

## ECOWAS Court Orders Nigeria To Provide Free And Compulsory Education To Every Child

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In a dramatic and ground-breaking judgment today, the ECOWAS Community Court of Justice in Abuja has ordered the Nigerian government to provide as of right, free and compulsory education to every Nigerian child. This judgment followed the court's earlier ruling that declared that all Nigerians are entitled to education as a legal and human right.

The ECOWAS Court's judgment read in open court today, followed a suit instituted by the Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) against the Federal Government and UBEC, alleging the violation of the right to quality education, the right to dignity, the right of peoples to their wealth and natural resources and to economic and social development guaranteed by Articles 1, 2, 17, 21 and 22 of the African Charter on Human and Peoples' Rights.

The Court also ruled that the Universal Basic Education Commission (UBEC) failed to discharge its legal responsibility pursuant to its foundational instrument to monitor how states are spending and using states' natural wealth and resources in order to ensure that the resources are spent for the purposes for which they are meant.

The court granted the following reliefs asked by SERAP:

A DECLARATION that every Nigerian child is entitled to Free and Compulsory Education by virtue of Article 17 of the African Child's Rights Act, Section 15 of the Child's Rights Act 2003 and Section 2 of the Compulsory Free and Universal Basic Education Act, 2004.

AN ORDER directing the Defendant to make adequate provisions for the compulsory and free education of every child forthwith.

The court also said that the ICPC report on the diversion of the sum of N3.5 billion from the UBE fund by certain public officers in 10 states of the Federation of Nigeria constitutes only a prima-facie evidence of theft of the public funds until the officials involved are successfully prosecuted before national courts. On this ground, the court did not elaborate on the provisions of Articles 21 and 22 of the African Charter on Human and Peoples Rights.

The Court said that the right to education can be enforced before the Court and dismissed all objections brought by the Federal Government, through the Universal Basic Education Commission (UBEC), that education is “a mere directive policy of the government and not a legal entitlement of the citizens.”

Reacting to the ruling, SERAP’s Solicitor Femi Falana, who filed and argued the case before the Court with Adetokunbo Mumuni, said, “This is the first time an international court has recognized a state obligation to provide legally enforceable human right to education to its citizens, and sends a clear message to ECOWAS member states, including Nigeria and indeed all African governments, that the denial of this human right to millions of African citizens will not be tolerated.”

“We commend the ECOWAS Court for its ground-breaking judgment, which has permanently re-defined human rights jurisprudence in Africa. The ECOWAS Court has consistently demonstrated courage and industry in the discharge of its vital role in putting an end to violation of all human rights and impunity of perpetrators in the sub-region. We also acknowledge the important contribution of Dr Kolawole Olaniyan of Amnesty International in London, to the case,” said Falana.

"In the current climate, where economic and social rights are not deemed legally enforceable in Nigerian courts and where victims of violations of these human rights are denied access to an effective remedy, this unanimous judgment of the ECOWAS Court of Justice is a welcome landmark. It reaffirms that states are obliged to promote and ensure the universality and indivisibility of all human rights as recognized by the African Charter on Human and Peoples’ Rights."

“The judgment is very promising for countless children who continue to be denied their legally enforceable human right to education, and for millions of Nigerians who continue to face extreme poverty as a result of high level official corruption and diversion of Nigeria’s natural wealth and resources for personal use.”

“Today the ECOWAS Court of Justice has shown itself to be a uniquely effective human rights mechanism; and as the only hope that Nigerian victims of large scale official corruption and the associated human rights violations, especially economic and social rights have for justice and effective remedy. Nigeria has a clear obligation to fully implement and comply with the judgment. The Authority of Heads of State and Government of ECOWAS should ensure that the court’s judgment is respected, and thereby ensure the court’s long-term effectiveness.”

“The Nigerian government and indeed all African governments should now put every child in school, and educate them at the expense of the state,” Falana added. SERAP’s suit [No ECW/CCJ/APP/0808] followed a petition sent by SERAP to the Independent Corrupt Practices and Other Related Offences Commission (ICPC), which led to the discovery by the ICPC of massive corruption and mismanagement of the UBEC funds.

The investigation also resulted in the recovery of stolen N3.4 billion, meant to improve the quality of education and access to education of every Nigerian child. The organization used the findings of the ICPC as the basis for its suit before the ECOWAS Court.

The Federal Government had alleged, through the UBEC, that “the Court lacks jurisdiction to entertain the action filed by SERAP on the grounds that the Compulsory and Basic Education Act 2004 and the Child’s Rights Act 2004 are Municipal Laws of Nigeria and not subject to the jurisdiction of the Court because it is not a treaty of ECOWAS; that the educational objective of Nigeria under the 1999 Constitution is non-justiciable or enforceable; and that SERAP has no locus standi to institute or maintain the action.”

Dismissing all the objections by the government, the ECOWAS Court reaffirmed its earlier ruling to the effect that: “It is important to assess the basis of SERAP’s claims in determining the justiciability or otherwise of its claims with respect to the right to education and whether it can be litigated before this Court. Though SERAP factually based its claim on the Compulsory and Basic Education Act and the Child’s Right Act of Nigeria, it alleged a breach of the right to education contrary to Article 17 of the African Charter on Human and Peoples’ Rights and not a breach of the right to education contained under Section II of the 1999 Federal Constitution of Nigeria It is trite law that this Court is empowered to apply the provisions of the African Charter on Human and Peoples’ Rights and Article 17 thereof guarantees the right to education.”

“It is well established that the rights guaranteed by the African Charter are justiciable before this Court. Therefore, since SERAP’s application was in pursuance of a right guaranteed by the provisions of the African Charter, the contention of the government that the right to education is not justiciable as it falls within the directive principles of state policy cannot hold”, the Court further ruled.

On the objection that the court lacks jurisdiction, the Court said: “It is a well established principle of law that jurisdiction is a creature of stature. Under Article 9(4) of the Supplementary Protocol, the Court clearly has jurisdiction to adjudicate on applications concerning the violation of human rights that occur in Member States of ECOWAS. The thrust of SERAP’s suit is the denial of the right to education for the people of Nigeria, denial of the right of people to their wealth and natural resources and the right of people to economic and social developments guaranteed by Articles 1, 2, 17, 21 and 22 of the African Charter on Human and Peoples’ Rights of which Nigeria is a signatory. The Court has jurisdiction over human rights enshrined in the African Charter and the fact that these rights are domesticated in the municipal law of Nigeria cannot oust the jurisdiction of the Court.”

The Court also said that “As SERAP’s claim is premised on Articles 1, 2, 17, 21 and 22 of the African Charter, the Court does have subject matter jurisdiction of the suit filed by SERAP.”

Dismissing the government’s argument on locus standi, the Court stated: “The authorities cited by both the government and SERAP support the viewpoints canvassed by them. However, we think that the arguments presented by SERAP are more persuasive for the following reasons: first, the doctrine of ‘Actio Popularis’ developed under Roman law to allow any citizen to challenge a breach of public right in Court was a way of ensuring that the restrictive approach to the issue of standing would not prevent public spirited individuals from challenging a breach of a public right in Court. Second, SERAP cited authorities from around the globe which all concur in the view that in a human rights violation the plaintiff need not be personally affected or have any special interest worthy of protection.”

The Court also said: “Public international law in general is in favour of promoting human rights and limiting the impediments against such a promotion, lends credence to the view that in public interest litigation, the plaintiff need not show that he has suffered any personal injury or has a special interest that needs to be protected to have standing. Plaintiff must establish that there is a public right which is worthy of protection which has been allegedly breached and that the matter in question is justiciable. This is a healthy development in the promotion of human rights and this court must lend its weight to it, in order to satisfy the aspirations of citizens of the sub-region in their quest for a pervasive human rights regime.”

END/

Signed

Adetokunbo

Executive

30/11/2010

Mumuni

Director