COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMMUNIDADE,
CEDEAO




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

In the Matter of

LAWYERS ALERT INITIATIVE FOR PROTECTING THE RIGHTS OF CHILDREN, WOMEN AND THE INDIGENT
**(APPLICANT)**

v

FEDERAL REPUBLIC OF NIGERIA
**(RESPONDENT)**

*Application* No. **ECW/CCJ/APP/25/21;** *Judg't* No. **ECW/CCJ/JUD/28/25**

***JUDGMENT***

LAGOS

14 MAY 2025

THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)
HOLDEN AT LAGOS, NIGERIA

*Application* No. **ECW/CCJ/APP/25/21;** *Judg't* No. **ECW/CCJ/JUD/28/25**

BETWEEN

LAWYERS ALERT INITIATIVE FOR PROTECTING THE RIGHTS OF CHILDREN, WOMEN AND THE INDIGENT
**(APPLICANT)**

AND

FEDERAL REPUBLIC OF NIGERIA
**(RESPONDENT)**

**COMPOSITION OF THE COURT**:

Hon. Justice Ricardo C.M. **GONÇALVES** -Presiding

Hon. Justice Sengu M. **KOROMA** - Member

Hon. Justice Edward Amoako **ASANTE** - Judge Rapporteur

ASSISTED BY:

Dr. Yaouza **OURO-SAMA** - Chief Registrar

**REPRESENTATION OF PARTIES**:

Rommy Mom, Esq - Counsel for APPLICANT

Maimuna Lami Shiru, Esq -Counsel for RESPONDENT

## I. JUDGMENT

1. This is a judgment of the Court read virtually in open court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

## II. DESCRIPTION OF THE PARTIES

2. Applicant, Lawyers Alert Initiative for Protecting the Rights of Children, Women and the Indigent, is a non-profit human rights organization based in Makurdi, Benue State, and Abuja, focused on advancing the rights of poor and vulnerable groups in Nigeria.

3. Respondent, the Federal Republic of Nigeria, is an ECOWAS Member State and a party to the African Charter on Human and People's Rights (African Charter) on which Applicant relies for its case.

## III. INTRODUCTION

### *Subject Matter of the Proceedings*

4. The Applicant alleges that certain provisions of Nigeria's Penal Code of 1963 (applicable in Northern Nigeria)—specifically Sections 405(1)(c) and (d), 405(2)(d) and (e), 406, and 407—as well as Sections 249 and 250 of the Criminal Code Act of 1916 (applicable in Southern Nigeria), constitute vagrancy laws that grant law enforcement agents broad discretion to arbitrarily arrest, dehumanize, and imprison vulnerable groups, including sex workers. The Applicant seeks a declaration that these provisions violate Articles 2, 3, 5, 6, 7, 10, 12, 18,

and 19 of the African Charter, and requests a consequential order directing the Respondent to repeal them.

## IV. PROCEDURE BEFORE THE COURT

5. The Initiating Application, dated 26 April 2021, was filed at the Registry of the Court on 11 June 2021, and served on the Respondent the same day.

6. On 30 March 2023, Applicant filed an application asking the Court to grant default judgment. It was served on the Respondent the same day.

7. On 15 May 2023, Respondent filed a Motion for Extension of Time within which to file a Defence, together with its prepared Statement of Defence. These were served on the Applicant the same day.

8. On 24 October 2023, the Alliance for the Decriminalisation of Petty Offences in Nigeria (ADPON) filed a motion to intervene as amicus curiae, together with its prepared amicus curiae brief. Both processes were served on the parties on 25 October 2023.

9. At a virtual session of the Court on 8 November 2023 during which all the parties were represented, Respondent's Counsel moved her application for extension of time to regularize her already filed Defence. With no opposition from the Applicant, the Court granted the Application. Counsel for the intended amicus curiae announced

appearance and urged the Court to grant their application to be admitted as amicus curiae. While Applicant did not oppose the amicus application, Respondent's Counsel informed the Court that she was not privy to it. The Court granted the amicus application and adjourned the matter to 7 December 2023 for hearing.

10. On 4 December 2023, the Applicant filed a Motion on Notice for Leave of the Court to amend its Initiating Application which was served on the Respondent on 5 December 2023.

11. At the sitting of the Court on 2 May 2024 at which all the parties were represented, Applicant's Counsel moved the application to amend the Initiating Application. Counsel for the Respondent opposed on points of law.

12. In a ruling of the Court dated 3 July 2024, the Court granted the Applicant's request to amend the Initiating Application, deemed the already filed Amended Initiating Application as properly filed and served and ordered the Respondent to file an amended Statement of Defence within 30 days.

13. On 25 July 2024, the Respondent filed its amended Statement of Defence which was served on the Applicant.

14. At a session of the Court on 17 March 2025, the Court heard the parties on the merits of the case and adjourned for deliberation and judgment.

## V. APPLICANT'S CASE

*(a) Summary of Facts*

15. The Applicant says that the Penal Code 1963 is a Nigerian law that applies to the northern part of Nigeria. Under Sections 405(1)(c) &(d), 405(2)(d) &(e), 406 and 407 of the Penal Code, a person can be convicted and punished for an offence on the discretion of a "punishing officer". Applicant therefore asserts that the Penal Code makes room for ultra-vires powers and discretionary verdicts.

16. According to the Applicant, sex workers and other vulnerable persons are often arbitrarily arrested, dehumanized, and imprisoned under these provisions of the Penal Code. The Applicant states that the Penal Code is not clear on the issue of sex work, and the offences it proscribes are unclear and petty. Yet, it gives frivolous and unhealthy powers to law enforcement agents in a manner that violates the human rights of persons affected.

17. That similarly, sections 249 and 250 of the Criminal Code 1916 (applicable in Southern Nigeria) provides for petty offences that are unclear.

18. According to the Applicant, the impugned provisions of the Penal Code and Criminal Code are vagrancy laws. Rather than protecting the state, they punish the offender's status and personal life for offences that do not harm anyone. The Applicant states that through its monitoring and documentation of human rights violations across Nigeria, it has, over the years, recorded numerous human rights

violations associated with the enforcement of vagrant or petty offences laws. It attached its 2022-2023 Report to the Application as evidence of this fact.

19. The Applicant states that the African Court in an advisory opinion requested by Pan African Lawyers Union (PALU) and Southern Africa Litigation Centre (SALC) highlighted the human rights implications of vagrancy laws. The Court noted *inter alia* that States have obligations to take measures to give full effect to the rights protected by African human rights instruments. Given its above conclusions, the Court held that States parties must "either amend or repeal their vagrancy-laws and by-laws to bring them into conformity with these instruments."

*(b) Pleas in Law*

20. By way of pleas in law, the Applicant submits:

(i) That Sections 405 (1)(c) &(d), 405(2)(d) &(e), 406 and 407 of the Penal Code 1963 (applicable in Northern Nigeria) and sections 249 and 250 of the Criminal Code Act 1916 (applicable in Southern Nigeria) are vagrancy laws that are incompatible with the African Charter and other human rights instrument biding on the Respondent.

*(c) Reliefs Sought*

21. The Applicant seeks the following reliefs from the Court:

i. A declaration that the provisions of Section 405, Sub-section 1, paragraphs (c)& (d)and Sub-section 2 paragraphs (d) & (e)and

Sections 406 and 407 of the Penal Code Nigeria, Cap. 89 of Northern Nigeria 1963 are not compatible with the African Charter on Human and People's Rights and other international human rights instruments applicable in Nigeria, [and] thereby violates the rights of poor and marginalized groups in Nigeria.

ii. A declaration that the provisions of Section 405, Sub-section 1, paragraphs (c)& (d) and Sub-section 2 paragraphs (d) & (e) and Sections 406 and 407 of the Penal Code of Nigeria, cap. 89 of Northern Nigeria 1963 are vagrancy laws.

iii. Any such further order or orders as the Court may deem fit in the circumstance.

## VI. RESPONDENT'S CASE

*(a) Summary of Facts*

22. The Respondent states that it observes and enforces the rule of law in accordance with its Constitution, ECOWAS treaties and the African Charter, and makes every effort to uphold its international obligations.

23. Respondent denies the Applicant's claim that various provisions of the Penal Code 1963 contradict the African Charter and other human rights instruments applicable in Nigeria. It further denies the Applicant's assertion that paragraphs (d) and (e) of Section 405(2) of

## VII. SUBMISSION OF AMICUS CURIAE

28. In its amicus brief, the Alliance for the Decriminalisation of Petty Offences in Nigeria (ADPON) provided the Court with the historical context of the impugned offences under the Penal Code and Criminal Code of Nigeria and highlighted relevant comparative jurisprudence on the overbreadth and impact of these offences on vulnerable groups.

## VIII. JURISDICTION OF THE COURT

*(a) Respondent's Objection to Jurisdiction*

29. The Respondent submits that although this Honourable Court has jurisdiction over cases of human rights violations within a Member State, the Applicant has not proved that the application of sections 405 to 407 of the Penal Code and sections 249 and 250 of the Criminal Code has violated the human rights of any identifiable individuals. That the Applicant's failure to demonstrate the specific individuals whose fundamental rights have been breached by the application of these laws shows that the suit is speculative and has no live issue for the Court to adjudicate. Accordingly, the Respondent submits that in the absence of proof that there are identifiable individuals whose human rights have been allegedly violated through the application of these laws, the Court has no jurisdiction to conduct an abstract review of its laws.

*(b) Submissions of the Applicant*

the Penal Code, as well as sections 406 and 407 thereof vests unbridled discretionary powers in law enforcement officials.

24. The Respondent states that contrary to the Applicant's claims, the Report attached to the Application does not provide any proof that the Respondent's application of sections 405 to 407 of the Penal Code and Sections 249 and 250 of the Criminal Code has violated the human rights of any individual.

25. As regards the African Court's advisory opinion, the Respondent states that the jurisdiction of this Court does not extend to declaring the provisions of the Penal Code and Criminal Code as vagrancy laws based upon the advisory opinion of the African Court, particularly when the opinion leaves states with the power to review and amend their laws as and when required.

*(b) Pleas in law*

26. Respondent submits that the Court has no jurisdiction as the Application invites the Court to undertake an abstract review of the laws of the Respondent.

*(c) Reliefs sought*

27. Respondent requests the Court to decline jurisdiction and dismiss the Application as speculative.

30. The Applicant asserts that the Application contains allegations that sex workers and other vulnerable individuals are being arbitrarily arrested, dehumanized, and imprisoned under the provisions of the impugned laws. According to the Applicant, these arrests and imprisonments amount to violations of the human rights of these individuals under the African Charter and other relevant international human rights instruments. Therefore, the Applicant contends that the Application does not invite the Court to conduct an abstract review of the Respondent's laws. Rather, it seeks a declaration that the laws in question, which continue to violate the rights of various groups, are incompatible with the African Charter. Accordingly, the Applicant submits that the Court has jurisdiction pursuant to Article 9(4) of the Protocol of the Court.

*(c) Analysis of the Court*

31. Article 9(4) of the Protocol of the Court provides that "[t]he Court has jurisdiction to determine cases of violation of human rights that occur in any Member State". The Court has held that to activate this jurisdiction, it is sufficient if the Application alleges that violations of human rights have taken place in the territory of the Respondent state and that the Respondent is responsible for those violations, but without prejudice to the determination of the claims on the merits after hearing both parties. (See *Registered Trustees of Gan Allah Fulani Development Association v Federal Republic of Nigeria* [ECW/CCJ/JUD/06/23], para 38 and *Jack Rockson & Global Agriculture Development v Liberia* [ECW/CCJ/JUD/16/24], para 40)

32. With respect to the Court's subject matter jurisdiction, the Application must allege a violation of internationally recognized human rights that are either set out in a binding human rights instrument or recognized under customary international law. (See *Hassan Habre v Senegal (Interim Ruling)* [2010] CCJELR 43, paras 58-59; *Digital Rights Lawyers Initiative v Nigeria* [ECW/CCJ/JUD/02/23], paras 25-30; and *Omar Jallow & Another v Republic of The Gambia* [ECW/CCJ/JUD/06/17], p 9.) Further, since the Court's jurisdiction under Article 9(4) of the Court's Protocol is to "determine cases of violation of human rights", the Application must show, at least *prima facie*, that there are real and identifiable victims whose internationally recognised human rights have been adversely impacted by the conduct of the Respondent.

33. Accordingly, this Court has held that its jurisdiction "does not consist in examining the domestic laws of a Member State *in abstracto*, or in assessing whether such domestic laws are consistent, or not, with the Member State's international obligations. The alleged violation must have resulted from an actual implementation of the law to the detriment of the Applicant in question. To that effect, mere presumptions or conjectures do not suffice." (*Karim Meissa Wade v. Republic of Senegal* [2013] CCJELR 231, para 75.)

34. In the instant case, the Court observes that the Applicant has made a generalized claim that certain provisions of the Penal Code 1963 and the Criminal Code 1916 of Nigeria violate the rights of sex workers

and other vulnerable groups. However, no evidence has been provided, whether in the form of sworn statements from victims, national court judgments, or even newspaper reports, detailing specific instances in which individuals have been adversely affected by the application of the impugned laws, to demonstrate that "cases of violation of human rights" have allegedly occurred in the Respondent State. The Applicant's 2022–2023 Report on Human Rights Violations Associated with Petty Offences in Nigeria contains only generalized statistics on arrests and prosecutions for various minor offences, without indicating whether such arrests or prosecutions were in fact carried out under the specific provisions of the Respondent's laws being challenged in this case. Furthermore, the Report does not provide any information about identifiable individuals who have been arrested, prosecuted, or convicted under the impugned laws.

35. Without such a factual context of alleged human rights violations, the Applicant simply seeks the following reliefs:

    i. A declaration that the provisions of Section 405, Sub-section 1, paragraphs (c) & (d) and Sub-section 2 paragraphs (d) & (e)and Sections 406 and 407 of the Penal Code Nigeria, Cap. 89 Of Northern Nigeria 1963 and sections 249 and 250 of the Criminal Code Criminal Code Act (1916) (Cap C. 38 LFN 2004) are not compatible with the African Charter on Human and People's Rights and other international human rights instruments applicable in Nigeria, thereby violating the rights of the poor and marginalized groups in Nigeria.

ii. A declaration that the provisions of Section 405, Sub-section 1, paragraphs (c)& (d) and Sub-section 2 paragraphs (d) & (e) and Sections 406 and 407 of the Penal Code of Nigeria, cap. 89 of Northern Nigeria 1963 and Criminal Code Act Criminal Code Act (1916) (Cap C. 38 LFN 2004) are vagrancy laws.

36. In light of the above, the Court considers that this Application is an invitation to undertake an abstract review of the impugned laws of the Respondent outside the context of any real and identifiable individuals whose human rights have been allegedly violated. As the Court has repeatedly held, it has no mandate to undertake such abstract review of Member States' laws under Article 9(4) of the Protocol of the Court. (See *Karim Meissa Wade v. Republic of Senegal* [2013] CCJELR 231, para 75 and *Nnenna Obi v Federal Republic of Nigeria* [ECW/CCJ/APP/JUD/27/16] pp 11-13.) Rather, the Court's mandate is to ensure the protection of the human rights of individuals when those rights are alleged to have been violated by the conduct of the Respondent, including the application of its laws. Accordingly, for the Court to assess the compatibility of a Member State's laws with its international human rights obligations, such assessment must be made in the context of those laws being actually applied to individuals and resulting in alleged violations of their rights.

37. In the present case, the Applicant has not alleged any specific cases of human rights violations, nor has it produced any victims whose rights were violated as a result of the implementation of the impugned provisions of Nigeria's Penal and Criminal Codes. Instead, the

Applicant makes generalized claims about persons being arrested or likely to be arrested under the said laws. Because the Applicant has not alleged the violation of the human rights of any identifiable individuals arising from the implementation of the Respondent's laws it challenges in this case, the Court has no jurisdiction within the meaning of Article 9(4) of the Protocol of the Court.

## IX. OPERATIVE CLAUSE

38. For the foregoing reasons, the Court sitting in public and after hearing the parties:

***On jurisdiction***

i. Declares that it has no jurisdiction and accordingly dismisses the Application.

***On costs***

ii. Makes no order as to costs.

Done at Lagos this 14 day of May 2025 in English and translated into French and Portuguese.

Hon. Justice Ricardo C.M. **GONÇALVES**
Presiding

Hon. Justice Sengu M. **KOROMA**
Member

Hon. Justice Edward Amoako **ASANTE**
Judge Rapporteur

ASSISTED BY:
Dr. Yaouza **OURO-SAMA** (Chief Registrar)