for judgment on the 8th November 2021.

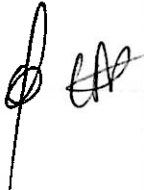
V. APPLICANT'S CASE

a) Summary of facts

10. The claim herein is for the violation of the rights to freedom of expression, information and other rights of human rights defenders, activists, bloggers, journalists, broadcasters and social media users, through the repressive use, interpretation and implementation of the vaguely worded and ambiguous provision of the Cybercrime Act.

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11. It is the contention of the Applicant that since the passage of the Cybercrime Act (Prohibition Prevention, etc.) Act 2015 (hereinafter Cybercrime Act), the Respondent and its agents have used the provisions of this Act to harass, intimidate, arbitrarily arrest and detain and unfairly prosecute users of the social media, human rights defenders, activists, journalists, broadcasters and bloggers who express their views perceived to be critical of the Government both at the Federal and State levels.
12. The Applicant submits that Section 24 of the Cybercrime Act, which provides for the offense of cyberstalking, is vaguely worded and has been severally used by the Respondent and its agents to intimidate, harass and witch hunt anyone found publishing facts deemed critical of the government or its officials. Furthermore, the definition of “*Cyberstalking*” in Section 58 as “*a course of conduct, directed at a specific person that would cause a reasonable person to feel fear,*” is quite vague and open to interpretation that is inimical to the rights of persons.
13. The Applicant states that the vaguely worded section of the Cybercrime Act is an affront and dangerous to the growth of the rule of law and protection of the human rights of people.
14. The Applicant lists twelve high profile cases of victims of harassment, intimidation, arrest unlawful detention, prosecution and imprisonment of journalists, bloggers, broadcasters, social media users, human rights defenders and activists, by the Respondent, its agents and several states of Nigeria between August 2015 and November 2018, for alleged cyberstalking.

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15. The Applicant states that it is only when the Cybercrime Act of 2015 is rendered incompatible with treaties on freedom of expression, right to information and press freedom and declared unlawful that these rights will be fully and effectively respected, protected, promoted and fulfilled in Nigeria.



b) Pleas in law

16. The Applicant is relying on the following pleas in law:

- a. Articles 1, 2, 3, 4, 5, 6, 7, 8, 9 & 24 of the African Charter on Human and People's Rights
- b. Articles 1, 2, 3, 5, 7, 9, 19 & 26 of the International Covenant on Civil and Political Rights
- c. Articles 1, 2, 9, 27, 28 & 30 of the Universal Declaration of Human Rights 1948
- d. Articles II & XII of the Declaration of Principles on Freedom of Expression in Africa
- e. Article 32 of the Supplementary Act (A/SA.1/01/10) ON Personal Data Protection within the Economic Community of West African States
- f. Articles 1, 6, 7, 10, 11 & 12 of the Supplementary act (A/SA.1/6/10) on Freedom of Expression and Right to Information in West Africa
- g. Articles 4, 65 & 66 of the Revised Treaty of the Economic Community of West African States.

c) Reliefs sought

17. The Applicant is praying to the Court for the following reliefs:

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- i. A declaration that the actions of the Respondent and its agents and several states of Nigeria in arbitrarily enforcing the provisions of the Cybercrime (Prohibition, Prevention, etc.) Act 2015 particularly its Section 24 to harass, intimidate, arrest, detain, prosecute and imprison journalists bloggers, social media users, Nigerian nationals and citizens of the economic Community of West African States (ECOWAS) violate the rights to freedom of expression, information, opinion and privacy AND MEDIA FREEDOM, GUARANTEED UNDER ARTICLES 6, 8, 9 & 24 OF THE African Charter on Human and People's Rights, Articles 7, 9, 17 & 19 of the International Covenant on Civil and Political Rights 1976, Articles 2, 9, 12 & 19 of the Universal Declaration of Human Rights 1948, Article 66 of the Revised Treaty of the Economic Community of West African States (ECOWAS) 1993, Articles 1, 6, 9, 10, 11 & 12 of the Supplementary Act (A/SA.1/6/10) on Freedom of Expression and Right to Information in West Africa, Article 32 of the Supplementary Act (A/SA.1/10) on Personal Data Protection within the Economic Community of West African States and Article II, XII & XIII of the Declaration of Principles on Freedom of Expression in African 2002.
- ii. A declaration that the provisions of the Cybercrime (Prohibition, Prevention, etc.) Act 2015 is entirely inconsistent and incompatible with international human rights standards and infringes on the rights to the freedom of expression, information and opinion guaranteed under the

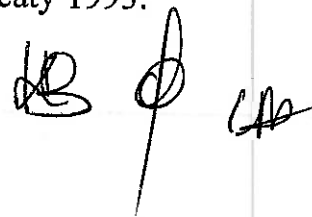
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African Charter on Human and Peoples Rights, the Declaration of Principles on Freedom of Expression in Africa 2002, the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1976, the Revised Treaty of the Economic Community of West African States 1993, the Supplementary Act (A/SA.1/6/10) on Freedom of Expression and Rights to Information in west Africa, the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the Supplementary Act (A/SA.1/01/10) ON Personal Data Protection with the Economic Community of West African States.

- iii. A declaration that the continuing use and application by the Respondent and its agents and several states in Nigeria is illegal and unlawful, as it amounts to breaches of obligations to respect, protect, promote and fulfill the rights to freedom of expression and information and media freedom, guaranteed under the African Charter on Human and People's Rights and International Covenant on Civil and Political Rights to which Nigeria is a party.
- iv. An order directing the Respondent to immediately repeal and/or amend the Cybercrime (Prohibition, Prevention, etc.) Act 2015 is in line with Nigerian obligations under international human rights law especially Article 1 of the African Charter on Human and People's Rights, the International Covenant on Civil and Political Rights and the Revised ECOWAS Treaty 1993.



- v. An order directing the Respondent and/or its agents and several states of Nigeria to provide effective remedies and reparation, including adequate compensation, restitution, satisfaction or guarantees of non-repetition that the Honorable Court may deem fit to grant to human rights defenders, activists bloggers, journalists and other online and off-line media practitioners that have been harassed, intimidated, unlawfully arrested, detained and unfairly prosecuted by the Respondent.
- vi. Such further orders the Honorable Court may deem fit to make in the circumstances of this suit.

VI. RESPONDENT'S CASE

a) Summary of facts

18. The Respondent contends that the Cybercrimes Act was enacted in 2015 after being subjected to all the requisite constitutional and legal processes, including public hearings, of which the Applicant was well aware and did not protest its passage. The Act was not enacted to muzzle the freedom of expression in Nigeria but to curtail the activities of criminals carried out on the internet. In addition to the criminalization of cyberstalking, other criminalized acts are child pornography, xenophobia, racism, internet fraud, intimidation, the threat of bodily harm via the internet, etc.

19. It is submitted by the Respondent that persons mentioned by the Applicant as victims of illegal arrests and prosecution were not prosecuted on the orders of the Respondent and that the Applicant has not provided any documentary proof

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in support of its claim. This Court has no jurisdiction to address these acts of private citizens.

20. Furthermore, the Respondent contends that any question of interpretation of Section 24 of the Cybercrime Act must be submitted to the domestic Courts and not the ECOWAS Court.

21. That the subject matter of this suit is currently before the Federal High Court, Abuja wherein the Applicant seeks the same reliefs as in the instant case.

22. Lastly, it is submitted by the Respondent that the Cybercrime Act is in line with the provisions of Section 45 of the 1999 Constitution as amended.

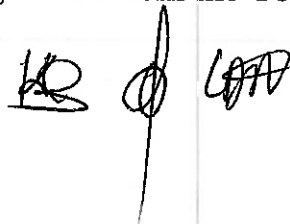
b) Pleas in law

23. The Respondent relies on the following pleas in law:

- a. Article 9 (3) of the Supplementary Protocol of the Community Court of Justice 2005
- b. Article 29 (2) of the Universal Declaration of Human Rights
- c. Cybercrime (Prohibition, Prevention, etc.) Act 2015
- d. Section 45 of the 1999 Constitution of the Federal Republic of Nigeria 1999
- e. Article 10 of the European Convention on Human Rights
- f. Article 19 (3) of the International Covenant on Civil and Political Rights

c) Reliefs sought

24. The Respondent is praying for the following reliefs from the Court:

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- i. An order of the Court dismissing the Applicant suit for being misplaced and unproven.
- ii. An order of this Court dismissing the Applicant reliefs for not being grantable in law.

VII. REPLY OF THE APPLICANT

25. The Applicant contends that contrary to the Respondent's argument, the Court has jurisdiction to adjudicate the application as it involves the violation of human rights by the Respondent, a Member State of ECOWAS.

26. Furthermore, the Supplementary Protocol does not provide for the exhaustion of local remedies for an application to be admissible before the Court.

27. That the argument that the Cybercrime Act is in line with the 1999 Constitution (as amended) is untenable, as the impact of the law on the rights to freedom of expression including the right to seek, receive and impart information and rights of journalists is more severe than that which is necessary or proportionate to the breach of the right to freedom of expression of Nigerian citizens.

28. The Applicant included annexures of newspaper reports of journalists and others allegedly arrested and detained by the Respondent and/or its agents in different parts of the country (Annexures A-L).

VIII. JURISDICTION

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29. The Court has, in a plethora of decided cases, upheld that mere allegations of human rights violation are sufficient to invoke its human rights mandate pursuant to Article 9 (4) of the Supplementary Protocol.

30. In view of the fact that the present application is premised on human rights violations pursuant to Article 9 (4) of the Supplementary Protocol, the Court holds that it has jurisdiction to hear and determine the same. (See the case of EL HADJI TIDJANI ABOUBAKAR V REPUBLIC OF NIGER (2011) CCJELR at page 8.)

IX. ADMISSIBILITY

31. The Court recalls the Respondent's contention that is owing to the fact that there is a pending suit before the national Court, the current application should be declared inadmissible by this Court as it does not comply with Article 10 (d) of the Supplementary Protocol of the Court (A/SP.1/01/05). This contention has prompted the Court to reproduce the said Article 10 (d) hereunder for ease of reference:

*“Access to the Court is open to the following:
Individuals on application for relief for violation of their human rights; the submission of application for which shall:
i. Not be anonymous; nor
ii. Be made whilst the same matter has been instituted before another International Court for adjudication;.”*

32. It is settled law that the requirement for accessing the Court on a claim for the violation of human rights is twofold: that the application should not be

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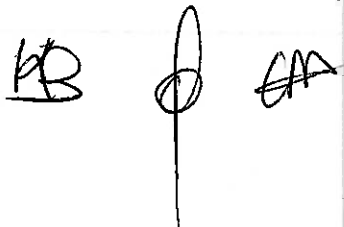
anonymous and the same suit must not be pending before another International Court.

33. Therefore, in this instance where the Applicant has described itself as a human rights Non-Governmental Organization registered under Nigerian Laws with a mandate and objective of promoting respect for the socio-economic right of Nigerians through litigation, research, publication, advocacy, and monitoring is a descriptive analysis of the identity of the same. The Court, therefore, with regards to the anonymity portion of the requirement for access, considers that the Applicant has thoroughly availed the Court of its identity, and finds it compliant pursuant to Article 10 (d) (i) of the Supplementary Protocol.

34. As to the requirement of non-pendency of the suit before another International Court, the Court finds that it must rely on its jurisprudence for instruction especially that laid out in HANS CAPEHART WILLIAMS SR. & 1 OR v. REPUBLIC OF LIBERIA & 4 ORS (2015) CCJELR at page 13, to wit:

“The limits to this Court’s jurisdiction in an action against a Member State for human rights violation as contained in Article 10(d) and as elucidated by the jurisprudence of this court are clear, lucid and unambiguous and cannot admit of any extraneous consideration. This Court has clearly stated that the pendency of an action before any national court in cases of human rights violation is not a bar to the exercise of the jurisdiction of the Court.”

35. Therefore, the requirement for admissibility before this Court for claims of violations of human rights is that pursuant to Article 10 (d) simpliciter, it must

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not be anonymous or be before another international Court. The Respondent's contention fails as the application is in compliance with Article 10 (d) of the Supplementary Protocol (supra). Consequently, this Court finds that the application is admissible and dismisses the objection by the Respondent.

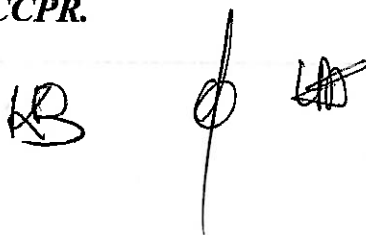
X. MERITS

36. The allegation of the Applicant before this Court for the determination on the merits, of whether the provisions of the Cybercrime Act violate the rights to freedom of expression, information, opinion and privacy in contravention of Article 9 (1) & (2) of the ACHPR and Article 19 of the ICCPR. For which it seeks certain declarations that the Cybercrime (Prohibition, Prevention, etc.) Act 2015, particularly its Section 24, violates the rights to freedom of expression, information, opinion and privacy and media freedom guaranteed under Articles 6, 8, 9 & 24 of the ACHPR and 7, 9, 17 and 19 of the ICCPR.

37. Whilst, the Respondent contends that the Cybercrime Act 2015 was promulgated to curtail criminal activities carried out on the internet and not to muzzle the freedom of the Press in Nigeria. Furthermore, that the Act was subjected to all the requisite constitutional and legal processes all of which the Applicant was aware of and registered no protests.

38. The Court will therefore, opt to consider the Applicant's allegation in the order in which the reliefs have been sought.

i. On the conformity of Section 24 of the Cybercrime Act with Article 9 of the ACHPR and Article 19 of the ICCPR.

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39. The issue before this Court is whether the Cybercrime Act conforms to the tenets of Article 9 (1) & (2) of the ACHPR and Article 19 of the ICCPR. Whilst it is noted that several guarantees have been listed by the Applicant, the Court will opt to consider the specific violation canvassed, which is the violation of freedom of expression, information, opinion and privacy and media freedom pursuant to Article 9 of the ACHPR and Article 19 of the ICCPR.

40. Article 9 (1) and (2) of the ACHPR reads thus:

1. *Every individual shall have the right to receive information.*
2. *Every individual shall have the right to express and disseminate their opinions within the law.*

41. Whilst Article 19 of the ICCPR reads thus:

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

(a) For respect of the rights or reputations of others;

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(b) For the protection of national security or of public order (ordre public), or of public health or morals.

42. It is pertinent to note here that the ACHPR in its Article 9 (1) guarantees the right to receive information on the one hand and the right to express and disseminate same on the other hand, provided the latter is done within the confines of the law. The ICCPR, in express terms, as opposed to its terse denotation in the ACHPR states claw-back clauses in Article 19 (3) that may curtail the enjoyment of the right. In both instances, the guarantee is not an absolute guarantee as certain derogations can be made within the ambit of extant laws.

43. Having noted, the contention lies in the conformity of Section 24 of the Cybercrime (Prohibition, Prevention etc.) Act, 2015 with the provisions of Article 9 of the ACHPR and Article 19 of the ICCPR, the Court will reproduce the same hereunder for ease of reference:

1. *Any person who knowingly or intentionally sends a message or other matter by means of a computer system or network that:*
 - a. *Is grossly offensive or pornographic or an indecent obscene or menacing character or causes any such message or matter to be so sent; or*
 - b. *He knows to be false, for the purpose of annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill-will or needless anxiety to another or caused such a message to be sent; commits an offense under this*

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act and shall be liable on conviction to fine of not more than N7, 000,000.00 or imprisonment.

2. Any person who knowingly or intentionally transmits or causes the transmission of any communication through a computer system or network:

- a. Bully, threaten or harass another person, where such communication places another person in fear of death, violence or bodily harm or to another person;*
- b. Containing any threat to kidnap any person or any threat to harm the person of another, any demand or request for a ransom for the release of any kidnapped person, to extort from any person firm association or corporation any money or other thing of value; or*
- c. Containing any threat to harm the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, to extort from any person, firm association or corporation, any money or other thing of value;*

Commits an offence under this Act and shall be liable on conviction-

(i) in the case of paragraphs (a) and (b) of this subsection to imprisonment for a term of 10 years and/or a minimum fine of N25,000,000.00; and

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- (ii) in the case of paragraph (c) and (d) of this subsection, to imprisonment for a term of 5 years and/or a minimum fine of N15,000, 000.00.
3. A court sentencing or otherwise dealing with a person convicted of an offence under subsections (1) and (2) may also make an order, which may, for the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from further conduct which- (a) amounts to harassment; or (b) will cause fear of violence, death or bodily harm; prohibit the defendant from doing anything described/specified in the order.
 4. A defendant who does anything which he is prohibited from doing by an order under this section, commits an offence and shall be liable on conviction to a fine of not more than N10,000,000.00 or imprisonment for a term of not more than 3 years or to both such fine and imprisonment.
 5. The order made under subsection (3) of this section may have effect for a specified period or until further order and the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.
 6. Notwithstanding the powers of the court under subsections (3) and (5), the court may make an interim order for the protection of victim(s) from further exposure to the alleged offences.

44. At this juncture, the Court recalls that the claim of the Applicant is that Section 24 of the Cybercrime Act is not in conformity with the provisions of Article 9 of the ACHPR and Article 19 of the ICCPR and this has resulted in a violation of freedom of expression, information, opinion and privacy. This warrants a

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determination by this Court, of what “a law” is within the context of Article 9 of the ACHPR and Article 19 of the ICCPR, thereafter, the Court will determine whether the said Section 24 of the Cybercrime Act is in conformity with Article 9 of the ACHPR and Article 19 of the ICCPR.

45. To reiterate the point earlier stated, “*within the law*” (which in this instance has the same meaning as “a law”) as provided for in Article 9 (2) of the ACHPR, applies to a law that is promulgated to be characteristically representative of the international guarantees and thus in conformity with same. Therefore, this Court will rely on the laid down foundation in its jurisprudence in *INCORPORATED TRUSTEES OF LAWS AND RIGHTS AWARENESS INITIATIVES V FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO. ECW/CCJ/JUD/16/20* (Unreported) at paragraphs 120 and 131 to wit: “*That in order to avoid being in contravention of human rights, a “law” should not be arbitrary, it should be predictable, reasonable, proportionate and pursue legitimate claims...when a law does not define the parameters or elements of the crime that it typifies, it cannot pass the test of legality since, by its nature, it will be arbitrary.*”

46. The law in question before this Court then is the Cybercrime Act 2005, which is alleged to denote terms which are arbitrary and vague causing same to be deemed not in conformity with Article 9 of the ACHPR and Article 19 of the ICCPR. It is imperative to state here that the Court is not embarking on the interpretation of the extant law as the same is outside of its competence. However, it is delving into the application of the law as where the very nature of a law causes its application to infringe on the rights of persons; the Court can decide on the same.

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47. In so doing, the Court considers the averment by the Applicant, on the one hand, that the term "... a course of conduct, directed at a specific person that would cause a reasonable person to feel fear" in Section 58 of the Cybercrime Act, is quite vague and open to interpretation that is inimical to the rights of persons. Furthermore, it submits that the term "...grossly offensive..." in Section 24 of the Cybercrime Act is ambiguous. That the arbitrary use of such terms within the Cybercrime Act is entirely inconsistent and incompatible with international human rights standards and infringes on the rights to freedom of expression, information and opinion guaranteed under the ACHPR. Furthermore, it considers the Respondent's contention that the Cybercrime Act was subjected to all requisite constitutional and legal processes, which was public and within the knowledge of the Applicant, on the other hand.

48. It is the considered opinion of the Court that any law promulgated to give voice to Article 9 of the ACHPR and Article 19 of the ICCPR must not undermine the guarantee afforded therein. Noting that this guarantee is not absolute, States are therefore enjoined to be guided by the precepts of the Declaration of the Principles of Freedom of Expression and Access to Information in Africa (Adopted in 2019 at the 5th Ordinary Session) particularly Principle 9 which outlines the limitations that are acceptable as:

"Justifiable limitations 1. States may only limit the exercise of the rights of freedom of expression and access to information, if the limitation: a. is prescribed by law; b. serves a legitimate aim; and c. is a necessary and proportionate means to achieve the stated aim in a democratic society...."

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49. A State therefore, when enacting laws must consider the ratio in the decision of the African Commission in *ZIMBABWE LAWYERS FOR HUMAN RIGHTS AND ORS. V ZIMBABWE*, that “*Any restriction on freedom of expression must be...necessary in a democratic society;*” as this rationale is based on the legal principle of proportionality, which demands that the punishment be proportional to the seriousness of the crime. (COMMUNICATION NO. 284/03, paragraph 17).

50. This re-echoes the Court’s pronouncement in the case of *INCORPORATED TRUSTEES OF LAWS AND RIGHTS AWARENESS INITIATIVES V. FEDERAL REPUBLIC OF NIGERIA* (supra) at paragraph 110 that:

“The Human Rights Committee, in its General Comment No. 34 on Article 19 on Freedom of Expression at paragraph 27 states, “...that when the State Parties impose certain restrictions on the exercise of freedom of expression, they should not undermine the right itself.”

51. Yet, it must be further emphasized that “*the law*” in the instant case (which is the Cybercrime Act) denotes terms aforementioned which are vague and arbitrary due to the fact that it does not define the parameters or elements of the crime that it typifies, it cannot pass the test of legality since, by its nature, and it will be arbitrary. Therefore, the Court finds that Section 24 of the Cybercrime Act is not in accordance with Article 9 of the ACHPR and Article 19 of the ICCPR.

52. Furthermore, the Court is persuaded by its decision in a similar case where the same Section 24 of the Cybercrime Act was contested for being inconsistent

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with Article 9 of the ACHPR and Article 19 of the ICCPR and it held therein that “...the provisions of Section 24 of the Cybercrime (Prohibition, Prevention etc.) Act 2015 are shown to be in violation of Article 9 (2) of the ACHPR and Article 19 of the ICCPR.” (INCORPORATED TRUSTEES OF LAWS AND RIGHTS AWARENESS INITIATIVES V FEDERAL REPUBLIC OF NIGERIA (supra) at paragraph 165)

53. The Court hereby states that it will not depart from its previous holding and consequently, holds that the vague and arbitrary nature of Section 24 of the Cybercrime Act of 2005 is not in conformity with Article 9 of the ACHPR and Article 19 of the ICCPR.

ii. On whether Applicants rights have been violated

54. In proving that there was a violation of the human rights of certain persons, the Applicant submits that several persons were allegedly arrested for acts ranging from cyberstalking, to expressing personal opinions. In support of this it adduces the following list of persons whose rights have been violated through the arbitrary arrest and detention and unfair prosecution:

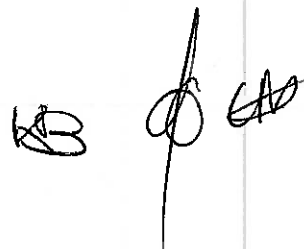
- *Abubakar Sidiq Usman - 8th August, 2015*
- *Musa Babale Azare – 20th August, 2016*
- *Seun Oloketuyi – 25th August, 2015*
- *Chris Nwandu – 1st September, 2015*
- *Emmanuel Ojo – September 2015*
- *Desmond Ike Chima – October 2015*
- *Sahara Reporters – September 2016*

- *Omoyele Sowore – January 2017*
- *Kemi Olunloyo and Samuel Walson – March 2017*
- *Nsibiet John - 6th January, 2017*
- *Deji Adeyanju – 28th November, 2018*
- *Mr. Segun Onibiyo – 23rd November, 2018*

55. That all these arrests were carried out between 2015 and 2018 pursuant to the Cybercrime Act.

56. The Respondent on the flip side contends that persons mentioned by the Applicant as victims of illegal arrests and prosecution were not prosecuted on the orders of the Respondent and that the Applicant has not provided any documentary proof in support of its claim. That these acts are of private citizens which this Court has no jurisdiction to address.

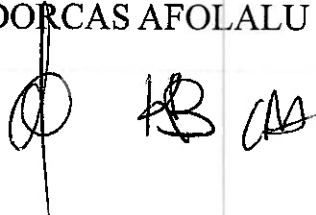
57. The issue for consideration herein is whether the Applicant has proved that they have suffered any injury or harm arising from the use of Section 24 of the Cybercrime Act. The Court has analyzed the facts and evidence supporting this allegation, particularly Annexures A to L, which are news clippings from online publications carrying stories of the arrest and detention of specific individuals between 2015 and 2019. However, the Court finds that the list in the Statement of Facts presented by the Applicant is inconsistent with the persons listed in the Annexure. What must be emphasized here is that a claim of violation of human rights must be adequately proven, and the victims should at least be identified appropriately.

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58. It is trite law that an allegation for human rights should be proven by evidence supporting the claim. The Court will rely on the principle of proof laid down in FEMI FALANA & 1 OR v. THE REPUBLIC OF BENIN & 2ORS (2012) CCJELR on page 15 where it held that “... *the onus of proof is on the party who asserts a fact and who will fail if that fact failed to attain the standard of proof that would persuade the Court to believe the statement of claim. Furthermore even as in this case where the Defendants rested their respective positions on the evidence of the Plaintiffs, the Plaintiff is required to still prove his claim. It must be mentioned that a party is free to choose whether to adduce evidence in support of his pleadings or not and the Court has no power to interfere with the exercise of that right.*”

59. Therefore, the Court considers that the list adduced by the Applicant cannot on its own persuade the Court of a violation of the rights of persons therein. This is due to the fact that the Applicant failed to establish, by way of evidence, that the violation was suffered by the persons listed which resulted in a breach of the Respondent’s obligation. The Court notes that the Applicant alleges that the persons listed above were arrested and detained, yet it failed to submit uncontroverted evidence of the said arrest. While the Applicant has submitted online newspaper (blogs) clippings of alleged arrests, it has been unable to corroborate the same with an independent source of persuasive value.

60. In like manner, the assertion by the Applicant that several persons were prosecuted and convicted has not been supported with evidence. The Court finds the claims before it is bereft of evidence of a summons or a judgment containing details of parties that will persuade it on the claim for prosecution. This Court, relying on its decision in MRS MODUPE DORCAS AFOLALU V. REPUBLIC

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OF NIGERIA (2014) CCJELR on page 8, held that “*All the parties in a trial must contribute towards establishing the truth, ...*”

61. The truth or proof must not only be a statement of facts but must be supported by evidence in the form of a document or testimony on oath that establishes the claim and is of persuasive influence to the Court. The Court, therefore, finds that online newspaper clippings on their own are insufficient in discharging the burden of proof as the same should have been corroborated with, for instance, the oral testimony and or witness statements of the victims.

62. Therefore, the Court has found no documentary or testimonial evidence supporting the claims herein and dismisses the Applicant’s claim as unsubstantiated.

XI. OPERATIVE CLAUSE

For the reasons stated above the court sitting in public after hearing both parties:

As to jurisdiction:

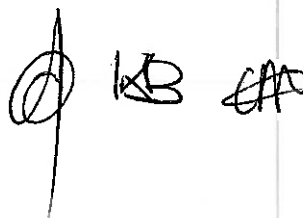
- i. **Declares** that it has jurisdiction.

As to admissibility

- ii. **Declares** the application admissible

As to the merits of the case:

- iii. **Declares** that Section 24 of the Cybercrime Act is arbitrary, vague and repressive and therefore, is in contravention of Article 9 of the ACHPR and Article 19 of the ICCPR.

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As to compensation

iv. **Dismisses** the claim for compensation of the Applicant.

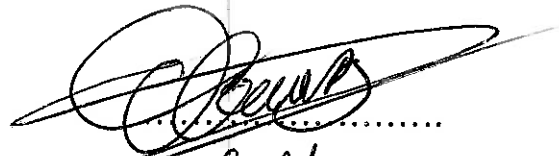
As to reparation:

v. **Orders** the Respondent to amend Section 24 of the Cybercrime (Prohibition, Prevention, etc.) Act, 2015 in accordance with its obligations under Article 1 of the ACHPR.

COSTS:

i. **Orders** that the parties bear their costs pursuant to Article 66 of the Rules of Procedure of the Court.

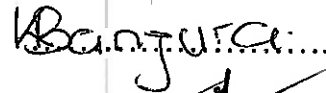
Hon. Justice Gberi-Be OUATTARA



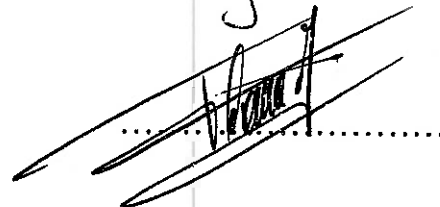
Hon. Justice Dupe ATOKI



Hon, Justice Keikura BANGURA/Judge Rapporteur



Mr. Aboubacar DIAKITE - Assistant Registrar



Done in Accra, this 25th day of March, 2022 in English and translated into French and Portuguese.

